

January 26 , 2009

**THE BOARD OF
BENTON COUNTY
COMMISSIONERS
AGENDA PACKET**

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
January 12, 2009, 9:00 am.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

Present: Chairman Max E. Benitz, Jr. Chairman
Commissioner Leo Bowman
Commissioner James Beaver
County Administrator David Sparks
Clerk of the Board Cami McKenzie

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Community Development Coordinator; Finance Manager Linda Ivey; Personnel Manager Melina Wenner; Facilities Manager Roy Rogers; Public Works Director Ross Dunfee; Ed Thornbrugh, Human Services; DPA Ryan Brown; Planning Manager Mike Shuttleworth; Human Services Manager Carrie Huie-Pascua; Robin Callow, Human Services; and Auditor Bobbie Gagner.

Approval of Minutes

The Minutes of January 5, 2009 were approved.

Review Agenda

Consent agenda item "i" (Community Litter Cleanup Program Application) was added to the consent agenda.

Consent Agenda

MOTION: Commissioner Beaver moved to approve the consent agenda items "a" through "i". Commissioner Bowman seconded and upon vote, the Board approved the following:

Assessor

- a. Expert Witness Agreement w/R Scott for Expert Advice

Commissioners

- b. Business Travel and Expense Policy; Rescinding Resolution No. 08-635

Planning

- c. Short Plat Vacation – SPV 07-06

Sheriff

- d. Service Contract w/Consolidated Food Management, Inc. for Food Services at Jail
- e. Service Contract w/Jack's Superior Auto Body, LLC for Auto Body Repair Services

- f. Service Contract w/Mel's Inter City Collision, Inc. for Auto Body Repair Services
- g. Service Contract w/Mathews Auto Body for Auto Body Repair Services
- h. Authorization to Purchase Vehicles

Public Works

- i. Community Litter Cleanup Program Application

Executive Session – 4th Quarter Litigation Update

The Board went into executive session with DPA Ryan Brown at 9:02 a.m. for approximately 10 minutes to discuss 4th Quarter Litigation. Also present were David Sparks, Cami McKenzie, Loretta Smith Kelty, and Melina Wenner. The Board came out of executive session at 9:13 a.m. Mr. Brown stated that no decisions were made in executive session.

Other Business

Meeting Cancellation

The Board cancelled the meeting of January 20, 2009.

Yakima Basin Fish and Wildlife Recovery Board (YBFWRB)

Alex Conley, President of YBFWRB, gave an overview and discussed the following purposes of the Board: Lead Entity (solicit projects and present to the Salmon Recovery Funding Board for approval); Recovery Plan (endangered species, salmon, steelhead, bull trout recovery); and outreach work. Additionally, he provided a brochure and a copy of the Yakima Basin Habitat Restoration Projects and Steelhead Recovery Plan.

Benton Conservation District – Semi-Annual Report

Mark Nelson and Marcy Apple gave a presentation on the Benton Conservation District and discussed the following:

Their work on conducting a comprehensive inventory of the Lower Yakima River through funding from the Salmon Recovery Board and a temperature study of the Lower Yakima River in locating cool pockets to benefit salmon migration.

The Board briefly recessed, reconvening at 10:00 a.m.

Benton County Affordable Housing

Carrie Huie-Pascua and Robin Callow provided an update on the Benton County Affordable Housing (2060 Funds) work to date, relevant data, and the current status of the Interlocal Agreement between Benton County and the cities. It was stated that Benton City, Richland, Prosser, and West Richland had all ratified both the Interlocal Agreement and subsequent Amendment for clarification and were ready to begin participation. However, the City of Kennewick retained its position that it wanted to have three votes in order to participate in the Interlocal Agreement.

Ms. Huie-Pascua recommended the Board approve and ratify the agreement so the money could be used. Additionally, she said the City of Kennewick was invited to join at any time or at the time of the Agreement's renewal process in five years and was eligible to apply for funding under the same criteria as any other participant, however, would not have a vote on the steering committee.

The Board agreed to have the interlocal agreement finalized with approval by the PA's office and submitted on the next available consent agenda.

Update on Historical Grant Process

Duane Davidson said there was a resolution appointing himself as chairman to the Historical Document Preservation Committee to develop a process and grant program for the historical preservation funds. He introduced Mike Huntington, President of East Benton County Museum and prior chairman of the Board. Mr. Huntington said that five organizations had worked to put together guidelines and develop application forms for a grant process. Mr. Davidson stated they anticipated several applications and would bring recommendations to the Board of Commissioners for final approval and would be requesting the Board of Commissioners to formally adopt the policies and procedures of the Committee.

Request for Supplemental Appropriation – PA's Office

Linda Ivey presented a request for supplemental appropriation by the Prosecuting Attorney's office in the amount of \$74,054.

Andy Miller (via videoconference) said the City of W. Richland had requested the County prosecute misdemeanors and gross misdemeanors in District Court on a contract basis. Mr. Miller said that part would be reimbursed by the City and part funded by the County to help with staffing problems in the PA's office.

MOTION: Commissioner Bowman moved to approve the supplemental appropriation to go to a public hearing. Commissioner Beaver seconded and upon vote, the motion carried.

Yakima River Basin Water Storage Feasibility Study

Adam Fyall presented a letter to the Dept. of Ecology regarding the County's response to the Yakima Supplemental Draft EIS. The Board approved the letter to be signed by the Chairman.

MOTION: Commissioner Bowman moved to approve the letter to the Department of Ecology as presented to be signed by the Chairman. Commissioner Beaver seconded and upon vote, the motion carried.

Line Item Transfer Request – Sheriff's Office

Sheriff Taylor (via/videoconference) requested the Board approve a line item transfer in the amount of \$12,400.00 to fund a deputy position until the retirement of a current senior deputy.

He said the provisional position was needed due to a deputy returning from active military duty earlier than expected.

MOTION: Commissioner Bowman moved to approve the line item transfer as presented. Commissioner Beaver seconded and upon vote, the motion carried.

Other Business

2009 Priorities

David Sparks said they had identified certain Board priorities for 2009, including Budget Policies and Procedures; District Court Judges v. Commissioners; Appointment Process for new District Court Judge; and 800 mhz program for SECOMM. Mr. Sparks requested the Board begin a series of workshops, beginning on Wednesday the 14th. The Board agreed.

Committee Assignments

Commissioner Bowman said the Board approved the Committee Assignments but that he no longer participated on the Transportation Improvement Board nor the Pipeline Safety Committee and that staff would send a letter to those entities stating the appointment was in error.

Flood Recap

Commissioner Bowman briefed the Board on the recent flood emergency declaration at Emergency Service and the estimated \$43,000 in property damage. He said they would be meeting today to identify a process for assessment of damages and repairs. Additionally, he provided copies of reports to the Board.

The Board briefly recessed, reconvening at 11:00 a.m.

C.R.I.D. Financing Options

Duane Davidson discussed the following issues regarding financing options for the C.R.I.D. #20 (Cottonwood Drive). First, the County would not be able to issue registered warrants for the amount needed because it exceeded the \$2 million cap. Second, the interest rate normally charged would need to be adjusted because the Finance Committee could not recommend the current rate. Third, the issue of long-term financing and selling bonds.

Mr. Sparks stated that bond advisor Jack McLaughlin has stated the County would not be able to get financing any time in the near future on this project if it wanted to sell bonds on the open market.

Commissioner Bowman said it appeared the Finance Committee should meet to recommend how to amend the current policy. Additionally, the Board had determined this C.R.I.D. was a viable project to move forward, however, he was not sure of the best path to accomplish that.

Commissioner Beaver said he did not think it was appropriate to use liquid money to fund a short-term project and had a problem with taking Benton County's cash and paying for the project. He wanted to know what the other financing options were.

Chairman Benitz said the issue should come to a workshop so the Board could determine if it wanted to change its current policy for utilizing registered warrants to finance county road improvement districts.

Mr. Sparks stated there was nothing wrong with the policy but the issue was whether the project was going forward and whether or not the County was paying for it.

MOTION: Commissioner Beaver moved to stop any further work on C.R.I.D. #20, until the Board could clarify where it was with financing. Commissioner Bowman seconded with the caveat that it stop only to look at other ways to finance the project. Commissioner Beaver concurred. Upon vote, the motion carried.

Gravel Road Issues

Commissioner Beaver said he had researched the issue regarding the private road used during construction of the Intertie. He said his preference would be to have the Contractor fix the road. However, he did not believe the County should pay for it nor build them a new road but that something needed to be done.

The Board agreed to have Commissioner Beaver work with Ross Dunfee and contact the Contractor about participating in fixing the road.

Vouchers

Check Date: 01/05/2009
Warrant #: 221638-221799
Direct Deposit #: 42013-42573
Total all funds: \$2,079,512.11

Check Date: 01/05/2009
Taxes #: 10109011-10109013
Warrant #: 914683-914720
Total all funds: \$1,987,836.46

Total amounts approved by fund can be reviewed in the Benton County Auditor's Office.

Resolutions

09-028 Expert Witness Agreement w/R Scott for Expert Advice
09-029 Business Travel and Expense Policy; Rescinding Resolution No. 08-635
09-030 Short Plat Vacation – SPV 07-06
09-031 Service Contract w/Consolidated Food Management, Inc. for Food Services at Jail

- 09-032 Service Contract w/Jack's Superior Auto Body, LLC for Auto Body Repair Services
- 09-033 Service Contract w/Mel's Inter City Collision, Inc. for Auto Body Repair Services
- 09-034 Service Contract w/Mathews Auto Body for Auto Body Repair Services
- 09-035 Authorization to Purchase Vehicles
- 09-036 Community Litter Cleanup Program Application
- 09-037 Line Item Transfer – Dept. 121

There being no further business before the Board, the meeting adjourned at approximately 11:30 a.m.

Clerk of the Board

Chairman

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Special Board Meeting
Wednesday, January 14, 2009, 8:00 am.
Commissioners' Conference Room
Benton County Justice Center
Kennewick, WA

Present: Chairman Max E. Benitz, Jr. Chairman
Commissioner Leo Bowman
Commissioner James Beaver
County Administrator David Sparks
Clerk of the Board Cami McKenzie

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kely; Adam Fyall, Community Development Coordinator; Finance Manager Linda Ivey; Public Works Director Ross Dunfee; DPA Ryan Brown; Auditor Bobbie Gagner; Deputy Auditor Brenda Chilton; Central Services Manager Randy Reid; Keith Mercer, Sheriff's Office; Judge Holly Hollenbeck; District Court Administrator Jacki Lahtinen; Clerk Josie Delvin.

Workshop – 2009 Commissioner Priorities

District Court Judge Nomination Process

Bobbie Gagner said she had contacted the Secretary of State and this position would be appointed and would run for election during the next even-year election. She said she forwarded the information to the PA for review.

Chairman Benitz said he had looked at other County processes and recommended the Board put together a policy for non-partisan position appointments. He suggested the Board send out a questionnaire sent to the Bar Association, which would be sent back to the County Administrator. The County Administrator would then make a recommendation for the top three and the Board would look at filling the position.

Commissioner Bowman agreed the Board needed to have a standardized process.

Commissioner Beaver also agreed there should be a standardized form and an application to fill out. He requested Mr. Sparks to get at least four or five models for the Board to review.

Judge Hollenbeck said that Benton County was unique in that it did not have a municipal court nor judges and the Courts worked well because of the cooperation from the cities. He said in the past a committee was formed represented by cities and judicial positions, an application sent out,

and a recommendation made to the Board. Mr. Sparks said there was an application process already in place and the Board could use Personnel for recruitment of the position.

Commissioner Beaver said he liked the idea from Judge Hollenbeck and recommended the Board put together an interview team that made a recommendation for the top three and sent the recommendation to the Board.

The Board agreed.

Bylaws and Rules of Procedure for Benton County Commissioners

The Board reviewed the Bylaws and Rules of Procedure for the Board and the following changes were agreed to:

1. Reference to "audiotapes" should be changed to reflect the current recording system.
2. Deadline to schedule and submit documentation for the agenda would be 5:00 p.m. on the Wednesday preceding the meeting.
3. Failure to comply with this deadline would result in removal of the agenda item without the prior consent of the County Administrator.
4. Only a member of the Commission could bring "Other Business" items before the Board.

Emergency Management - 800 MHz

David Sparks said the City of Richland was currently drafting an interlocal agreement regarding the participation in the 800 MHz system.

Chairman Benitz asked the Board if it wanted to participate financially in the upgrade of the 800 MHz system. He said he would support it, but first wanted to see the proposed participation plan. He indicated the proportionate share of each party was determined on use of the radios between Richland, Kennewick and Benton County and with the \$7 million grant, there was approximately a \$4 million shortfall.

Ryan Brown and David Sparks discussed the sheriff's usage on behalf of the jail and the cities and allocating a percentage back to the cities. Chairman Benitz said the project was moving forward and two new tower sites were being constructed. He did indicate that funds were available in the 800 MHz reserves (based on a per month maintenance charge per phone) to begin paying for construction.

Commissioner Beaver said if part of this system was for the jail, then it should be worked out in the bed day rate. There was a discussion on whether the cost of the Public Works phones should be used in the formula since they were only used in the case of an emergency.

Mr. Sparks said he would be meeting with the City of Richland later in the day to discuss the interlocal agreement.

Chairman Benitz asked the Board if it was still willing to participate in an amount up to \$2 million and the Board said it was.

Budget Policies/Procedures

The Board discussed going to a bi-annual budget instead of a yearly budget, for the sake of saving staff and department time. The Board agreed to have Mr. Sparks research the idea. The Board briefly discussed a zero-base budget and said it was not ready to go there, but would look at it if the need arose.

The Board agreed to have another workshop at 8:00 a.m. on Wednesday, November 21, 2009.

The meeting adjourned at 10:00 a.m.

Clerk of the Board

Chairman

a

RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON**

**IN THE MATTER OF THE NOTICE OF COMPLETION FOR THE CONSTRUCTION OF
THE BENTON COUNTY COURTROOM TI PROJECT LOCATED AT THE JUSTICE
CENTER, KENNEWICK, WA**

WHEREAS, Benton County entered into a contract on December 3, 2007 with Fowler General Construction, Inc., Richland, WA for the construction of the Benton County District Courtrooms, per Resolution 07-834; and

WHEREAS, the Benton County Facilities Manager and CWH Architects determined the project reached completion as of January 20, 2009; **NOW, THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby accepts the Benton County Courtrooms TI project complete.

Dated this _____ day of _____, 2009

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

RESOLUTION

b

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON**

**IN THE MATTER OF THE NOTICE OF COMPLETION FOR THE PROCUREMENT AND
INSTALLATION OF HAWORTH OFFICE FURNITURE AND JURY CHAIRS FOR THE
NEW COURTROOMS TI PROJECT LOCATED AT THE BENTON COUNTY JUSTICE
CENTER, KENNEWICK, WA**

WHEREAS, Benton County entered into a contract on July 28, 2008 with Brutzman's Inc.,
Richland, WA for the procurement and installation of Haworth furniture for the Benton
County District Courtrooms, per Resolution 08-674; and

WHEREAS, the Board entered into a contract on October 13, 2008 with Brutzman's Inc.,
Richland, WA for the procurement and installation of jury chairs for the Benton County
District Courtrooms, per Resolution 08-847; and

WHEREAS, the Facilities Manager determined the procurement and installation has
reached completion; **NOW, THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County,
Washington, the Board hereby accepts the procurement and installation of the Haworth
furniture and jury chairs for the District Courtrooms complete.

Dated this _____ day of _____, 2009

”

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

Orig: File – Lisa Small
cc: Auditor; R. Ozuna; J. Lahtinen; Brutzman's Inc.

Small

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: 1/26/09 Subject: Gold Wing Road Riders Association, Inc.	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Board Direction	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Workshop
Prepared by: <u>dgg</u> Reviewed by: <u>lsk</u>		

BACKGROUND INFORMATION

Attached for Board review is the Lease Agreement with the Gold Wing Road Riders Association, Inc. The Lease Agreement has been reviewed and approved as to form by the Prosecuting Attorney's office.

The Lease Agreement allows the Gold Wing Road Riders Association, Inc. to hold their annual motorcycle rally at the Fairgrounds on May 22 – 25, 2009.

Compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased.

The Deputy County Administrator recommends approval of the Lease Agreement with the Gold Wing Road Riders Association, Inc.

RECOMMENDATION

Move the Lease Agreement with the Gold Wing Road Riders Association, Inc. be approved.

RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON**

**IN THE MATTER OF APPROVING THE LEASE AGREEMENT BETWEEN THE
BENTON COUNTY FAIRGROUNDS AND THE GOLD WING ROAD RIDERS
ASSOCIATION, INC.**

WHEREAS, the Gold Wing Road Riders Association, Inc. will provide the Benton County Fairgrounds \$1,795.00 plus camping fees to hold a motorcycle rally at the Fairgrounds on May 22 – 25, 2009; and

WHEREAS, compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased, and per Resolution 07-870, the agreement must be approved by the Board of Benton County Commissioners; and

WHEREAS, the Benton County Deputy Administrator recommends the Gold Wing Road Riders Association, Inc. Lease Agreement be approved; **NOW THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, that the Lease Agreement with the Gold Wing Road Riders Association, Inc. shall be granted; and

BE IT FURTHER RESOLVED that the Board authorizes the Chairman of the Board to sign the Lease Agreement with the Gold Wing Road Riders Association, Inc.

Dated this _____ day of _____ 2009.

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

**Constituting the Board of County
Commissioners of Benton County,
Washington**

BENTON COUNTY FAIRGROUNDS

1500 South Oak Street, Bldg #20
Kennewick, WA 99337
(509) 586-9211

LEASE AGREEMENT

TODAY'S DATE: **December 1, 2008**

LEASE AGREEMENT NUMBER: **012.09**

EVENT DATE(S): **May 22 – 25, 2009**

NUMBER OF DAYS: **4**

BUILDING(S) / AREA: **Grounds – Including Buildings 3, 4, Oak Street Area,
North and Central Lawn and South/West RV Areas**

LESSEE: **Gold Wing Road Riders Association, Inc.**

MAILING ADDRESS: **905 W 25th Ave., Kennewick, WA 99337**

CONTACT: **Gary Domas, Director**

HOME PHONE: **582-7214** CELLULAR PHONE: **551-6133**

TIME OF THE EVENT: **Friday – Sunday 8:00 am – 11:00 pm,
Monday 8:00 am – 12:00 pm**

TYPE OF EVENT: **GWRRA Motorcycle Rally**

ESTIMATED ATTENDANCE: **200**

SELLING TICKETS: YES NO X

THIS LEASE (AGREEMENT) is entered into effective upon the signature of both parties, between Gold Wing Road Riders Association, Inc., an Arizona Corporation (LESSEE) and BENTON COUNTY, a municipal corporation authorized under the laws of the State of Washington, operating the Benton County Fairgrounds (LESSOR).

1. EVENT

- a. MOTORCYCLE RALLY ON THE GROUNDS INCLUDING BUILDINGS 3, 4, OAK STREET AREA, NORTH AND CENTRAL LAWN AND SOUTH/WEST RV AREAS ON MAY 22-25, 2009, FRIDAY THROUGH SUNDAY 8:00 AM UNTIL 11:00 PM AND MONDAY 8:00 AM UNTIL 12:00 PM WITH AN ESTIMATED ATTENDANCE OF 200 PEOPLE, hereafter referred to as the EVENT.

2. FACILITIES LEASED FOR THE EVENT

- a. LESSEE agrees to lease the buildings and grounds, equipment and services specified in Exhibit A (Attached) (collectively the Facilities) to hold EVENT on the date(s) specified on the cover hereto. In addition to said date(s), LESSEE desires and further agrees to lease said Facilities for move-in and/or move-out purposes on May 21, 2009. LESSEE WARRANTS THAT SAID FACILITIES WILL BE USED ONLY FOR LAWFUL PURPOSES NECESSARY TO SUPPORT THE EVENT.

3. PAYMENTS

- a. In consideration for the license to hold the EVENT, LESSEE agrees to pay LESSOR the FEE of \$ 1,795.00 (less damage/cleaning deposit if previously paid) for use of the Facilities as detailed in Exhibit A, no later than May 6, 2009. If the fee is not made by said date, this Agreement will be null and void unless otherwise agreed to in writing by LESSOR. Upon such termination, LESSEE shall be obligated to pay a cancellation fee as specified in the Benton County Fairgrounds Policies and Procedures, Paragraph #9.

4. CAMPING OVERNIGHT

- a. LESSOR does not make any warranties as to suitability of campgrounds for LESSEE'S purposes or compatibility of campground infrastructure to any equipment anticipated to be used by LESSEE or participants in LESSEE'S EVENT. LESSEE is responsible for ensuring that the campgrounds, as they exist, are suitable for LESSEE'S purposes and that campground infrastructure meets the needs of LESSEE and/or participants in LESSEE'S EVENT. LESSEE may request a walk-through of the campground facilities and LESSOR shall take all reasonable steps to accommodate such a request. PROVIDED that all such walk-throughs shall be during regular business hours only, and may be by appointment only.
- b. A \$10.00 fee per day per tent/camper applies to units hooked up to water and electricity. A \$6.00 per day per tent/camper applies to units that do not hook up to water and electricity. LESSEE is responsible for collecting all camping fees. Camping fees must be turned into the Fairgrounds Administrative Office no later than two (2) business days after the EVENT. If payment is not received by such date, the entire otherwise refundable balance of the LESSEE'S damage/cleaning deposit will

be forfeited. IF THE REFUNDABLE PORTION OF THE DAMAGE/CLEANING DEPOSIT IS LESS THAN THE AMOUNT OF CAMPING FEES DUE, LESSEE REMAINS LIABLE FOR THE BALANCE OF THE CAMPING FEES. (Further details may be included in Exhibit A.)

5. CANCELLATION OF EVENT

- a. The parties recognize that cancellations made less than 60 days prior to the first event date will potentially cause the BCF to lose lease or rental revenue. The parties further recognize that for a number of reasons outside of the control of the parties, the actual amount of the loss is often difficult to quantify. Therefore, the parties agree to the following schedule of liquidated damages which shall become due and owing if Lessee cancels less than 60 days prior to the first day of the event:
 1. If the Cancellation is made less than 60 days prior to the first event date, then Lessee shall pay 25% of the Lease fee as liquidated damages;
 2. If the cancellation is made less than 30 days prior to the first event date, then Lessee shall pay 50% of the fee as liquidated damages.
- b. The liquidated damages specified in this section may be deducted from cleaning or any other deposits retained by the BCF, and if any further amount is still due after such deduction, the Lessee may recover such amount due in the same manner as if it were seeking to recover any other sum due under this agreement, and may utilize any lawful means to do so.

6. CONCESSIONAIRES

- a. LESSEE and LESSOR agree that LESSEE may arrange for food and/or beverage service CONCESSIONAIRE(S) at the EVENT. LESSOR is entitled to 0 of the revenues generated by such CONCESSIONAIRE(S).
- b. LESSEE may arrange for food and/or beverage service CONCESSIONAIRE(S) at the EVENT on the following conditions:
 1. Any concessionaires shall be fully licensed under all applicable state and local laws to serve whatever food or beverage they intend to sell;
 2. Any concessionaires who serve food or drink other than alcoholic beverages must procure commercial general liability insurance, appropriate for the food service industry, which does not exclude any of the hazards common to vendors in the food service industry. Such policy must specifically insure against claims resulting from bodily injury, illness or death due to foodborne pathogens. The policy must have a minimum liability limit of \$1 million per person or incident with a general aggregate of \$2 million. Policies shall name Lessee, as well as Lessor, its officers, directors, its elected officials, agents and employees, as additional insureds.
 3. LESSEE shall ensure that all concessionaires have insurance policies as required herein, and must provide copies of certificates of insurance and the necessary endorsement pages to prove compliance with additional insured requirements, for said policies to LESSOR prior to the first date during which such concessionaires

plan on doing business at the event. In the event that LESSEE fails to provide a certificate of insurance as required by this paragraph for any concessionaire planning to do business at the event, then that concessionaire shall be barred from doing business anywhere on fairgrounds property.

- c. Permitting unlicensed vendors or vendors who are not insured as required in this article to do business on the fairgrounds property during any event or events shall constitute a breach of this agreement.

7. NOVELTIES/SOUVENIRS

- a. LESSEE agrees to pay 0 of all novelty, souvenir and merchandise gross revenues (minus sales tax) to the LESSOR for the duration of the EVENT.
- b. LESSEE may sell novelty, souvenir and similar merchandise at the EVENT and may contract with vendors for this purpose, and may contract with such other vendors as it finds necessary to conduct the Event provided that any vendors doing business at the site of the Event must comply with the following requirements:
 1. All vendors must be licensed to conduct business as vendors selling whatever merchandise they plan on selling, or providing such equipment/services as they plan on providing pursuant to all state and local laws;
- c. Permitting unlicensed vendors as required in this article to do business on the fairgrounds property during any event or events shall constitute a breach of this agreement.

8. DAMAGE / CLEANING DEPOSIT

- a. LESSEE must pay a damage/cleaning deposit of \$ 250.00 at the time LESSEE executes this Agreement. **THIS AGREEMENT IS NOT EFFECTIVE UNTIL EXECUTED BY LESSOR AND THE DAMAGE/CLEANING DEPOSIT IS RECEIVED.** Damages to the Fairgrounds' resulting from the EVENT activities will be charged to the LESSEE at replacement cost plus labor; the cost of labor not exceeding the average cost for such labor in the Tri-Cities area. Charges for repairs will be subtracted from the damage/cleaning deposit, as may any other fees specified as subject to forfeiture of the damage/cleaning deposit elsewhere in this Agreement. The remaining balance, if any, of the damage/cleaning deposit, if any, will be returned to the LESSEE in approximately ten (10) business days after the EVENT date. If the damage/cleaning deposit is less than the amount of damage, LESSEE remains liable for the balance. Neither the Benton County Fairgrounds nor Benton County assume any liability whatsoever for any loss or injury to the LESSEE or LESSEE'S property while on Benton County Fairgrounds' property.

9. INSURANCE

- a. LESSEE agrees to purchase, and maintain in force through the duration of this Agreement **commercial general liability insurance with a limit in the sum of not less than one million dollars (\$1,000,000) per occurrence for bodily injury or death of any one person and property damage and two million dollars (\$2,000,000) in the aggregate for bodily injury to, or death of, any number of persons and property damage.** Said policy may not exclude any activities

expected to be, or actually, undertaken during the EVENT or setup/takedown. Said policy shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured and shall include a provision prohibiting cancellation of said policy except after thirty (30) days prior written notice to LESSOR. A CERTIFICATE OF LIABILITY INSURANCE COVERAGE AS REQUIRED BY THIS SECTION SHALL BE DELIVERED TO THE LESSOR NO LATER THAN THIRTY (30) DAYS PRIOR TO THE FIRST DATE OF THE EVENT.

- b. LESSEE shall ensure that all vendors and contractors for the EVENT are either covered by their own insurance policies, covered by a policy purchased through LESSOR specifically for this EVENT, or added as an additional insured on LESSEE'S policy in the following amounts:
 1. If the vendor or contractor will be serving food or food items, or beverages other than alcoholic beverages of any type, then the policy must be a **commercial general liability policy which does not exclude claims for food poisoning, and must have limits of one million dollars (\$1,000,000) per incident, and two million dollars (\$2,000,000) general aggregate.**
- c. *Policies sufficient to meet these requirements may be available for purchase directly through LESSOR for this EVENT only, if any such vendors are not otherwise covered by appropriate insurance.*
- d. LESSEE is responsible for enforcing the above stated insurance requirements and requiring written proof from the vendors and contractors. No later than ten (10) business days prior to the EVENT, LESSEE shall provide to LESSOR proof, in the form of unaltered ACORD insurance certificates, of insurance as required above. In the case of liquor liability and food poisoning coverage, the proof must also include applicable endorsements and/or copies of the exclusions pages to evidence that such coverage is afforded.
- e. **All insurance policies required by this section shall include move-in and move-out days, as well as the event days and shall indicate these dates on the insurance certificate.**
- f. All insurance policies required by this section shall cover losses which occur during the covered period, regardless of when the claim is filed, i.e. cannot be "claims made" policies.
- g. All insurance policies required by this section shall be primary to any insurance policies or policies of self-insurance carried by LESSOR;
- h. The limits required by this section are not intended to an indication of liability nor are they to be considered limits on amount of indemnification;

- i. LESSEE SHALL PROVIDE, NO LATER THAN THIRY (30) DAYS PRIOR TO ANY EVENT COVERED BY THIS AGREEMENT, PROOF OF ALL FORMS OF INSURANCE REQUIRED IN THIS SECTION. THIS PROOF SHALL CONSIST OF A CERTIFICATE OF INSURANCE NAMING "BENTON COUNTY FAIRGROUNDS" AS CERTIFICATE HOLDER, AS WELL AS COPIES OF ALL KEY PROVISIONS, EXCLUSIONS, AND ENDORSEMENTS FROM THE POLICY INCLUDING THE REQUIRED ADDITIONAL INSURED LANGUAGE.
- j. All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

10. PERMITS

- a. All necessary city and/or state permits and/or licenses must be obtained and presented to LESSOR prior to the first day of the EVENT, or the first day of set up if applicable.
- b. LESSEE shall comply with all Federal, State and local laws, ordinances, rules and regulations. LESSEE acknowledges that all buildings, premises or structures located in or upon the leased premises are considered "public buildings" for purposes of RCW Chapter 70.160 that prohibits smoking in and around public places. LESSEE shall ensure that the security personnel retained pursuant to section 11 of this agreement are specifically instructed to enforce the provisions of RCW Chapter 70.160.

11. SECURITY

- a. LESSEE takes full responsibility for the safety and well being of participants while they are participating in the EVENT. LESSEE is responsible for inspecting the building and premises and ensuring that they are sufficient to provide for the safety and security of event participants. LESSOR will make all reasonable attempts to honor requests for a walk through of premises and buildings to be leased provided that such walk through will be by appointment only, during regular business hours.
- b. LESSEE shall designate a primary and secondary contact person for purposes of the EVENT. These contact persons shall be persons who have authority, during the EVENT, to direct how the EVENT is being operated, including the operations of any vendors (such as music DJs, food concessionaires, etc). **Within ten (10) days following execution of this contract, LESSEE shall furnish LESSOR with these contact persons on a form provided by LESSOR including cellular telephone numbers which will allow these persons to be contacted AT ALL TIMES DURING THE OPERATION OF THE EVENT and copies of their photo ID.** Depending on the size of the event, LESSEE may designate more contact persons at LESSEE'S discretion, but shall do so in writing. If event security or law enforcement

officers responding to any incident at the event are unable to contact any designated contact for a period of 15 minutes or longer, then LESSOR shall have the option to terminate the EVENT and LESSEE'S license to use the facility pursuant to this Agreement. If the EVENT is terminated for these reasons, LESSEE forfeits all right to recover any payments paid to date.

12. SERVING ALCOHOL

- a. Alcoholic beverages shall not be served at this EVENT.
- b. The LESSEE agrees to abide by and enforce within the EVENT the County Policies regarding the presence of alcohol or the use of alcoholic beverages on County leased property.
- c. LESSOR'S POLICY IS THAT NO LIQUOR BE CONSUMED BY ANY INDIVIDUAL UNDER TWENTY-ONE (21) YEARS OF AGE. VIOLATION OF THE POLICY SHALL CONSTITUTE A SUBSTANTIAL AND SIGNIFICANT BREACH OF THE AGREEMENT AND IF LESSOR LEARNS OF SUCH VIOLATION, LESSOR SHALL HAVE THE AUTHORITY TO IMMEDIATELY TERMINATE THE EVENT.

13. NOISE CONTROL

- a. Noise is considered a nuisance if it exceeds 55 decibels between the hours of 6:00 am and 8:00 pm and 45 decibels between the hours of 8:00 PM and 6:00 AM (Kennewick Municipal Code Title 9 Health Sanitation). Decibel reading will be taken at the intersection of 10th Street and Oak Street.
- b. If a reasonable complaint is received alleging excessive noise, the Lessee will be given a warning to reduce the noise level. The volume and bass must be reduced to an acceptable level and remain there. A second complaint will result in the event being continuously monitored by a BCF representative at Lessee's cost in the amount of \$100.00 per hour, which may be deducted from the damage/cleaning deposit. A third complaint will result in the event being shut down and all parties asked to leave with Lessee forfeiting all lease payments, damage/cleaning deposit and license to use the facility. A complaint which results in a citation being issued or arrest being made pursuant to Kennewick code 9.48.010 and 9.48.020, or any other applicable state or local law, shall also result in the event being shut down and all parties required to leave with Lessee forfeiting all lease payments, damage/cleaning deposit and license to use the facility.

14. TERMINATION OR AMENDMENT

- a. Unless otherwise specified herein, the LESSOR reserves the right to terminate or amend this agreement at any time by giving the LESSEE thirty (30) days written notice. Notice will be assumed to be received on the day (except Sundays) following the date when it is addressed to Lessee's address and mailed by first class and certified mail.

15. INDEMNIFICATION AND HOLD HARMLESS

- a. LESSEE agrees to defend, indemnify and hold harmless LESSOR and its elected and appointed officials employees, agents, licensees and representatives, from and against any and all suits, claims, actions, losses, costs, penalties, damages, attorneys' fees and all other costs of defense of whatever kind or nature arising out of injuries to or death of any and all persons (including subcontractors, agents, licensees or representatives, and any of their employees) or damage to or destruction of any property (including, without limitation, LESSEE or LESSOR'S property or any other activity or omission which results in civil liability of any sort or type) in any manner caused by, resulting from incident to, connected with or arising out of LESSEE'S use of the facilities or performance under this agreement, unless such injury, death or damage is caused by the sole negligence of LESSOR. In the event of litigation between the parties to enforce the rights under this paragraph, LESSOR shall be entitled to attorney's fee and all other costs incurred in establishing its rights. LESSEE'S obligations pursuant to this article include investigating, adjusting and defending any cause of action or claim falling within the parameters as set out in this article.

In any and all claims against the LESSOR, its officers, officials, employees and agents by any employee of the LESSEE, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the LESSEE or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the LESSEE expressly waives any immunity the LESSEE might have had under such laws. By executing this Contract, the LESSEE acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the LESSEE makes with any subcontractor or agent performing work hereunder. These indemnification obligations shall specifically include indemnification for any fines, fees, penalties or costs incurred by LESSEE during the course of the event for violations of any law, ordinance or regulation including, but not limited to, Washington's law on Smoking in Public Places, RCW Chapter 70.160. In the event of litigation between the parties to enforce the rights under this paragraph, LESSOR shall be entitled to attorney's fee and all other costs incurred in establishing its rights. LESSEE'S obligations pursuant to this article include investigating, adjusting and defending any cause of action or claim falling within the parameters as set out in this article.

16. FAIRGROUNDS CONTACT

- a. The following person(s) is the contact representative of the Benton County Fairgrounds:

Jeff, Farrin, Jim and/or Denise 543-0060

- b. This person(s) may be contacted for the following reasons:

1. To access locked locations of the Fairgrounds for functions essential to the EVENT;
 2. In the event of malfunction of services or equipment essential to the EVENT.
- c. This person(s) SHALL be contacted (any one of them) if any of the following occurs:
1. The police department is summoned to the scene for any criminal investigation which takes place on the premises of the Fairgrounds;
 2. The fire department or an ambulance is summoned to the scene for an incident involving injury or illness to a person on the premises of the Fairgrounds;
 3. LESSEE is unable to ensure that all persons have left the premises of the Fairgrounds at the termination of the EVENT;
 4. There is a situation such as a fire, explosion or structural failure, which results in substantial damage to LESSORS' property and/or injury to persons.

17. POLICIES AND PROCEDURES

In signing this Lease Agreement, the LESSEE signifies that said LESSEE has been provided a copy of the Policies and Procedures governing the use of the Benton County Fairgrounds and has had an opportunity to review those policies and procedures. The parties agree that the provisions contained within the Policies and Procedures manual are hereby incorporated into this Agreement and any violation of such provisions shall constitute a breach of this Lease Agreement.

I, Gary Domas, Director (name and job title/position) have read and fully understand this Agreement. I hereby certify that I have the authority to bind Gold Wind Road Riders Association, Inc. to the terms and conditions set forth herein. In the event I do not have the authority, I acknowledge and agree that I shall be personally liable for any payments due under this Agreement and for any breach that occurs under the Agreement. I agree to abide by the conditions set forth in this Lease Agreement and assume the responsibility for enforcing these policies.

LESSOR: BENTON COUNTY

LESSEE: Gold Wind Road Riders Association, Inc.

BY: _____
Chairman of the Board

BY: Gary A Domas

Date: 1-14-09

Date: _____

Name: Gary A Domas

Title: Chapter Director

Approved as to form:

BY: _____
Civil Deputy Prosecutor

NAME: Gold Wing Road Riders Association

EVENT DATE: May 22 - 25, 2009

SUMMARY OF FEE(S)

Damage/Cleaning Deposit	\$ <u>250.00</u>
Building(s)/Area Fees	\$ <u>1,545.00</u>
Equipment Fees	\$ <u>0</u>
Insurance Fees	\$ <u>0</u>
Security Fees	\$ <u>0</u>
Refuse Disposal Fees	\$ <u>0</u>
Other Fees	\$ <u>Camping Fees</u>

TOTAL FEE: \$ 1,795.00
Plus Camping Fees

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: 1/26/09 Subject: Franklin County Farm Bureau	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Board Direction	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Workshop
Prepared by: <u>dgg</u> Reviewed by: <u>lsk</u>		

BACKGROUND INFORMATION

Attached for Board review is the Lease Agreement with the Franklin County Farm Bureau. The Lease Agreement has been reviewed and approved as to form by the Prosecuting Attorney's office.

The Lease Agreement allows the Franklin County Farm Bureau to hold their annual Farm Fair for 5th Grade Students at the Fairgrounds on March 17 – 18, 2009.

Compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased.

The Deputy County Administrator recommends approval of the Lease Agreement with the Franklin County Farm Bureau.

RECOMMENDATION

Move the Lease Agreement with the Franklin County Farm Bureau be approved.

RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON**

**IN THE MATTER OF APPROVING THE LEASE AGREEMENT BETWEEN THE
BENTON COUNTY FAIRGROUNDS AND THE FRANKLIN COUNTY FARM
BUREAU**

WHEREAS, the Franklin County Farm Bureau will provide the Benton County Fairgrounds \$1,250.00 to hold a Farm Fair for 5th Graders at the Fairgrounds on March 17 – 18, 2009; and

WHEREAS, compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased, and per Resolution 07-870, the agreement must be approved by the Board of Benton County Commissioners; and

WHEREAS, the Benton County Deputy Administrator recommends the Franklin County Farm Bureau Lease Agreement be approved; **NOW THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, that the Lease Agreement with the Franklin County Farm Bureau shall be granted; and

BE IT FURTHER RESOLVED that the Board authorizes the Chairman of the Board to sign the Lease Agreement with the Franklin County Farm Bureau.

Dated this _____ day of _____ 2009.

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

**Constituting the Board of County
Commissioners of Benton County,
Washington**

BENTON COUNTY FAIRGROUNDS

1500 South Oak Street, Bldg #20
Kennewick, WA 99337
(509) 586-9211

LEASE AGREEMENT

TODAY'S DATE: **December 1, 2008**

LEASE AGREEMENT NUMBER: **004.09**

EVENT DATE(S): **March 17-18, 2009**

NUMBER OF DAYS: **2**

BUILDING(S) / AREA: **Building 2, 16 and Oak Street Area**

LESSEE: **Franklin County Farm Bureau, a Washington Non-Profit Corporation**

MAILING ADDRESS: **8715 Bell St., Pasco, WA 99301**

CONTACT: **Melissa Neff Hill, Committee Chair**

HOME PHONE: **783-2494** WORK PHONE: **737-8681**

CELLULAR PHONE: **366-4653**

TIME OF THE EVENT: **9:00 am – 3:00 pm each day**

TYPE OF EVENT: **2009 Farm Fair**

ESTIMATED ATTENDANCE: **1500 over the course of the event**

SELLING TICKETS: YES NO **X**

THIS LEASE (AGREEMENT) is entered into effective upon the signature of both parties, between Franklin County Farm Bureau, a Washington Non-Profit Corporation (LESSEE) and BENTON COUNTY, a municipal corporation authorized under the laws of the State of Washington, operating the Benton County Fairgrounds (LESSOR).

1. EVENT

- a. FARM FAIR IN BUILDING 2, 16 AND THE OAK STREET AREA ON MARH 17 -18, 2009 FROM 9:00 AM UNTIL 3:00 PM EACH DAY WITH AN ESTIMATED ATTENDANCE OF 1500 PEOPLE OVER THE COURSE OF THE EVENT, hereafter referred to as the EVENT.

2. FACILITIES LEASED FOR THE EVENT

- a. LESSEE agrees to lease the buildings and grounds, equipment and services specified in Exhibit A (Attached) (collectively the Facilities) to hold EVENT on the date(s) specified on the cover hereto. In addition to said date(s), LESSEE desires and further agrees to lease said Facilities for move-in and/or move-out purposes on March 16, 2008. LESSEE WARRANTS THAT SAID FACILITIES WILL BE USED ONLY FOR LAWFUL PURPOSES NECESSARY TO SUPPORT THE EVENT.

3. PAYMENTS

- a. In consideration for the license to hold the EVENT, LESSEE agrees to pay LESSOR the FEE of \$ 1,250.00 (less damage/cleaning deposit if previously paid) for use of the Facilities as detailed in Exhibit A, no later than March 2, 2009. If the fee is not made by said date, this Agreement will be null and void unless otherwise agreed to in writing by LESSOR. Upon such termination, LESSEE shall be obligated to pay a cancellation fee as specified in the Benton County Fairgrounds Policies and Procedures, Paragraph #9.

4. CAMPING OVERNIGHT

- a. LESSOR does not make any warranties as to suitability of campgrounds for LESSEE'S purposes or compatibility of campground infrastructure to any equipment anticipated to be used by LESSEE or participants in LESSEE'S EVENT. LESSEE is responsible for ensuring that the campgrounds, as they exist, are suitable for LESSEE'S purposes and that campground infrastructure meets the needs of LESSEE and/or participants in LESSEE'S EVENT. LESSEE may request a walk-through of the campground facilities and LESSOR shall take all reasonable steps to accommodate such a request. PROVIDED that all such walk-throughs shall be during regular business hours only, and may be by appointment only.
- b. Camping on the Fairgrounds property is not permitted unless requested by LESSEE in advance when booking the EVENT. Fees, terms and conditions applicable to camping will be furnished on request and attached to a resultant lease when applicable.

5. CANCELLATION OF EVENT

- a. The parties recognize that cancellations made less than 60 days prior to the first event

date will potentially cause the BCF to lose lease or rental revenue. The parties further recognize that for a number of reasons outside of the control of the parties, the actual amount of the loss is often difficult to quantify. Therefore, the parties agree to the following schedule of liquidated damages which shall become due and owing if Lessee cancels less than 60 days prior to the first day of the event:

1. If the Cancellation is made less than 60 days prior to the first event date, then Lessee shall pay 25% of the Lease fee as liquidated damages;
2. If the cancellation is made less than 30 days prior to the first event date, then Lessee shall pay 50% of the fee as liquidated damages.

b. The liquidated damages specified in this section may be deducted from cleaning or any other deposits retained by the BCF, and if any further amount is still due after such deduction, the Lessee may recover such amount due in the same manner as if it were seeking to recover any other sum due under this agreement, and may utilize any lawful means to do so.

6. **CONCESSIONAIRES**

a. LESSEE certifies that no food or beverage concessions will be available at the EVENT and understand that it shall not provide such concession services without the prior written permission of LESSOR.

7. **NOVELTIES/SOUVENIRS**

a. LESSEE warrants that there will be no novelties, souvenirs or similar merchandise sold at the EVENT.

8. **DAMAGE / CLEANING DEPOSIT**

a. LESSEE must pay a damage/cleaning deposit of \$ 250.00 at the time LESSEE executes this Agreement. **THIS AGREEMENT IS NOT EFFECTIVE UNTIL EXECUTED BY LESSOR AND THE DAMAGE/CLEANING DEPOSIT IS RECEIVED.** Damages to the Fairgrounds' resulting from the EVENT activities will be charged to the LESSEE at replacement cost plus labor; the cost of labor not exceeding the average cost for such labor in the Tri-Cities area. Charges for repairs will be subtracted from the damage/cleaning deposit, as may any other fees specified as subject to forfeiture of the damage/cleaning deposit elsewhere in this Agreement. The remaining balance, if any, of the damage/cleaning deposit, if any, will be returned to the LESSEE in approximately ten (10) business days after the EVENT date. If the damage/cleaning deposit is less than the amount of damage, LESSEE remains liable for the balance. Neither the Benton County Fairgrounds nor Benton County assume any liability whatsoever for any loss or injury to the LESSEE or LESSEE'S property while on Benton County Fairgrounds' property.

9. **INSURANCE**

a. LESSEE agrees to purchase, and maintain in force through the duration of this Agreement **commercial general liability insurance with a limit in the sum of not less than one million dollars (\$1,000,000) per occurrence for bodily injury or**

death of any one person and property damage and two million dollars (\$2,000,000) in the aggregate for bodily injury to, or death of, any number of persons and property damage. Said policy may not exclude any activities expected to be, or actually, undertaken during the EVENT or setup/takedown. Said policy shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured and shall include a provision prohibiting cancellation of said policy except after thirty (30) days prior written notice to LESSOR. A CERTIFICATE OF LIABILITY INSURANCE COVERAGE AS REQUIRED BY THIS SECTION SHALL BE DELIVERED TO THE LESSOR NO LATER THAN THIRTY (30) DAYS PRIOR TO THE FIRST DATE OF THE EVENT.

- b. All insurance policies required by this section shall include move-in and move-out days, as well as the event days and shall indicate these dates on the insurance certificate.
- c. All insurance policies required by this section shall cover losses which occur during the covered period, regardless of when the claim is filed, i.e. cannot be "claims made" policies.
- d. All insurance policies required by this section shall be primary to any insurance policies or policies of self-insurance carried by LESSOR;
- e. The limits required by this section are not intended to an indication of liability nor are they to be considered limits on amount of indemnification;
- f. LESSEE SHALL PROVIDE, NO LATER THAN THIRY (30) DAYS PRIOR TO ANY EVENT COVERED BY THIS AGREEMENT, PROOF OF ALL FORMS OF INSURANCE REQUIRED IN THIS SECTION. THIS PROOF SHALL CONSIST OF A CERTIFICATE OF INSURANCE NAMING "BENTON COUNTY FAIRGROUNDS" AS CERTIFICATE HOLDER, AS WELL AS COPIES OF ALL KEY PROVISIONS, EXCLUSIONS, AND ENDORSEMENTS FROM THE POLICY INCLUDING THE REQUIRED ADDITIONAL INSURED LANGUAGE.

10. PERMITS

- a. All necessary city and/or state permits and/or licenses must be obtained and presented to LESSOR prior to the first day of the EVENT, or the first day of set up if applicable.
- b. LESSEE shall comply with all Federal, State and local laws, ordinances, rules and regulations. LESSEE acknowledges that all buildings, premises or structures located in or upon the leased premises are considered "public buildings" for purposes of RCW Chapter 70.160 that prohibits smoking in and around public places. LESSEE shall ensure that the security personnel, if any, retained pursuant to section 11 of this agreement are specifically instructed to enforce the provisions of RCW Chapter 70.160.

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- a. LESSEE takes full responsibility for the safety and well being of participants while they are participating in the EVENT. LESSEE is responsible for inspecting the building and premises and ensuring that they are sufficient to provide for the safety and security of event participants. LESSOR will make all reasonable attempts to honor requests for a walk through of premises and buildings to be leased provided that such walk through will be by appointment only, during regular business hours.
- b. LESSEE shall designate a primary and secondary contact person for purposes of the EVENT. These contact persons shall be persons who have authority, during the EVENT, to direct how the EVENT is being operated, including the operations of any vendors (such as music DJs, food concessionaires, etc). **Within ten (10) days following execution of this contract, LESSEE shall furnish LESSOR with these contact persons on a form provided by LESSOR including cellular telephone numbers which will allow these persons to be contacted AT ALL TIMES DURING THE OPERATION OF THE EVENT and copies of their photo ID.** Depending on the size of the event, LESSEE may designate more contact persons at LESSEE'S discretion, but shall do so in writing. If event security or law enforcement officers responding to any incident at the event are unable to contact any designated contact for a period of 15 minutes or longer, then LESSOR shall have the option to terminate the EVENT and LESSEE'S license to use the facility pursuant to this Agreement. If the EVENT is terminated for these reasons, LESSEE forfeits all right to recover any payments paid to date.

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- a. Alcoholic beverages shall not be served at this EVENT.
- b. The LESSEE agrees to abide by and enforce within the EVENT the County Policies regarding the presence of alcohol or the use of alcoholic beverages on County leased property.
- c. LESSOR'S POLICY IS THAT NO LIQUOR BE CONSUMED BY ANY INDIVIDUAL UNDER TWENTY-ONE (21) YEARS OF AGE. VIOLATION OF THE POLICY SHALL CONSTITUTE A SUBSTANTIAL AND SIGNIFICANT BREACH OF THE AGREEMENT AND IF LESSOR LEARNS OF SUCH VIOLATION, LESSOR SHALL HAVE THE AUTHORITY TO IMMEDIATELY TERMINATE THE EVENT.

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- a. Noise is considered a nuisance if it exceeds 55 decibels between the hours of 6:00 am and 8:00 pm and 45 decibels between the hours of 8:00 PM and 6:00 AM (Kennewick Municipal Code Title 9 Health Sanitation). Decibel reading will be taken at the intersection of 10th Street and Oak Street.
- b. If a reasonable complaint is received alleging excessive noise, the Lessee will be

given a warning to reduce the noise level. The volume and bass must be reduced to an acceptable level and remain there. A second complaint will result in the event being continuously monitored by a BCF representative at Lessee's cost in the amount of \$100.00 per hour, which may be deducted from the damage/cleaning deposit. A third complaint will result in the event being shut down and all parties asked to leave with Lessee forfeiting all lease payments, damage/cleaning deposit and license to use the facility. A complaint which results in a citation being issued or arrest being made pursuant to Kennewick code 9.48.010 and 9.48.020, or any other applicable state or local law, shall also result in the event being shut down and all parties required to leave with Lessee forfeiting all lease payments, damage/cleaning deposit and license to use the facility.

14. TERMINATION OR AMENDMENT

- a. Unless otherwise specified herein, the LESSOR reserves the right to terminate or amend this agreement at any time by giving the LESSEE thirty (30) days written notice. Notice will be assumed to be received on the day (except Sundays) following the date when it is addressed to Lessee's address and mailed by first class and certified mail.

15. INDEMNIFICATION AND HOLD HARMLESS

- a. LESSEE agrees to defend, indemnify and hold harmless LESSOR and its elected and appointed officials employees, agents, licensees and representatives, from and against any and all suits, claims, actions, losses, costs, penalties, damages, attorneys' fees and all other costs of defense of whatever kind or nature arising out of injuries to or death of any and all persons (including subcontractors, agents, licensees or representatives, and any of their employees) or damage to or destruction of any property (including, without limitation, LESSEE or LESSOR'S property or any other activity or omission which results in civil liability of any sort or type) in any manner caused by, resulting from incident to, connected with or arising out of LESSEE'S use of the facilities or performance under this agreement, unless such injury, death or damage is caused by the sole negligence of LESSOR. These indemnification obligations shall specifically include indemnification for any fines, fees, penalties or costs incurred by LESSEE during the course of the event for violations of any law, ordinance or regulation including, but not limited to, Washington's law on Smoking in Public Places, RCW Chapter 70.160. In the event of litigation between the parties to enforce the rights under this paragraph, LESSOR shall be entitled to attorney's fee and all other costs incurred in establishing its rights. LESSEE'S obligations pursuant to this article include investigating, adjusting and defending any cause of action or claim falling within the parameters as set out in this article.
- b. In any and all claims against the LESSOR, its officers, officials, employees and agents by any employee of the LESSEE, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the LESSEE or subcontractor under Workers Compensation acts, disability

benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the LESSEE expressly waives any immunity the LESSEE might have had under such laws. By executing this Contract, the LESSEE acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the LESSEE makes with any subcontractor or agent performing work hereunder.

16. FAIRGROUNDS CONTACT

a. The following person(s) is the contact representative of the Benton County Fairgrounds:

Jeff, Farrin, Jim and/or Denise 543-0060

b. This person(s) may be contacted for the following reasons:

1. To access locked locations of the Fairgrounds for functions essential to the EVENT;
2. In the event of malfunction of services or equipment essential to the EVENT.

c. This person(s) SHALL be contacted (any one of them) if any of the following occurs:

1. The police department is summoned to the scene for any criminal investigation which takes place on the premises of the Fairgrounds;
2. The fire department or an ambulance is summoned to the scene for an incident involving injury or illness to a person on the premises of the Fairgrounds;
3. LESSEE is unable to ensure that all persons have left the premises of the Fairgrounds at the termination of the EVENT;
4. There is a situation such as a fire, explosion or structural failure, which results in substantial damage to LESSORS' property and/or injury to persons.

17. POLICIES AND PROCEDURES

In signing this Lease Agreement, the LESSEE signifies that said LESSEE has been provided a copy of the Policies and Procedures governing the use of the Benton County Fairgrounds and has had an opportunity to review those policies and procedures. The parties agree that the provisions contained within the Policies and Procedures manual are hereby incorporated into this Agreement and any violation of such provisions shall constitute a breach of this Lease Agreement.

I, Melissa Neff Hill, Committee Chair (name and job title/position) have read and fully understand this Agreement. I hereby certify that I have the authority to bind Franklin County Farm Bureau to the terms and conditions set forth herein. In the event I do not have the authority, I acknowledge and agree that I shall be personally liable for any payments due under this Agreement and for any breach that occurs under the Agreement. I agree to abide by the conditions set forth in this Lease Agreement and assume the responsibility for enforcing these policies.

LESSOR: BENTON COUNTY

LESSEE: Franklin County Farm Bureau

BY: _____
Chairman of the Board

BY: Melissa Neff Hill

Date: _____

Date: 1-9-08

Name: Brenda Pennington

Title: Franklin Co Farm Bureau Secretary

Approved as to form:

BY: Kathleen B. Halverson
Civil Deputy Prosecutor

NAME: Franklin County Farm Bureau

EVENT DATE: March 17 - 18, 2009

SUMMARY OF FEE(S)

Damage/Cleaning Deposit	\$ <u>250.00</u>
Building(s)/Area Fees	\$ <u>1,000.00</u>
Equipment Fees	\$ <u>0</u>
Insurance Fees	\$ <u>0</u>
Security Fees	\$ <u>0</u>
Refuse Disposal Fees	\$ <u>0</u>
Other Fees	\$ <u>0</u>

TOTAL FEE: \$ 1,250.00

**BENTON AND FRANKLIN COUNTIES
ACTION SUMMARY COVER SHEET**

COPY

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment #1 to 07/09-DD-PHG between Human Services and Provident Horizon Group	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
Prepared By: Carol Carey	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other

BACKGROUND INFORMATION

The Department of Human Services would like to put a Vendor Rate Increase in place for Provident Horizon Group. This Amendment replaces Section 50, CONSIDERATION, effective November 1, 2008.

SUMMARY

Award: This Agreement is on a Fee-for-service basis.

Period: July 1, 2007 through June 30, 2009.

Funding Source: Division of Developmental Disabilities

RECOMMENDATION

- Sign the resolution to accept the proposed agreement.
- Approve the proposed agreement by signing all the copies where indicated.

FISCAL IMPACT

Funding for the services described in this Agreement is provided by the Division of Developmental Disabilities. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #1 for Agreement #07/09-DD-PHG-1, and to authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

Benton County Resolution No. _____

Franklin County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,
WASHINGTON:

IN THE MATTER OF EXECUTION OF AMENDMENT #01 BETWEEN PROVIDENT HORIZON GROUP AND BENTON AND FRANKLIN COUNTIES' DEPARTMENT OF HUMAN SERVICES, AGREEMENT #07/09-DD-PHG, and

WHEREAS, this amendment serves to replace Section 50, Consideration, to put a Vendor Rate Increase in place; and

WHEREAS, there is no funding changes to this amendment as it is a Fee for Service Agreement, and

WHEREAS, the amendment is effective November 1, 2008 and remains effective until June 30, 2009, NOW THEREFORE,

BE IT RESOLVED that the Boards of Benton and Franklin County Commissioners hereby accept the proposed amendment; and

BE IT FURTHER RESOLVED that the Chairs of Benton and Franklin County Commissioners are hereby authorized to sign amendment #07/09-DD-PHG-01 on behalf of the Board of Benton and Franklin County Commissioners.

Dated this . . . day of, 2009

Dated this . . . day of, 2009

Chair, Benton County Commissioners

Chair, Franklin County Commissioners

Member

Member

Member
Constituting the Board of County
Commissioners of Benton County, Washington

Member
Constituting the Board of County
Commissioners of Franklin County, Washington

Attest:
Clerk of the Board

Attest:
Clerk of the Board

cc: Human Services, Franklin County, Benton County

Carey

**BENTON AND FRANKLIN COUNTIES
ACTION SUMMARY COVER SHEET**

COPY

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment #1 to 07/09-DD-CDC between Human Services and Children's Developmental Center	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other
Prepared By: Carol Carey		

BACKGROUND INFORMATION

The Department of Human Services would like to put a Vendor Rate Increase in place for the Children's Developmental Center. This Amendment replaces Section 50, CONSIDERATION, effective November 1, 2008.

SUMMARY

Award: This Agreement is on a Fee-for-service basis.

Period: July 1, 2007 through June 30, 2009.

Funding Source: Division of Developmental Disabilities

RECOMMENDATION

- Sign the resolution to accept the proposed agreement.
- Approve the proposed agreement by signing all the copies where indicated.

FISCAL IMPACT

Funding for the services described in this Agreement is provided by the Division of Developmental Disabilities. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #1 for Agreement #07/09-DD-CDC-1, and to authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

Benton County Resolution No. _____

Franklin County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,
WASHINGTON:

IN THE MATTER OF EXECUTION OF AMENDMENT #01 BETWEEN CHILDREN'S DEVELOPMENTAL CENTER AND BENTON AND FRANKLIN COUNTIES' DEPARTMENT OF HUMAN SERVICES, AGREEMENT #07/09-DD-CDC, and

WHEREAS, this amendment serves to replace Section 50, Consideration, to put a Vendor Rate Increase in place; and

WHEREAS, there is no funding changes to this amendment as it is a Fee for Service Agreement, and

WHEREAS, the amendment is effective November 1, 2008 and remains effective until June 30, 2009, NOW THEREFORE,

BE IT RESOLVED that the Boards of Benton and Franklin County Commissioners hereby accept the proposed amendment; and

BE IT FURTHER RESOLVED that the Chairs of Benton and Franklin County Commissioners are hereby authorized to sign amendment #07/09-DD-CDC-01 on behalf of the Board of Benton and Franklin County Commissioners.

Dated this . . . day of, 2009

Dated this . . . day of, 2009

Chair, Benton County Commissioners

Chair, Franklin County Commissioners

Member

Member

Member
Constituting the Board of County
Commissioners of Benton County, Washington

Member
Constituting the Board of County
Commissioners of Franklin County, Washington

Attest:
Clerk of the Board

Attest:
Clerk of the Board

cc: Human Services, Franklin County, Benton County

Carey

**BENTON AND FRANKLIN COUNTIES
ACTION SUMMARY COVER SHEET**

COPIES 9

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment #1 to 07/09-DD-ARC between Human Services and ARC of Tri-Cities	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other
Prepared By: Carol Carey		

BACKGROUND INFORMATION

The Department of Human Services would like to put a Vendor Rate Increase in place for the ARC of Tri-Cities. This Amendment replaces Section 50, CONSIDERATION, effective November 1, 2008.

SUMMARY

Award: This Agreement is on a Fee-for-service basis.

Period: July 1, 2007 through June 30, 2009.

Funding Source: Division of Developmental Disabilities

RECOMMENDATION

- Sign the resolution to accept the proposed agreement.
- Approve the proposed agreement by signing all the copies where indicated.

FISCAL IMPACT

Funding for the services described in this Agreement is provided by the Division of Developmental Disabilities. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #1 for Agreement #07/09-DD-ARC-1, and to authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

Benton County Resolution No. _____

Franklin County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,
WASHINGTON:

IN THE MATTER OF EXECUTION OF AMENDMENT #01 BETWEEN THE ARC OF TRICITIES AND BENTON AND FRANKLIN COUNTIES' DEPARTMENT OF HUMAN SERVICES, AGREEMENT #07/09-DD-ARC, and

WHEREAS, this amendment serves to replace Section 50, Consideration, to put a Vendor Rate Increase in place; and

WHEREAS, there is no funding changes to this amendment as it is a Fee for Service Agreement, and

WHEREAS, the amendment is effective November 1, 2008 and remains effective until June 30, 2009, NOW THEREFORE,

BE IT RESOLVED that the Boards of Benton and Franklin County Commissioners hereby accept the proposed amendment; and

BE IT FURTHER RESOLVED that the Chairs of Benton and Franklin County Commissioners are hereby authorized to sign amendment #07/09-DD-ARC-01 on behalf of the Board of Benton and Franklin County Commissioners.

Dated this . . . day of, 2009

Dated this . . . day of, 2009

Chair, Benton County Commissioners

Chair, Franklin County Commissioners

Member

Member

Member
Constituting the Board of County
Commissioners of Benton County, Washington

Member
Constituting the Board of County
Commissioners of Franklin County, Washington

Attest:
Clerk of the Board

Attest:
Clerk of the Board

cc: Human Services, Franklin County, Benton County

Carey

**BENTON AND FRANKLIN COUNTIES
ACTION SUMMARY COVER SHEET**

COPY

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment to Equipment Purchase and Software License Agreement	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
Prepared By: Carol Carey	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other

BACKGROUND INFORMATION

The Greater Columbia Regional Support Network has had ownership of 80 CMHC/MIS software licenses with Netsmart, Ohio, Inc since 1992. These licenses need to be transferred to the Department of Human Services MIS system.

RECOMMENDATION

- Sign the resolution to accept the proposed amendment.
- Approve the proposed amendment by signing all the copies where indicated.

FISCAL IMPACT

There is no impact on the current expense budget. .

MOTION

To approve the amendment to the Equipment Purchase and Software License Agreement, and to authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

Benton County Resolution No. _____

Franklin County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,
WASHINGTON:

IN THE MATTER OF EXECUTION OF AN AMENDMENT FOR THE EQUIPMENT PURCHASE AND SOFTWARE LICENSE BETWEEN THE BENTON AND FRANKLIN COUNTIES' DEPARTMENT OF HUMAN SERVICES AND NETSMART OHIO, INC, and

WHEREAS, Netsmart, Ohio has had an agreement with the Greater Columbia Regional Support Network for equipment purchase and software licenses since August 1992; and

WHEREAS, the ownership of 80 licenses need to be transferred to the Benton and Franklin Counties' Department of Human Services MIS System, NOW THEREFORE,

BE IT RESOLVED that the Boards of Benton and Franklin County Commissioners hereby accept the proposed Amendment with Netsmart, Ohio, Inc.; and

BE IT FURTHER RESOLVED that the Chairs of Benton and Franklin County Commissioners are hereby authorized to sign on behalf of the Board of Benton and Franklin County Commissioners.

Dated this . . . day of, 2009

Dated this . . . day of, 2008

Chair, Benton Co. Commissioners

Chair, Franklin Co. Commissioners

Chair, Pro Tem

Chair, Pro Tem

Member
Constituting the Board of County
Commissioners of Benton County, Washington

Member
Constituting the Board of County
Commissioners of Franklin County, Washington

Attest:
Clerk of the Board

Attest:
Clerk of the Board

cc: Human Services, Franklin County, Benton County

Carey

**BENTON COUNTY
ACTION SUMMARY COVER SHEET**

AGENDA ITEM	TYPE OF ACTION NEEDED	
Resolution allowing services and assistance to homeless individuals. (2163)	<input type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
Prepared By: Carol Carey	<input type="checkbox"/> Other	<input type="checkbox"/> Other

BACKGROUND INFORMATION

The Department of Human Services would like to contract with Benton Franklin Community Action Committee for services and assistance for homeless individuals in Benton County .

FISCAL IMPACT

The maximum consideration for this agreement shall be \$29,830.00.

EFFECTIVE DATES

This agreement shall be effective for the period January 26, 2009 through March 31, 2009

RECOMMENDATION

- Sign the resolution for the Department of Human Services to contract with Benton Franklin Community Action Committee to provide services and assistance to homeless individuals in Benton County.

MOTION

To approve signing the Resolution for the contract between the Department of Human Services and Benton Franklin Community Action Committee.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE EXECUTION OF AN AGREEMENT TO PROVIDE SERVICES AND ASSISTANCE TO HOMELESS PEOPLE IN BENTON COUNTY WITH BENTON FRANKLIN COMMUNITY ACTION COMMITTEE.

WHEREAS, the Department of Human Services would like to contract with Benton Franklin Community Action Committee for service and assistance for homeless individuals, and

WHEREAS, the consideration for this Agreement is for a maximum consideration of \$29,830.00; and

WHEREAS, the Agreement shall be effective for the period January 26, 2009 through March 31, 2009; NOW THEREFORE

BE IT RESOLVED that the Board of Benton County Commissioners hereby accept the proposed Agreement; and

BE IT FURTHER RESOLVED that the Chairman is hereby authorized to sign the Agreement on behalf of the Board of Benton County Commissioners.

Dated this day of, 2009.

Chair

Chair Pro Tem

Member
Constituting the Board of County
Commissioners of Benton County,
Washington.

Attest:
Clerk of the Board

cc: Human Services

Carey

**BENTON AND FRANKLIN COUNTIES
ACTION SUMMARY COVER SHEET**

COPY

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment #1 to 07/09-DD-CI between Human Services and Columbia Industries	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
Prepared By: Carol Carey	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other

BACKGROUND INFORMATION

The Department of Human Services would like to put a Vendor Rate Increase in place for Columbia Industries. This Amendment replaces Section 50, CONSIDERATION, effective November 1, 2008.

SUMMARY

Award: This Agreement is on a Fee-for-service basis.

Period: July 1, 2007 through June 30, 2009.

Funding Source: Division of Developmental Disabilities

RECOMMENDATION

- Sign the resolution to accept the proposed agreement.
- Approve the proposed agreement by signing all the copies where indicated.

FISCAL IMPACT

Funding for the services described in this Agreement is provided by the Division of Developmental Disabilities. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #1 for Agreement #07/09-DD-CI-1, and to authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

Benton County Resolution No. _____

Franklin County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,
WASHINGTON:

IN THE MATTER OF EXECUTION OF AMENDMENT #01 BETWEEN COLUMIBA INDUSTRIES AND BENTON AND FRANKLIN COUNTIES' DEPARTMENT OF HUMAN SERVICES, AGREEMENT #07/09-DD-CI, and

WHEREAS, this amendment serves to replace Section 50, Consideration, to put a Vendor Rate Increase in place; and

WHEREAS, there is no funding changes to this amendment as it is a Fee for Service Agreement, and

WHEREAS, the amendment is effective November 1, 2008 and remains effective until June 30, 2009, NOW THEREFORE,

BE IT RESOLVED that the Boards of Benton and Franklin County Commissioners hereby accept the proposed amendment; and

BE IT FURTHER RESOLVED that the Chairs of Benton and Franklin County Commissioners are hereby authorized to sign amendment #07/09-DD-CI-01 on behalf of the Board of Benton and Franklin County Commissioners.

Dated this . . . day of, 2009

Dated this . . . day of, 2009

Chair, Benton County Commissioners

Chair, Franklin County Commissioners

Member

Member

Member
Constituting the Board of County
Commissioners of Benton County, Washington

Member
Constituting the Board of County
Commissioners of Franklin County, Washington

Attest:
Clerk of the Board

Attest:
Clerk of the Board

cc: Human Services, Franklin County, Benton County

Carey

**BENTON AND FRANKLIN COUNTIES
ACTION SUMMARY COVER SHEET**

COPY K

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment #1 to 07/09-DD-GW between Human Services and Goodwill Industries	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
Prepared By: Carol Carey	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other

BACKGROUND INFORMATION

The Department of Human Services would like to put a Vendor Rate Increase in place for Goodwill Industries. This Amendment replaces Section 50, CONSIDERATION, effective November 1, 2008.

SUMMARY

Award: This Agreement is on a Fee-for-service basis.

Period: July 1, 2007 through June 30, 2009.

Funding Source: Division of Developmental Disabilities

RECOMMENDATION

- Sign the resolution to accept the proposed agreement.
- Approve the proposed agreement by signing all the copies where indicated.

FISCAL IMPACT

Funding for the services described in this Agreement is provided by the Division of Developmental Disabilities. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #1 for Agreement #07/09-DD-GW-1, and to authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

Benton County Resolution No. _____

Franklin County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,
WASHINGTON:

IN THE MATTER OF EXECUTION OF AMENDMENT #01 BETWEEN GOODWILL INDUSTRIES AND BENTON AND FRANKLIN COUNTIES' DEPARTMENT OF HUMAN SERVICES, AGREEMENT #07/09-DD-GW, and

WHEREAS, this amendment serves to replace Section 50, Consideration, to put a Vendor Rate Increase in place; and

WHEREAS, there is no funding changes to this amendment as it is a Fee for Service Agreement, and

WHEREAS, the amendment is effective November 1, 2008 and remains effective until June 30, 2009, NOW THEREFORE,

BE IT RESOLVED that the Boards of Benton and Franklin County Commissioners hereby accept the proposed amendment; and

BE IT FURTHER RESOLVED that the Chairs of Benton and Franklin County Commissioners are hereby authorized to sign amendment #07/09-DD-GW-01 on behalf of the Board of Benton and Franklin County Commissioners.

Dated this . . . day of, 2009

Dated this . . . day of, 2009

Chair, Benton County Commissioners

Chair, Franklin County Commissioners

Member

Member

Member
Constituting the Board of County
Commissioners of Benton County, Washington

Member
Constituting the Board of County
Commissioners of Franklin County, Washington

Attest:
Clerk of the Board

Attest:
Clerk of the Board

cc: Human Services, Franklin County, Benton County

Carey

**BENTON AND FRANKLIN COUNTIES
ACTION SUMMARY COVER SHEET**

COPY!

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment #1 to 07/09-DD-PTC between Human Services and Peopleworks Tri-Cities	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other
Prepared By: Carol Carey		

BACKGROUND INFORMATION

The Department of Human Services would like to put a Vendor Rate Increase in place for Peopleworks Tri-Cities. This Amendment replaces Section 50, CONSIDERATION, effective November 1, 2008.

SUMMARY

Award: This Agreement is on a Fee-for-service basis.

Period: July 1, 2007 through June 30, 2009.

Funding Source: Division of Developmental Disabilities

RECOMMENDATION

- Sign the resolution to accept the proposed agreement.
- Approve the proposed agreement by signing all the copies where indicated.

FISCAL IMPACT

Funding for the services described in this Agreement is provided by the Division of Developmental Disabilities. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #1 for Agreement #07/09-DD-PTC-1, and to authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

Benton County Resolution No. _____

Franklin County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,
WASHINGTON:

IN THE MATTER OF EXECUTION OF AMENDMENT #01 BETWEEN PEOPLEWORKS TRI-CITIES AND BENTON AND FRANKLIN COUNTIES' DEPARTMENT OF HUMAN SERVICES, AGREEMENT #07/09-DD-PTC, and

WHEREAS, this amendment serves to replace Section 50, Consideration, to put a Vendor Rate Increase in place; and

WHEREAS, there is no funding changes to this amendment as it is a Fee for Service Agreement, and

WHEREAS, the amendment is effective November 1, 2008 and remains effective until June 30, 2009, NOW THEREFORE,

BE IT RESOLVED that the Boards of Benton and Franklin County Commissioners hereby accept the proposed amendment; and

BE IT FURTHER RESOLVED that the Chairs of Benton and Franklin County Commissioners are hereby authorized to sign amendment #07/09-DD-PTC-01 on behalf of the Board of Benton and Franklin County Commissioners.

Dated this . . . day of, 2009

Dated this . . . day of, 2009

Chair, Benton County Commissioners

Chair, Franklin County Commissioners

Member

Member

Member
Constituting the Board of County
Commissioners of Benton County, Washington

Member
Constituting the Board of County
Commissioners of Franklin County, Washington

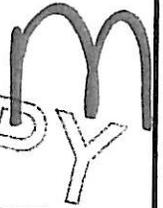
Attest:
Clerk of the Board

Attest:
Clerk of the Board

cc: Human Services, Franklin County, Benton County

Carey

**BENTON AND FRANKLIN COUNTIES
ACTION SUMMARY COVER SHEET**

COPY 

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment #1 To Agreement 07/09-RES-LCC	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
Prepared By: Carol Carey	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other

BACKGROUND INFORMATION

The Department of Human Services would like to amend the Agreement with Lourdes Counseling Center to revise the Consideration and Payment Provisions and the Statement of Work sections of the Agreement. Lourdes Counseling Center has discontinued operation of the Transitional Living Mobile Homes as of May 1, 2008.

SUMMARY

Award: The consideration for these services is deleted from the payment section.

Period: Agreement period is October 1, 2007 through September 30, 2009.

Funding Source: Mental Health Division

RECOMMENDATION

- Sign the resolution to accept the proposed amendment.
- Approve the proposed agreement by signing all the copies where indicated.

FISCAL IMPACT

Funding for the services described in this Amendment is provided by the Mental Health Division of Washington State. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #07/09-RES-LCC-1 and authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

**BEFORE THE BOARDS OF THE COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,
WASHINGTON:**

**IN THE MATTER OF AMENDMENT #1 OF AGREEMENT 07/09-RES-LCC
BETWEEN THE BENTON AND FRANKLIN COUNTIES DEPARTMENT OF
HUMAN SERVICES AND LOURDES COUNSELING CENTER FOR THE
DISCONTINUATION OF THE TRANSITIONAL LIVING MOBILE HOMES AND
COMPENSATION FOR 24 HOUR STAFFING OF CRISIS STABILIZATION BEDS,
and**

WHEREAS, Lourdes Counseling Center discontinued operation of the transitional living mobile homes on May 1, 2008, and

WHEREAS, The monthly rate for 24 hour staffing of the crisis stabilization beds is increased to \$22,550 per month, and

NOW, THEREFORE, BE IT RESOLVED, that the Chairs of the Boards of Benton and Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, Agreement Amendment #07/09-RES-LCC-1.

Dated this day of 2009.

Dated this day of2009.

Benton County Board of Commissioners

Franklin County Board of Commissioners

”

Chair, Benton County Commissioners

Chair, Franklin County Commissioners

Member

Member

Member
Constituting the Board of County Commissioners,
Benton County, Washington

Member
Constituting the Board of County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board

Clerk of the Board

Originals: Franklin County
Human Services
Benton County

n

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED Executive Contract <u>xx</u> Pass Resolution <u>xx</u> Pass Ordinance Pass Motion Other	CONSENT AGENDA <u>xx</u>
MEETING DATE: B/C 01-19-09 F/C 01-12-09		PUBLIC HEARING
SUBJECT: Tri-Cities Chaplaincy		1ST DISCUSSION
Prepared By: Kathryn M. Phillips		2ND DISCUSSION
Reviewed By: Sharon Paradis		OTHER

BACKGROUND INFORMATION

Tri-Cities Chaplaincy has been providing counseling and consultation services to the Juvenile Detention facility for numerous years. The Chaplaincy provides individual and group care counseling services for youth in detention. The Chaplaincy responds to clergy who have parishioners at the Juvenile Detention facility or who have questions about the facility's services.

SUMMARY

The Benton and Franklin County Boards of Commissioners signed the renewable Personal Service Contract in Benton and Franklin Counties Superior Court Juvenile Division for the Tri-Cities Chaplaincy on February 13, 2006 and February 22, 2006, respectively.

RECOMMENDATION

We recommend that the Boards of Benton and Franklin Counties sign the Contract Amendment between Benton-Franklin Juvenile Justice Center and Tri-Cities Chaplaincy, a Washington non-profit corporation.

FISCAL IMPACT

The fiscal impact is \$10,920.00, which has been budgeted for in our Approved Budget.

MOTION

I move that the Chairs of the Boards of County Commissioners be authorized to sign the Contract Amendment Between Benton-Franklin Counties Juvenile Justice Center and Tri-Cities Chaplaincy.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF THE COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES, WASHINGTON;

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE CHAIRMAN OF THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PERSONAL SERVICES CONTRACT AMENDMENT BETWEEN THE JUVENILE JUSTICE CENTER AND TRI-CITIES CHAPLAINCY, THUS, AMENDING BENTON COUNTY RESOLUTION 06 101 AND FRANKLIN COUNTY RESOLUTION 2006 110, and

WHEREAS, Sharon Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the amended personal services contract between the Juvenile Court and Tri-Cities Chaplaincy, be approved as presented; and

WHEREAS, approval then necessitates amending Benton County Resolution 06 101 and Franklin County Resolution 2006 110, NOW, THEREFORE,

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be and they hereby are authorized to sign, on behalf of their respective county the amended personal service contract between the Juvenile Court and Tri-Cities Chaplaincy, thus, amending Benton County Resolution 06 101 and Franklin County Resolution 2006 110.

DATED this 19th day of January 2009
BENTON COUNTY BOARD OF COMMISSIONERS

DATED this 12th day of January 2009
FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman of the Board

Chairman of the Board

Member

Chairman Pro Tem

Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Clerk of the Board

Clerk of the Board

JUDGES
Hon. Dennis D. Yule
Hon. Craig J. Matheson
Hon. Vic L. VanderSchoor
Hon. Robert G. Swisher
Hon. Carrie Runge
Hon. Cameron Mitchell

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRI G. POTTS
Court Commissioners

PERSONAL SERVICE CONTRACT AMENDMENT BETWEEN BENTON-AND FRANKLIN COUNTIES SUPERIOR COURTS JUVENILE DIVISION AND TRI-CITIES CHAPLAINCY

This Contract Amendment is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336-1388, (hereinafter, collectively referred to as "Counties"), and Tri-Cities Chaplaincy, with its principal offices at 2108 W. Entiat Ave., Kennewick, WA 99336, (hereinafter referred to as "Contractor").

In consideration of the mutual benefits and covenants contained herein, the parties agree that their Contract, numbered as Benton County Resolution No. 06 101 and executed on February 13, 2006, and Franklin County Resolution No. 2006 110 and executed on February 22, 2006, section 1, Duration of Contract, and section 4, Compensation, shall be amended as follows:

1. DURATION OF CONTRACT

The term of this Contract shall begin January 1, 2009, and shall expire on December 31, 2009, and will renew for successive one-year periods on January 1 of the following year unless the Counties notifies the Contractor no later than November 1 that the Counties is not renewing this Contract for the following year. The Contractor shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

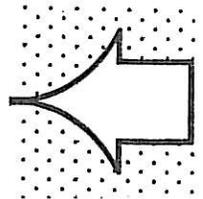
4. COMPENSATION

The Counties shall compensate the Contractor as professional services and not as a salary for the services provided under this Contract in the sum of Nine Hundred and Ten dollars (\$910.00) per month, pro-rated for each partial month.

Except as expressly provided in this Contract Amendment, all other terms and conditions of the original Contract, and subsequent amendments, addenda or modifications thereto, remain in full force and effect.

The parties have caused this Contract Amendment to be signed as follows:

Tri-Cities Chaplaincy, Inc.		Benton Franklin Counties Juvenile Justice Center	
<i>Bette A. Cooper</i> <i>12-11-08</i>		<i>Sharon A. Paradis</i> <i>12/05/08</i>	
Bette Cooper Executive Director Date		Sharon A. Paradis Juvenile Court Administrator Date	
BENTON COUNTY APPROVAL		FRANKLIN COUNTY APPROVAL	
Approved as to Form:		Approved as to Form:	
<u>Agreed Review Performed by Franklin County</u> Sarah Villanueva, Deputy Prosecuting Attorney Date		<i>BOB</i> <i>12/31/2008</i> Ryan Verhulp, Civil Deputy Prosecuting Attorney Date	
By: _____ Name: <u>Claude L. Oliver</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____		By: _____ Name: <u>Robert E. Koch</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____	
Attest: _____		Attest: _____	
Clerk of the Board: _____		Clerk of the Board: _____	



HERE



RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF PAYMENT FOR PROFESSIONAL SERVICES AND ATTORNEY FEES PURSUANT TO THE COURT ORDER APPOINTING MICHAEL IARIA, ATTORNEY AT LAW, AS COURT APPOINTED COUNSEL FOR AN INDIGENT PERSON CHARGED WITH CAPITAL HOMICIDE IN BENTON COUNTY SUPERIOR COURT AND HEREBY AMENDING RESOLUTION NO. 08-829

WHEREAS, Resolution 08-829 authorized the procedure for payment of professional services and attorney fees for an Indigent person charged with capital homicide in Benton County Superior Court; and

WHEREAS, the Board of County Commissioners desire to amend that Resolution by removing the requirement for the Benton County Deputy Administrator's review and approval for payment of professional services and attorney fees;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves removing the requirement for the Benton County Deputy Administrator's review and approval for payment of professional services and attorney fees;

BE IT FURTHER RESOLVED that Resolution 08-829 is hereby amended to remove the requirement of the Benton County Deputy Administrator to review and approve payment of professional services and attorney fees.

Dated this day of, 2009

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County
Commissioners of Benton County,
Washington

Attest:
Clerk of the Board

RESOLUTION 08 829

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF PAYMENT FOR PROFESSIONAL SERVICES AND ATTORNEY FEES PURSUANT TO THE COURT ORDER APPOINTING MICHAEL IARIA, ATTORNEY AT LAW, DBA COHEN AND IARIA, NATIONAL BUILDING, 1008 WESTERN AVENUE, SUITE 302, SEATTLE, WA, 98104, AS COURT-APPOINTED LEAD COUNSEL FOR AN INDIGENT PERSON CHARGED WITH CAPITAL HOMICIDE IN BENTON COUNTY SUPERIOR COURT AND HEREBY RESCINDING RESOLUTION NO. 08-791 PREVIOUSLY PASSED ON SEPTEMBER 22, 2008.

WHEREAS, the Benton County Superior Court previously has appointed Michael Iaria as appropriately qualified court-appointed lead counsel of record for an indigent person charged with the crime of capital homicide in Benton County Superior Court as required by applicable court rules; and

WHEREAS, that appointment necessarily includes appointment of and payment for costs such as hourly attorney fees and fees for necessary experts and investigative and other professional services as well as associated costs such as mileage, meals and lodging that may fall outside the parameters of the Joint Resolution (Benton County Resolution Number 08-339 and Franklin County Resolution Number 2008-097) providing for a standardized system of payment; and

WHEREAS, the Benton-Franklin Office of Public Defense and the Office of the Benton County Administrator have fully and carefully considered the need for a consistent process for administration of such payments and believe it appropriate that appointment and compensation of such experts, investigators and other providers of professional services be completed by the Benton-Franklin Office of Public Defense through its existing systems; and

WHEREAS, payment for such services in a capital case are subject to monitoring by the Benton County Superior Court or its designee; **NOW, THEREFORE,**

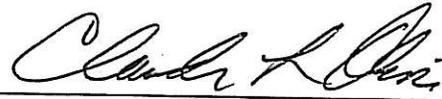
BE IT RESOLVED that the Benton-Franklin Office of Public Defense, through the Indigent Defense Coordinator, be and hereby is authorized to approve the use of such expert witnesses, investigators and other providers of professional services as well as the associated costs such as mileage, meals and lodging as may be necessary to assist the defendant herein; and

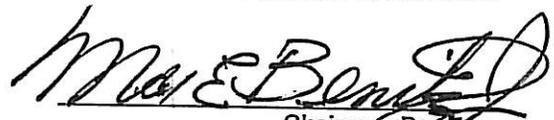
BE IT FURTHER RESOLVED that payment for those professional services and payment for attorney's fees as well as the associated costs such as mileage, meals and lodging for counsel and others providing professional services shall be presented to the Benton-Franklin Office of Public Defense and specifically to the Indigent Defense Coordinator for review with and approval by the Benton County Deputy Administrator for payment with no specific financial limitation to be imposed; and

BE IT FURTHER RESOLVED that compensation for such services then shall be managed through the pre-existing voucher and financial tracking system in the Benton-Franklin Office of Public Defense and in Benton County generally and shall be fully in accordance with any other orders or requirements then in place specifically including but not limited to sealing and confidentiality orders previously approved by the Benton County Superior Court; and

BE IT FURTHER RESOLVED that Benton County Resolution No. 08-791 be and hereby is rescinded without further action.

Dated this 6 day of Oct., 2008


Chairman of the Board


Chairman Pro Tem


Member

Attest: 
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

P

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

RESCIND BENTON COUNTY RESOLUTION NUMBER 08-339 and

AUTHORIZING THE INDIGENT DEFENSE COORDINATOR TO SIGN VOUCHERS UP TO \$5,000 FOR BENTON COUNTY OFFICE OF PUBLIC DEFENSE EXPENDITURES, PER PROVIDER, PER CASE and

AUTHORIZING THE BENTON COUNTY ADMINISTRATOR TO SIGN VOUCHERS UP TO THE CURRENT BUDGET AMOUNT SET FOR PROFESSIONAL SERVICES FOR OFFICE OF PUBLIC DEFENSE EXPENDITURES, PER PROVIDER, PER CASE

WHEREAS, joint Resolution 08-339 requires prior written approval of the Benton County Deputy Administrator on the original and supplemental requests and/or invoices over \$1,000 up to \$2,000 per provider, per case for compensation for professional services for indigent persons charged with criminal offenses in Benton and Franklin County Superior Court; and

WHEREAS, the Benton County Administrator notified the Board of Commissioners of the need to authorize approval of compensation for professional services per provider, per case, on behalf of Benton County for the Office of Public Defense; and

WHEREAS, the Board of Benton County Commissioners constitutes the legislative authority of Benton County and desires to authorize the Indigent Defense Coordinator to sign vouchers up to \$5,000 for Benton County Office of Public Defense expenditures, per provider, per case, as being in the best interest of the County; and

WHEREAS, the Board of Benton County Commissioners constitutes the legislative authority of Benton County and desires to authorize the County Administrator or designee to sign vouchers up to the current budget amount set for Professional Services for Office of Public Defense expenditures, per provider, per case, as being in the best interest of the County; and

WHEREAS, any expenditures requested over the current budget amount set for Professional Services shall be presented to the Board of Benton County Commissioners for authorization;

NOW, THEREFORE, BE IT RESOLVED the Benton County Board of Commissioners hereby authorizes the Indigent Defense Coordinator to sign vouchers up to \$5,000 for Office of Public Defense expenditures, per provider, per case; authorizes the Benton County Administrator or designee to sign vouchers up to the current budget amount set for Professional Services; and any expenditures exceeding the current budget amount set for Professional Services shall be presented to the Board of Benton County Commissioners for authorization.

Dated this day of, 20

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

**Constituting the Board of County
Commissioners of Benton County,
Washington**

9.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT WITH CATHERINE HARKINS, ATTORNEY AT LAW, DBA HARKINS LAW, PLLC., FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS IN BENTON COUNTY DISTRICT COURT.

WHEREAS, the Board of County Commissioners and Catherine Harkins, Attorney at Law, dba Harkins Law, PLLC., both desire to enter into an agreement effective on December 01, 2008 for legal representation of indigent individuals in District Court;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached Professional Service Agreement for Legal Representation Of Indigent Individuals In District Court with Catherine Harkins, Attorney at Law for the period December 01, 2008 through January 20, 2009, and authorizes the Chairman of the Board of Commissioners to sign said contract.

”

Dated this day of , 2009.

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT

THIS AGREEMENT is entered into by and between CATHERINE HARKINS, attorney at law, Washington State Bar Association #38113 ("Attorney"), dba Harkins Law, PLLC; and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with misdemeanor criminal offenses alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to misdemeanor criminal charges in the Benton County District Court.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **December 1, 2008**, and shall continue thereafter through and including **January 20, 2009**, on which date it shall terminate unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 415 Morain Street, Suite B, Kennewick, WA 99336. Attorney's current local office telephone and fax numbers are (509) 737-8308 and (509) 737-8352, respectively; and Attorney's current office/work e-mail address is C Harkins@verizon.net.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain such an office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s)

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT

THIS AGREEMENT is entered into by and between CATHERINE HARKINS, attorney at law, Washington State Bar Association #38113 ("Attorney"); and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with misdemeanor criminal offenses alleged to have been committed within the County's jurisdictional boundaries.
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b. Throughout the entire term of this Agreement, Attorney shall continue to maintain such an office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s)

to the Benton-Franklin Indigent Defense Coordinator ("IDC"), the Benton County Prosecuting Attorney, and the Benton County District Court Administrator ("District Court Administrator").

c. The County prefers that Attorney locate and maintain Attorney's office in a commercial/professional building. However, regardless of the location Attorney decides to maintain his/her office, the office must be capable of accommodating confidential face-to-face meetings between Attorney and persons whom Attorney is appointed to represent under this Agreement, must be capable of regularly receiving mail, and must have adequate telephone service to facilitate and ensure prompt response to contact with or from represented persons.

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; has not been subject to a termination proceeding involving a previous personal services agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 17 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within three (3) business days if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint is filed against Attorney.

b. To comply with the provisions of RCW 72.05.440, WAC 388-700-0010, and RCW 13.40.570, Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

d. During each calendar year during the term of this Agreement, beginning in calendar year 2008, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education (CLE) credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington State Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the IDC with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and efficiently perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is

appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than by the 15th day of each month during the term of this Agreement, Attorney shall provide the IDC with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of misdemeanor crimes in Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County District Court, the District Court Administrator and the IDC to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County District Court Criminal Defense Panel"). The District Court Administrator and/or the IDC shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in the Benton County District Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in the Benton County District Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any material witness matter relating to a case or matter filed in Benton County District Court.

- Any case or matter returned to the Benton County District Court from any higher court.
- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District Court is unable to handle due to a conflict of interest.
- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.
- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

6. **CONTINUED REPRESENTATION.** Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of dismissal of all charges, a change of plea and entering of a sentencing, or a disposition of the case with an alternative that places the case on an a track separate from other criminal cases pending trial, that has the intended potential to permanently resolve the case (including, but not limited to, deferred prosecution agreements and stipulated orders of continuance). However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded prior to the effective date of termination of this Agreement. Attorney's obligation to continue post-termination representation shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement. By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a crime or other matter after the termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation, except for any court-authorized cost reimbursements specified in paragraph 13.b below.

7. **NUMBER OF APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County District Court on the court's "Washington State Patrol" and "State" Dockets. The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.
- A probation violation appointment shall be counted as one-half (1/2) case equivalent.
- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.
- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.
- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the IDC following consultation.
- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the IDC shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation.
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County District Court and Attorney continues representing the same person in such matter within a 12-month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, however, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent

representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Provided, however, the IDC may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. Throughout the term of this Agreement, the IDC shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The IDC shall provide copies of such records to the County and Attorney on a monthly basis. Attorney shall have the burden of proof in the event that Attorney ever disagrees with any such records, and Attorney must notify the IDC in writing within ten (10) business days of records receipt if Attorney disagrees with, and desires to dispute, any such records, otherwise such records shall be conclusively presumed as being accurate.

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Benton County District Court of such possibility for purposes of the District Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Benton County District Court (or its designee) then determines that such person is not eligible for publicly provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County District Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County District Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County District Court to represent provided that the

matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County District Court aware of such development for purposes of the District Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation shall include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of District Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's duty to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney shall use best efforts to meet face-to-face within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall use best efforts to apprise the

person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney shall contact (preferably in person or at least via telephone) such person to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible copy thereof, to include electronic file storage) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the IDC of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct under RCW Title 50 and result in the immediate and automatic termination of this Agreement:

- (i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;
- (ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or
- (iii) Any violent offense as defined in RCW 9.94A.030.

12. COMPENSATION.

a. Attorney's compensation during the term of this Agreement shall be **\$145.00 for each full case equivalent** (proratable for any partial case equivalents) appointed to Attorney hereunder, becoming payable to Attorney on or before January 31, 2009.

b. In addition to the above-stated compensation, during the term of this Agreement, Attorney shall receive \$200 per day for each full day of trial and \$100 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day.

c. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement.

13. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to employees of the Benton County District Court under then-existing employee travel-related policies and rules.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising

appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 15.a throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 and Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County District Court, and its elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 15.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 15.b throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder. Provided that, however, Attorney may elect to delay and forego obtaining the Commercial General Liability insurance coverage required by this paragraph 15.b until January 1, 2009, at which time such coverage or such other coverage as may be agreed must be obtained and thereafter maintained throughout the entire remaining term of this Agreement and throughout any longer time period during which attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated Risk Manager(s) with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 15, and Attorney shall annually provide the Risk Manager(s) with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the Benton County District Court or the IDC receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney, the employee/representative receiving such communication shall promptly request and obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the Benton County District Court Administrator, and the IDC.

a. Upon receiving such complaint, the IDC, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall immediately forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the IDC within five (5) business days, who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The IDC shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The IDC then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the IDC have the right to periodically ask, without limitation, the Benton County District Court and/or the District Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

17. **TERMINATION.**

a. In addition to any other automatic termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County District Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder.

Further, in the event that the Benton County District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County relating to such substitute appointment(s).

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence (i.e., termination without further notice) if the failure(s) is/are not cured within the ten (10) day period. The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In any event, consistent with the provisions of paragraph 12.c above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

d. If the County decides in its discretion to provide indigent defense representation in Benton County District Court through a County agency (such as an Office of Public Defense or similar entity) that would eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can mutually coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic or in any way guaranteed.

18. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County District Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the County's IDC, nor the Benton County District Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

19. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 19.a and 19.b below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the IDC on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County District Court Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the District Court Administrator and the IDC) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 15 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the IDC with written notice of such event within five (5) business days of Attorney being called up so that the IDC and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

20. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County District Court.

21. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement.

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any court other than Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitations on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the IDC's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the IDC's sole and absolute discretion. Any judicial services rendered by Attorney under this paragraph shall fully comply with all applicable Rules of Professional Conduct and Judicial Canons.

23. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.

24. **CAPTIONS; TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

25. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

26. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Attorney's heirs, legal/personal representatives, successors, and assigns.

27. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

28. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

29. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced mediator chosen by mutual agreement between the parties. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

b. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a

third arbitrator. The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) business days thereafter. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be personally delivered to the County's Board of Commissioners or mailed to the County's Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's following address:

Benton County Board of Commissioners
620 Market St.
Prosser, WA 99350

With a mandatory complete copy of any such notices to also be provided to:

Jacki Lahtinen
Benton County District Court Administrator
7122 West Okanogan Place, Building A
Kennewick, WA 99336

Eric Hsu
Indigent Defense Coordinator
Benton & Franklin Counties Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage

prepaid, at Attorney's office address specified and set forth in paragraph 2.a above.

c. Any notices under this Agreement shall be deemed to have been duly given, made and received when personally delivered against receipt or when duly deposited in the U.S. mail in compliance with the provisions of this paragraph. A party may change the address(es) to which notices or copies thereof are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

d. For purposes of clarity, whenever the terms of this Agreement require Attorney to provide "the County" with certain information or notice, such information or notice shall be provided to the County's Board of Commissioners or the Board's designee unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

31. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

32. **INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has established and employed the IDC to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the IDC to assume and fulfill various roles and functions under this Agreement. Though the IDC will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate and promptly comply with reasonable requests from the IDC to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

(SIGNATURES APPEAR ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

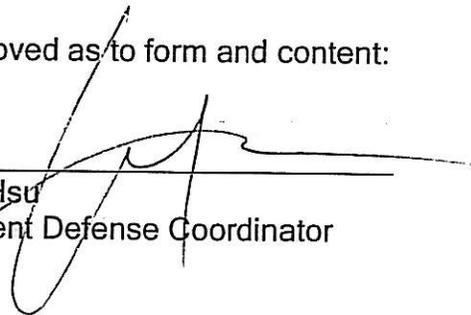
Date: _____

Date: 1/21/09

BENTON COUNTY

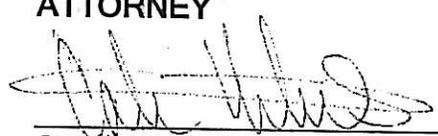
Chairman of the Benton County
Board of County Commissioners

Approved as to form and content:



Eric Hsu
Indigent Defense Coordinator

ATTORNEY



Catie Harkins

WSBA # 38115

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RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT WITH RYAN SWINBURNSON, ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS IN BENTON COUNTY DISTRICT COURT.

WHEREAS, the Board of County Commissioners and Ryan Swinburnson, Attorney at Law, both desire to enter into an agreement effective on December 01, 2008 for legal representation of indigent individuals in District Court;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached Professional Service Agreement for Legal Representation Of Indigent Individuals In District Court with Ryan Swinburnson, Attorney at Law for the period December 01, 2008 through January 20, 2009, and authorizes the Chairman of the Board of commissioners to sign said contract.

Dated this day of, 2009.

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT

THIS AGREEMENT is entered into by and between RYAN MICHAEL SWINBURNSON, attorney at law, Washington State Bar Association #30227 ("Attorney"); and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with misdemeanor criminal offenses alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to misdemeanor criminal charges in the Benton County District Court.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **December 1, 2008**, and shall continue thereafter through and including **January 20, 2009**, on which date it shall terminate unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 415 Morain Street, Suite B, Kennewick, WA 99336. Attorney's current local office telephone and fax numbers are (509) 737-8308 and (509) 737-8352, respectively; and Attorney's current office/work e-mail address is r_swinburnson@verizon.net

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain such an office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s)

to the Benton-Franklin Indigent Defense Coordinator ("IDC"), the Benton County Prosecuting Attorney, and the Benton County District Court Administrator ("District Court Administrator").

c. The County prefers that Attorney locate and maintain Attorney's office in a commercial/professional building. However, regardless of the location Attorney decides to maintain his/her office, the office must be capable of accommodating confidential face-to-face meetings between Attorney and persons whom Attorney is appointed to represent under this Agreement, must be capable of regularly receiving mail, and must have adequate telephone service to facilitate and ensure prompt response to contact with or from represented persons.

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; has not been subject to a termination proceeding involving a previous personal services agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 17 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censored, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within three (3) business days if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint is filed against Attorney.

b. To comply with the provisions of RCW 72.05.440, WAC 388-700-0010, and RCW 13.40.570, Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

d. During each calendar year during the term of this Agreement, beginning in calendar year 2008, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education (CLE) credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington State Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the IDC with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and efficiently perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is

appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than by the 15th day of each month during the term of this Agreement, Attorney shall provide the IDC with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of misdemeanor crimes in Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County District Court, the District Court Administrator and the IDC to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County District Court Criminal Defense Panel"). The District Court Administrator and/or the IDC shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in the Benton County District Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in the Benton County District Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any material witness matter relating to a case or matter filed in Benton County District Court.

- Any case or matter returned to the Benton County District Court from any higher court.
- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District Court is unable to handle due to a conflict of interest.
- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.
- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

6. **CONTINUED REPRESENTATION.** Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of dismissal of all charges, a change of plea and entering of a sentencing, or a disposition of the case with an alternative that places the case on an a track separate from other criminal cases pending trial, that has the intended potential to permanently resolve the case (including, but not limited to, deferred prosecution agreements and stipulated orders of continuance). However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded prior to the effective date of termination of this Agreement. Attorney's obligation to continue post-termination representation shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement. By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a crime or other matter after the termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation, except for any court-authorized cost reimbursements specified in paragraph 13.b below.

7. **NUMBER OF APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County District Court on the court's "Washington State Patrol" and "State" Dockets. The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.
- A probation violation appointment shall be counted as one-half (1/2) case equivalent.
- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.
- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.
- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the IDC following consultation.
- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the IDC shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation.
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County District Court and Attorney continues representing the same person in such matter within a 12-month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, however, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent

representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Provided, however, the IDC may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. Throughout the term of this Agreement, the IDC shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The IDC shall provide copies of such records to the County and Attorney on a monthly basis. Attorney shall have the burden of proof in the event that Attorney ever disagrees with any such records, and Attorney must notify the IDC in writing within ten (10) business days of records receipt if Attorney disagrees with, and desires to dispute, any such records, otherwise such records shall be conclusively presumed as being accurate.

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Benton County District Court of such possibility for purposes of the District Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Benton County District Court (or its designee) then determines that such person is not eligible for publicly provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County District Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County District Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County District Court to represent provided that the

matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County District Court aware of such development for purposes of the District Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation shall include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of District Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's duty to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney shall use best efforts to meet face-to-face within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall use best efforts to apprise the

person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney shall contact (preferably in person or at least via telephone) such person to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible copy thereof, to include electronic file storage) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the IDC of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct under RCW Title 50 and result in the immediate and automatic termination of this Agreement:

- (i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;
- (ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or
- (iii) Any violent offense as defined in RCW 9.94A.030.

12. COMPENSATION.

a. Attorney's compensation during the term of this Agreement shall be **\$145.00 for each full case equivalent** (proratable for any partial case equivalents) appointed to Attorney hereunder, becoming payable to Attorney on or before January 31, 2009.

b. In addition to the above-stated compensation, during the term of this Agreement, Attorney shall receive \$200 per day for each full day of trial and \$100 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day.

c. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement.

13. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to employees of the Benton County District Court under then-existing employee travel-related policies and rules.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising

appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 15.a throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 and Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County District Court, and its elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 15.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 15.b throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder. Provided that, however, Attorney may elect to delay and forego obtaining the Commercial General Liability insurance coverage required by this paragraph 15.b until January 1, 2009, at which time such coverage or such other coverage as may be agreed must be obtained and thereafter maintained throughout the entire remaining term of this Agreement and throughout any longer time period during which attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated Risk Manager(s) with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 15, and Attorney shall annually provide the Risk Manager(s) with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the Benton County District Court or the IDC receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney, the employee/representative receiving such communication shall promptly request and obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the Benton County District Court Administrator, and the IDC.

a. Upon receiving such complaint, the IDC, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall immediately forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the IDC within five (5) business days, who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The IDC shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The IDC then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the IDC have the right to periodically ask, without limitation, the Benton County District Court and/or the District Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

17. TERMINATION.

a. In addition to any other automatic termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County District Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder.

Further, in the event that the Benton County District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County relating to such substitute appointment(s).

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence (i.e., termination without further notice) if the failure(s) is/are not cured within the ten (10) day period. The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In any event, consistent with the provisions of paragraph 12.c above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

d. If the County decides in its discretion to provide indigent defense representation in Benton County District Court through a County agency (such as an Office of Public Defense or similar entity) that would eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can mutually coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic or in any way guaranteed.

18. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County District Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the County's IDC, nor the Benton County District Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

19. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 19.a and 19.b below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the IDC on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County District Court Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the District Court Administrator and the IDC) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 15 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the IDC with written notice of such event within five (5) business days of Attorney being called up so that the IDC and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

20. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County District Court.

21. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement.

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any court other than Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitations on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the IDC's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the IDC's sole and absolute discretion. Any judicial services rendered by Attorney under this paragraph shall fully comply with all applicable Rules of Professional Conduct and Judicial Canons.

23. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.

24. **CAPTIONS; TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

25. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

26. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Attorney's heirs, legal/personal representatives, successors, and assigns.

27. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

28. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

29. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced mediator chosen by mutual agreement between the parties. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

b. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a

third arbitrator. The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) business days thereafter. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be personally delivered to the County's Board of Commissioners or mailed to the County's Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's following address:

Benton County Board of Commissioners
620 Market St.
Prosser, WA 99350

With a mandatory complete copy of any such notices to also be provided to:

Jacki Lahtinen
Benton County District Court Administrator
7122 West Okanogan Place, Building A
Kennewick, WA 99336

Eric Hsu
Indigent Defense Coordinator
Benton & Franklin Counties Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage

prepaid, at Attorney's office address specified and set forth in paragraph 2.a above.

c. Any notices under this Agreement shall be deemed to have been duly given, made and received when personally delivered against receipt or when duly deposited in the U.S. mail in compliance with the provisions of this paragraph. A party may change the address(es) to which notices or copies thereof are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

d. For purposes of clarity, whenever the terms of this Agreement require Attorney to provide "the County" with certain information or notice, such information or notice shall be provided to the County's Board of Commissioners or the Board's designee unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

31. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

32. **INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has established and employed the IDC to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the IDC to assume and fulfill various roles and functions under this Agreement. Though the IDC will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate and promptly comply with reasonable requests from the IDC to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

(SIGNATURES APPEAR ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

Date: _____

Date: _____

BENTON COUNTY

Chairman of the Benton County
Board of County Commissioners

Approved as to form and content:

Eric Hsu
Indigent/Defense Coordinator

ATTORNEY

Ryan Swinburnson
WSBA # 30227

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: 1/26/09 Subject: Position Classifications and Grades Prepared by: M. Wenner	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Other	Consent Agenda Public Hearing X 1st Discussion 2nd Discussion Other

S

BACKGROUND INFORMATION

Please see attached.

RECOMMENDATION

Pass Resolution.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EVALUATING AND APPROVING NEW NON-BARGAINING POSITIONS AND EXISTING NON-BARGAINING POSITIONS TO INCLUDE BI-COUNTY NON-BARGAINING POSITIONS

WHEREAS, the Board of Benton County Commissioners recognizes the current economic state facing Benton County, Washington State, and the nation; and

WHEREAS, it is the responsibility of the Board of Benton County Commissioners to approve any new positions and changes to existing positions, including classification descriptions and grades; and

WHEREAS, the Board of Benton County Commissioners is placing a halt on evaluating and approving any new non-bargaining and bi-county non-bargaining positions and changing existing non-bargaining and bi-county non-bargaining positions, including classification descriptions and grades; and

WHEREAS, the Board of Benton County Commissioners recommends that no proposed new non-bargaining and bi-county non-bargaining positions or changes to existing non-bargaining and bi-county non-bargaining positions, including classification descriptions or grades, be brought before the Board for approval until further notice; **NOW THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby halts the process of evaluating and approving any new non-bargaining and bi-county non-bargaining positions and changes to existing non-bargaining and bi-county non-bargaining positions until further notice.

Dated this day of, 20

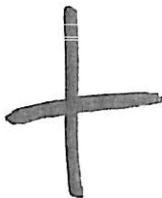
Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington



RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE BOARD OF BENTON COUNTY COMMISSIONERS TO SIGN THE PERSONAL SERVICES CONTRACT BETWEEN BENTON COUNTY AND MCCARY L.L.C, A WASHINGTON CORPORATION DOING BUSINESS AS ALL-SAFE ABATEMENT

BE IT RESOLVED that the Board of Benton County Commissioners is hereby authorized to sign the attached personal services contract between Benton County and McCary L.L.C., a Washington Corporation doing business as All-Safe Abatement.

Dated this day of, 20

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

cc: R. Sparks, B. Perry, R. Ozuna

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: 1/26/09 Subject: Contract Prepared by: <u>M. Wenner</u>	Execute Contract Pass Resolution <u> X </u> Pass Ordinance Pass Motion Other	Consent Agenda <u> X </u> Public Hearing 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION

See attached Personal Service Contract between All-Safe Abatement and Benton County.

RECOMMENDATION

Having been reviewed by Bryan Perry, Safety and Training Coordinator, and Eric Hsu, Civil DPA, we recommend the agreement be signed.

**PERSONAL SERVICES CONTRACT
TERMS AND CONDITIONS**

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and MCCARY L.L.C., a Washington corporation doing business as ALL-SAFE ABATEMENT, with its principal offices at 6223 West Deschutes Ave., #316 Kennewick, WA 99336 (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of the following documents

- a. Labor costs for services
- b. Prevailing wage schedule for Benton County

2. DURATION OF CONTRACT

The term of this Contract shall begin immediately upon execution by the COUNTY and shall expire on December 31, 2009. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. Cleanup and disposal of a small amount of less than 1% asbestos containing vermiculite at the Prosser Courthouse.
- b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.
- c. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.

- e. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a contract representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

- a. For CONTRACTOR: Greg McCary 6223 West Deschutes Ave.,
#316
Kennewick, WA 99336
- b. For COUNTY: Bryan Perry 7122 West Okanogan Place, Bld
A Kennewick, WA 99336

5. COMPENSATION

For the services performed hereunder, the CONTRACTOR shall be paid as follows:

- b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed \$ 1,000.00 .
- c. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.
- d. The CONTRACTOR may submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.
- e. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- f. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice

from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

- g. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.
- h. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages in a form approved and certified by the Washington State Department of Labor and Industries directly to COUNTY's contract representative. At the completion of all work contemplated by this agreement or at the end of the contract term, whichever comes first, the work contemplated herein, CONTRACTOR shall submit an affidavit of wages paid in compliance with prevailing wage requirements, pre-certified by the Department of Labor and Industries, directly to COUNTY's contract representative. Such affidavit shall be in a form approved by the Washington State Department of Labor and Industries. No final payment will be made until such affidavit is provided.

6. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.
- b. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section [7] shall survive termination and expiration of this Contract.
- c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, the CONTRACTOR'S employees, agents or subcontractors.

8. INSURANCE

- a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial liability or commercial umbrella liability insurance.

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.

Certain work or services under this Contract may require insurance coverage for long shore or harbor workers other than seaman as provided in the Long Shore and Harbor Workers Compensation Act [33 U.S.C.A. Section 901 et seq.]. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. CONTRACTOR is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. CONTRACTOR is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.

Certain work or services under this Contract may require insurance coverage for seamen injured during employment resulting from the negligence of the owner, master or fellow crew members as provided in 46 U.S.C.A. Section 688. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. CONTRACTOR is fully responsible for ascertaining if such insurance is required and

shall maintain insurance in compliance with that Act. CONTRACTOR is responsible for all civil and criminal liability that may arise from the failure to maintain coverage.

- b. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability coverage (policy form CG0001 or equivalent) for wrongful death, bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).

The general commercial liability policy will contain an endorsement naming the COUNTY as an additional insured (CG2010) and an endorsement that specifically states that CONTRACTOR's general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

The CONTRACTOR will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section [7]. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

If CONTRACTOR has any employees, CONTRACTOR also shall maintain employers liability insurance with limits of not less than one million dollars (\$1,000,000) each incident for bodily injury by accident or one million dollars (\$1,000,000) each employee for bodily injury by disease.

- c. **Automobile Liability:** [This section required if services involve the use of vehicles by CONTRACTOR or the transportation of COUNTY employees or third parties]. The CONTRACTOR shall maintain business automobile liability insurance with a limit of not less than one million dollars (\$1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall

cover liability arising out of "Any Auto." CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by business auto liability.

e. **Other Insurance Provisions:**

- (1) The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
- (2) The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
- (3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
- (4) The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
- (6) The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
- (7) The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section [8(a)], shall be written on an Occurrence Policy form. Professional liability insurance on a Claims Made form shall have a

retroactive date prior to or coincident with the effective date of this Contract.

f. **Verification of Coverage and Acceptability of Insurers:** All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Benton County Risk Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

- (1) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered Acord form certificates of insurance and, if requested, a signed policy endorsement(s) which shall clearly evidence all required insurance prior to commencing work under this Contract. The certificates will, at a minimum, list limits of liability and coverage. For any professional liability insurance, the CONTRACTOR agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the COUNTY by the CONTRACTOR. For other insurance policies, CONTRACTOR shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the COUNTY. CONTRACTOR shall also instruct the insurer to give the COUNTY forty-five (45) days advanced written notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the COUNTY as an additional insured of cancellation.
- (2) The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.
- (3) Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown

as the current address of the COUNTY'S Contract Representative.

- (4) If the CONTRACTOR or any subcontractor or sub-subcontractor has any employees, CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.
- (5) All written notices under this Section [8] and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:

Benton County Risk Manager/Personnel Dept.
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336
- (6) The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager.
- (7) If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, CONTRACTOR must describe its financial condition and the self-insured funding mechanism.

9. TERMINATION

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.
- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any

other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. PERFORMANCE BOND

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to 100% of the contract sum as security for the performance by the contractor of this Agreement and payment of all the persons performing labor and supplying materials pursuant to this agreement. PROVIDED that CONTRACTOR may elect, in lieu of the bond, to allow COUNTY to retain 50% of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under chapter 60.28, RCW, whichever is later. Either proof of the performance bond, or written notification of the CONTRACTOR'S desire to elect the alternative to the bond described above, must be received by COUNTY within ten (10) days following the execution of this agreement in order for the CONTRACTOR to be considered for "as needed" projects.

11. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- a. The CONTRACTOR shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or

subcontracted to any other person or firm without the prior express written consent of the COUNTY.

- b. The CONTRACTOR warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

12. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section [5] of this Contract, and neither the CONTRACTOR nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to COUNTY employees.
- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.

- d. CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state or local law which are now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S contract representative or designee.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit B shall be paid to all employees, agents, sub-contractors or sub-sub-contractors who do any work for CONTRACTOR on this project. CONTRACTOR shall ensure that all sub-contractors or sub-sub-contractors sign an agreement to pay these same wages, and that such a signed agreement is submitted to COUNTY prior to sub-contractor commencing any work on the project. This schedule is duplicated from the Washington State Department of Labor & Industries website, is provided for informational purposes only and COUNTY takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedule contains any such ambiguities or inaccuracies then CONTRACTOR is responsible for contact the Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this contract and relevant law to pay prevailing wages.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

15. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- a. All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.
- c. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the COUNTY, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTY of any notice of such claim.

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

The CONTRACTOR, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

20. CHOICE OF LAW, JURISDICTION AND VENUE

- a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.
- b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton County, Washington.

21. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves, their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

22. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

24. NOTICES

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the Contract Representatives Section of this Contract. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately, if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, indemnification provisions (Sections [7] and [17]); extended reporting period requirements for professional liability insurance (Section [8(a)]); inspection and keeping of records and books (Section [14]); litigation hold notice (Section [26]); Public Records Act (Section [27]) and confidentiality (Section [19]).

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section [14] of this agreement may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule as set out above in Section [14].

27. PUBLIC RECORDS ACT

CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements

of the Public Records Act, RCW 42.56 et seq. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records actually in its possession or deemed by judicial determination to be in its possession, which may include records provided to the COUNTY by CONTRACTOR that CONTRACTOR might regard as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, it agrees to conspicuously mark the records as such. CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

The parties to this Contract have executed this Contract to take effect as of the date written below.

DATED:

BENTON COUNTY BOARD OF COMMISSIONERS

Chairman

Member

Member

Constituting the Board of
County Commissioners of
Benton County, Washington.

Attest:

Clerk of the Board

Approved as to Form:

Deputy
Prosecuting Attorney

DATED: 1/05/09

CONTRACTOR
ALL-SAFE ABATEMENT

Greg McCary

President

Member, Greg McCary

Its

R E S O L U T I O N

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BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EQUIPMENT RENTAL RATES FOR COUNTY ROAD EQUIPMENT RENTAL AND REVOLVING FUND - 2009

WHEREAS, by resolution 77-644, dated December 29, 1977, an annual review of the E. R. & R. Fund's Equipment Rental Rates was established;, and

WHEREAS, the current Equipment Rental Rates were last reviewed in January 2008; and

WHEREAS, a review of equipment status has been made and it is found that all equipment rental rates need to be revised according to the attached schedule; and

WHEREAS, the County Engineer recommends that the attached schedule of Equipment Rental Rates be approved and become effective January 1, 2009; NOW, THEREFORE,

BE IT RESOLVED that the attached schedule of E. R. & R. Fund Equipment Rental Rates for all County Road Equipment be approved and be effective January 1, 2009.

Dated this 26th day of January, 2009.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

Constituting the Board of
Commissioners of Benton
County, Washington.

RBD:LJM:dlh

E. R. R. FUND
Equipment Rental Rate Schedule
2009

Rates: (hr) = Hourly (mo) = Monthly (yr) = Yearly

Equip No.	Description	Current Rental Rates (1/01/08)	Revised Rental Rates (1/01/09)	Comments
0095	Water Pump, portable	\$15.00	\$15.00 (hr)	
0096	Water Pump, portable	\$15.00	\$15.00 (hr)	
0172	Truck, Oil Distributor	\$132.44	\$98.74 (hr)	
0212	Pipe trailer	\$35.50	\$15.75 (hr)	
0215	Generator, portable	\$5.00	\$5.00 (hr)	
0216	Vibratory tamper	\$25.93	\$25.93 (hr)	
0217	Vibratory tamper	\$25.93	\$25.93 (hr)	
0253	Roller trailer	\$4.45	\$4.98 (hr)	
0273	Concrete vibrator	\$2.00	\$2.00 (hr)	
0322	Trailer, Beaver Tail, TBR 10-12	\$18.06	\$14.50 (hr)	
0334	Trailer/Eng. Lab.	\$8.31	\$6.88 (hr)	
0335	Excavator	\$54.68	\$87.10 (hr)	
0336	Vacuum Sweeper	\$76.16	\$73.37 (hr)	
0351	Vibratory roller	\$9.22	\$11.69 (hr)	
0358	2-Way Dump truck	\$104.24	\$83.83 (hr)	
0362	Truck/tractor	\$35.37	\$38.22 (hr)	
0371	2-Way Dump Truck	\$42.99	\$55.90 (hr)	
0375	Water Truck	\$58.91	\$54.36 (hr)	
0388	Equipment trailer	\$17.54	\$15.43 (hr)	
0390	Water pump	\$38.53	\$35.69 (hr)	
0399	Loader/backhoe	\$42.74	\$43.23 (hr)	
0402	Pickup, 3/4 ton (Gas)	\$11.09	\$10.05 (hr)	

Equip No.	Description	Current Rental Rates (1/01/08)	Revised Rental Rates (1/01/09)	Comments
0403	Pickup, 3/4 ton (Gas)	\$28.09	\$13.00 (hr)	
0404	Pickup, 3/4 ton (Gas)	\$24.57	\$20.60 (hr)	
0405	2-Way Dump Truck	\$43.90	\$59.21 (hr)	
0406	2-Way Dump Truck	\$43.89	\$50.49 (hr)	
0407	Truck, Patch	\$44.74	\$43.24 (hr)	
0410	Grader	\$97.05	\$97.62 (hr)	
0417	Trailer, pup	\$11.69	\$11.64 (hr)	
0418	Trailer, equipment	\$37.37	\$23.57 (hr)	
0419	Trailer, belly dump	\$69.63	\$73.70 (hr)	
0420	Conveyor	\$47.86	\$47.97 (hr)	
0424	Rock rake	\$40.07	\$46.50 (hr)	
0425	Rock rake	\$8.56	\$8.03 (hr)	
0428	Pup trailer	\$68.43	\$25.28 (hr)	
0429	Broom	\$59.76	\$67.78 (hr)	
0432	Trailer, tank	\$55.61	\$49.39 (hr)	
0433	Pickup, 4x4 (3/4 T Diesel)	\$16.58	\$17.53 (hr)	
0434	Pickup, 4x4 (3/4 T Diesel)	\$17.01	\$17.06 (hr)	
0435	Pickup, 1/2 ton (Gas)	\$26.09	\$26.97 (hr)	
0438	Trailer	\$64.08	\$26.11 (hr)	
0439	Trailer	\$30.17	\$23.54 (hr)	
0441	1 Ton Truck (w/ flatbed)	\$15.95	\$19.35 (hr)	
0442	Tilt Trailer	\$9.36	\$7.22 (hr)	
0443	Truck Chassis	\$46.44	\$46.44 (hr)	
0444	Pickup (3/4 T Trapwagon)	\$10.71	\$12.27 (hr)	
0447	Spray Tank	\$14.51	\$14.11 (hr)	

Equip No.	Description	Current Rental Rates (1/01/08)	Revised Rental Rates (1/01/09)	Comments
0449	Road Grader	\$83.25	\$83.21 (hr)	
0450	Loader	\$34.37	\$32.81 (hr)	
0452	Roller	\$94.30	\$70.76 (hr)	
0453	Compactor	\$5.27	\$7.90 (hr)	
0455	Pickup (3/4 T Flatbed - Gas)	\$28.19	\$30.46 (hr)	
0458	Conveyor	\$18.85	\$19.91 (hr)	
0459	Conveyor	\$11.93	\$23.31 (hr)	
0460	Loader-backhoe	\$33.74	\$41.98 (hr)	
0461	Water Truck	\$88.69	\$64.07 (hr)	
0462	Spray unit	\$11.16	\$6.76 (hr)	
0463	Sedan	\$5.85 (hr)	\$983.00 (mo)	
0464	Pickup, Small (Gas)	\$25.54	\$25.54 (hr)	
'65	Utility Vehicle	\$4.82	\$6.16 (hr)	
0466	Pickup (1/2 T - Gas)	\$10.52	\$11.73 (hr)	
0467	Vibratory Tamper	\$19.94	\$22.60 (hr)	
0468	Water Truck	\$102.83	\$99.44 (hr)	
0469	Grader	\$108.25	\$110.78 (hr)	
0470	Dump Truck 10-12 cy	\$66.49	\$74.25 (hr)	
0471	Dump Truck 10-12 cy	\$87.61	\$87.66 (hr)	
0472	Dump Truck 10-12 cy	\$62.10	\$70.70 (hr)	
0473	Dump Truck	\$77.39	\$77.45 (hr)	
0474	Dump Truck	\$77.28	\$71.32 (hr)	
0475	Dump Truck	\$64.42	\$69.97 (hr)	
0476	Utility Truck	\$68.11	\$52.16 (hr)	
0477	Rock Spreader	\$22.15	\$26.20 (hr)	

Equip No.	Description	Current Rental Rates (1/01/08)	Revised Rental Rates (1/01/09)	Comments
0478	Rock Spreader	\$25.00	\$26.53 (hr)	
0479	Rock Spreader	\$25.00	\$26.59 (hr)	
0480	De-Icing Tank	\$11.13	\$11.75 (hr)	
0481	De-Icing Tank	\$30.66	\$32.85 (hr)	
0482	Rammer	\$74.82	\$16.64 (hr)	
0483	Utility Vehicle	\$10.85	\$10.86 (hr)	
0484	Front End Loader	\$74.71	\$67.48 (hr)	
0485	Grader	\$99.09	\$90.47 (hr)	
0486	Utility Vehicle	\$8.83	\$12.00 (hr)	
0487	Pickup (1/2 T - Gas)	\$4.16	\$4.04 (hr)	
0488	Pickup (3/4 T - Diesel)	\$16.44	\$14.89 (hr)	
0489	Rock Rake	\$26.21	\$24.29 (hr)	
0490	Truck - Hot Patch unit mounted	\$122.93	\$139.49 (hr)	
0491	Pickup	\$18.73	\$20.59 (hr)	
0492	Grader	\$105.55	\$102.24 (hr)	
0493	V Snowplow	\$10.00	\$10.00 (hr)	
0494	Pickup	\$22.39	\$20.71 (hr)	
0495	Roller	\$58.46	\$52.08 (hr)	
0496	Sedan	\$6.56	\$7.57 (hr)	
0497	Pickup	\$15.71	\$15.01 (hr)	
0498	Pickup	\$14.19	\$14.66 (hr)	
0499	Pickup	\$12.86	\$15.49 (hr)	
0500	Grader	\$94.31	\$105.74 (hr)	
0501	Forklift	\$20.00	\$20.00 (hr)	
0502	De-Icing Tank	\$16.15	\$18.96 (hr)	

Equip No.	Description	Current Rental Rates (1/01/08)	Revised Rental Rates (1/01/09)	Comments
0503	Paint Sprayer	\$10.00	\$10.00 (hr)	
0504	Broom	\$70.34	\$80.41 (hr)	
0505	Tractor/Mower	\$74.96	\$81.18 (hr)	
0506	Wood Chipper	\$56.81	\$69.58 (hr)	
0507	Pickup 4x4	\$5.35	\$7.06 (hr)	
0508	Pickup	\$15.58	\$17.45 (hr)	
0509	Spray Truck	\$23.93	\$28.25 (hr)	
0510	Pickup	\$11.00	\$12.33 (hr)	
0511	Tractor	\$75.16	\$85.06 (hr)	
0512	Sedan	\$8.67	\$8.74 (hr)	
0513	Sedan	\$8.49	\$8.74 (hr)	
0514	Forklift	\$20.00	\$20.00 (hr)	
0515	Pickup	\$8.18	\$10.04 (hr)	
0516	Pickup	\$11.93	\$14.21 (hr)	
0517	Pickup	\$11.93	\$13.05 (hr)	
0518	Truck, Spray	\$0.00	\$47.43 (hr)	
0520	Pickup	\$0.00	\$46.44 (hr)	
0521	Sedan	\$0.00	\$8.74 (hr)	
0522	Pickup	\$0.00	\$14.48 (hr)	
0523	Pickup	\$0.00	\$14.41 (hr)	
1017	Compact	\$0.00	\$0.00 (yr)	
1022	Sedan	\$8.78 (hr)	\$1,773.00 (yr)	
1024	Sedan	\$0.00	\$0.00 (yr)	
1025	Sedan	\$490.00 (yr)	\$124.00 (yr)	
1026	Sedan	\$1,525.00	\$0.00 (yr)	

Equip No.	Description	Current Rental Rates (1/01/08)	Revised Rental Rates (1/01/09)	Comments
1029	Sedan	\$688.00	\$715.00 (yr)	
1030	Sedan	\$1,421.00	\$0.00 (yr)	
1033	Sedan	\$684.00	\$8,999.00 (yr)	
1034	Pickup	\$184.00	\$3,087.00 (yr)	
1036	Pickup	\$5,362.00	\$0.00 (yr)	
1037	Pickup	\$2,636.00	\$365.00 (yr)	
1038	Pickup	\$11.61	\$11.63 (hr)	
1039	Pickup	\$0.00	\$0.00 (yr)	
1040	Pickup	\$11.61	\$11.64 (hr)	
1041	Pickup	\$0.00	\$0.00 (yr)	
1042	Sedan	\$740.00	\$508.00 (yr)	
1044	Utility Vehicle	\$2,417.00	\$1,760.00 (yr)	
1045	Pickup	\$1,182.00	\$885.00 (yr)	
1046	Cargo Van	\$7,633.00	\$0.00 (yr)	
1047	Sedan	\$1,918.00	\$903.00 (yr)	
1048	Sedan	\$1,787.00	\$2,152.00 (yr)	
1049	Sedan	\$1,646.00	\$106.00 (yr)	
1050	Sedan	\$3,208.00	\$144.00 (yr)	
1051	Station Wagon	\$1,349.00	\$675.00 (yr)	
1052	Sedan	\$854.00	\$1,246.00 (yr)	
1053	Sedan	\$710.00	\$912.00 (yr)	
1054	Utility Vehicle	\$1,332.00	\$4,269.00 (yr)	
1056	Sedan	\$1,831.00	\$2,580.00 (yr)	
1057	Pickup	\$1,704.00	\$1,734.00 (yr)	
1058	Sedan	\$1,856.00	\$755.00 (yr)	

Equip No.	Description	Current Rental Rates (1/01/08)	Revised Rental Rates (1/01/09)	Comments
1059	Cargo Van	\$8,435.00	\$1,329.00 (yr)	
1060	Pickup	\$11.00	\$11.00 (hr)	
1061	Sedan	\$8.00	\$10.00 (hr)	
1062	Pickup	\$5,570.00	\$2,348.00 (yr)	
1063	Pickup	\$4,676.00	\$2,642.00 (yr)	
1064	Utility Vehicle	\$5,660.00	\$2,639.00 (yr)	
1065	Sedan	\$4,302.00	\$1,232.00 (yr)	
1066	Sedan	\$4,549.00	\$3,909.00 (yr)	
1067	Pickup	\$6,127.00	\$5,581.00 (yr)	
1068	Sedan	\$4,026.00	\$3,586.00 (yr)	
1069	Sedan	\$7,853.00	\$7,168.00 (yr)	
1070	Van	\$5,819.00	\$6,031.00 (yr)	
1071	Sedan	\$1,852.00	\$2,238.00 (yr)	
1072	Pickup	\$6,384.00	\$5,855.00 (yr)	
1073	Sedan	\$4,271.00	\$5,190.00 (yr)	
1074	Sedan	\$4,233.00	\$5,711.00 (yr)	
1075	Sedan	\$4,494.00	\$5,944.00 (yr)	
1076	Van	\$4,682.00	\$5,359.00 (yr)	
1077	Sedan	\$3,273.00	\$4,130.00 (yr)	
1078	Sedan	\$3,273.00	\$4,063.00 (yr)	
1079	Pickup	\$3,895.00	\$5,281.00 (yr)	
1080	Sedan	\$2,852.00	\$4,851.00 (yr)	
1081	Pickup	\$3,354.00	\$4,862.00 (yr)	
1082	Pickup	\$2,490.00	\$6,728.00 (yr)	
1083	Sedan	\$0.00	\$2,854.00 (yr)	

Equip No.	Description	Current Rental Rates (1/01/08)	Revised Rental Rates (1/01/09)	Comments
E5005	Digitizing Tablet	\$0.00	\$0.00 (mo)	
E5013	Notebook	\$0.00	\$0.00 (mo)	
E5021	Wheelwriter	\$0.00	\$0.00 (mo)	
E5024	Notebook	\$0.00	\$0.00 (mo)	
E5038	Workstation	\$0.00	\$0.00 (mo)	
E5040	Workstation	\$0.00	\$0.00 (mo)	
E5041	Notebook	\$0.00	\$0.00 (mo)	
E5042	Notebook	\$0.00	\$0.00 (mo)	
E5044	Workstation	\$0.00	\$0.00 (mo)	
E5049	Workstation	\$0.00	\$0.00 (mo)	
E5051	Workstation	\$0.00	\$0.00 (mo)	
E5053	Workstation	\$0.00	\$0.00 (mo)	
E5054	Design Printer	\$0.00	\$0.00 (mo)	
E5055	Printer	\$0.00	\$0.00 (mo)	
E5057	Workstation	\$0.00	\$0.00 (mo)	
E5058	Workstation	\$0.00	\$0.00 (mo)	
E5059	Workstation	\$0.00	\$0.00 (mo)	
E5060	Total Station	\$0.00	\$0.00 (hr)	
E5061	Data Collector	\$0.00	\$0.00 (hr)	
E5062	Printer	\$0.00	\$0.00 (mo)	
E5063	Nuclear Density Gauge	\$11.00	\$11.00 (hr)	
E5064	Workstation	\$0.00	\$0.00 (mo)	
E5065	Workstation	\$0.00	\$0.00 (mo)	
E5067	Workstation	\$0.00	\$0.00 (mo)	
E5068	Workstation	\$0.00	\$0.00 (mo)	

Equip No.	Description	Current Rental Rates (1/01/08)	Revised Rental Rates (1/01/09)	Comments
E5069	Autolevel	\$0.00	\$0.00 (mo)	
E5071	Printer/Scanner	\$0.00	\$0.00 (mo)	
E5072	Workstation	\$0.00	\$0.00 (mo)	
E5073	Workstation	\$0.00	\$0.00 (mo)	
E5074	Workstation	\$0.00	\$0.00 (mo)	
E5075	Workstation	\$0.00	\$0.00 (mo)	
E5076	Nuclear Density Gauge	\$11.00	\$11.00 (hr)	
E5077	Workstation	\$0.00	\$0.00 (mo)	
E5078	Workstation	\$0.00	\$0.00 (mo)	
E5079	Workstation	\$0.00	\$0.00 (mo)	
E5080	Workstation	\$0.00	\$0.00 (mo)	
E5081	Monitor	\$0.00	\$0.00 (mo)	
E5083	Monitor	\$0.00	\$0.00 (mo)	
E5085	Printer/Scanner/Fax	\$0.00	\$0.00 (mo)	
E5086	Workstation	\$0.00	\$0.00 (mo)	
E5087	Workstation	\$0.00	\$0.00 (mo)	
E5088	Workstation	\$0.00	\$0.00 (mo)	
E5089	Workstation	\$0.00	\$0.00 (mo)	
E5090	Monitor	\$0.00	\$0.00 (mo)	
E5091	Monitor	\$0.00	\$0.00 (mo)	
E5092	Monitor	\$0.00	\$0.00 (mo)	
E5093	Monitor	\$0.00	\$0.00 (mo)	
E5094	PDA	\$21.65	\$21.65 (mo)	
E5095	Workstation	\$46.39	\$46.39 (mo)	
E5096	Monitor	\$18.22	\$18.22 (mo)	

Equip No.	Description	Current Rental Rates (1/01/08)	Revised Rental Rates (1/01/09)	Comments
E5097	Workstation	\$74.38	\$74.38 (mo)	
E5098	Workstation	\$74.38	\$74.38 (mo)	
E5099	Monitor	\$14.22	\$14.22 (mo)	
E5100	Monitor	\$14.22	\$14.22 (mo)	
E5101	Workstation	\$40.62	\$40.62 (mo)	
E5102	Workstation	\$35.99	\$35.99 (mo)	
E5103	Printer	\$127.32	\$127.32 (mo)	
E5104	Total Station	\$36.34	\$36.34 (hr)	
E5105	Laptop Computer	\$40.99	\$40.99 (mo)	
E5106	Workstation	\$37.51	\$37.51 (mo)	
E5107	Workstation	\$37.51	\$37.51 (mo)	
E5108	Workstation	\$37.51	\$37.51 (mo)	
E5109	Workstation	\$37.51	\$37.51 (mo)	
E5110	Printer	\$3.06	\$3.06 (mo)	
E5111	Printer	\$25.59	\$25.59 (mo)	
E5113	Laptop Computer	\$48.48	\$48.48 (mo)	
E5114	Laptop Computer	\$0.75	\$0.75 (hr)	
E5115	Laptop Computer	\$0.75	\$0.75 (hr)	
E5116	Workstation	\$33.23	\$33.23 (mo)	
E5117	Printer	\$20.88	\$20.88 (mo)	
E5118	Workstation	\$99.21	\$99.21 (mo)	
E5119	Workstation	\$0.00	\$93.92 (mo)	
E5120	Workstation	\$0.00	\$93.92 (mo)	
E5121	Workstation	\$0.00	\$24.00 (mo)	



RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: UNDERPASS AGREEMENT FOR BNSF RAILWAY BRIDGE FOR WEBBER CANYON ROAD, AND BNSF RAILROAD UNDERPASS BRIDGE AT KIONA

WHEREAS, an Underpass Agreement by and between BNSF RAILWAY COMPANY, and the COUNTY OF BENTON has been prepared for the Webber Canyon Road and BNSF Railroad Underpass; NOW, THEREFORE;

BE IT RESOLVED that the Underpass Agreement hereby is approved, and the Chairman is authorized to sign said Agreement on behalf of Benton County.

Dated this 26th day of January, 2009.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington.

RBD:BLT:dlh

UNDERPASS AGREEMENT
BNSF Railway Bridge over
Webber Canyon Road
BNSF LS 48 MP 23.95, Kiona, Washington

Webber Canyon Road Underpass
U.S. D.O.T. No. 927487A

This Agreement ("**Agreement**"), is executed to be effective as of this _____ day of _____, 2009 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the COUNTY OF BENTON, a political subdivision of the State of Washington ("**Agency**").

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the County of Benton, State of Washington;

WHEREAS, Agency desires to improve the existing Webber Canyon Road at-grade crossing by constructing a new crossing at separated grades to be known as the Webber Canyon Road Underpass, D.O.T. No. 927487A; and

WHEREAS, the existing Webber Canyon Road at-grade crossing will be permanently closed and vacated, in accordance with the procedures set forth in Title 81.53 RCW. Agency will attain the authority for closure before the start of construction and the placing in service of said underpass;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I – SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the construction of the proposed Webber Canyon Road Underpass (hereinafter referred to as the "**Structure**"), more particularly described on the Exhibit A attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation. During construction of the Structure, vehicular traffic may be excluded from the Webber Canyon Road construction site, and traffic may not be allowed to access the area until the project is completed and the new roadway is adequately completed to safely accommodate automobile traffic assign underneath the BNSF tracks at the new Webber Canyon Road Underpass. Additionally, temporary controls during construction must be in compliance with Section 8A-5, "Traffic Controls During Construction and Maintenance" of the Uniform Traffic Control Devices Manual, U.S. Department of Transportation.

2. The following work items related to the "Project" are planned under this agreement

(a) By BNSF forces:

- (i) Review the underpass design plan and make revision if it is necessary.
- (ii) Construction inspection, construction management and construction support.
- (iii) Removal of main line and siding tracks and redirecting railroad traffic.

- (iv) Construction of the railroad bridges including needed excavation for piers and temporary drainage
 - (v) Reinstallation and reopening of mainline and siding tracks.
 - (vi) Installation of channel bracings at intermediate piers during the roadway excavation. (The roadway excavation will be performed by County's Contractor.)
 - (vii) Removal of at grade crossing including signals and pavement within 2' outside the tracks after new Webber Canyon Road is open to the Public.
- (b) By County's Contractor:
- (i) Roadway excavation underneath the Webber Canyon Road Underpass Structure.
 - (ii) Construction of slope protection and pier encasements.
 - (iii) Construction of new Webber Canyon Road under Webber Canyon Road Underpass Structure and routing of the vehicular traffic to the newly aligned Webber Canyon Road under the new Structure.
 - (iv) Removal of the existing at grade crossing pavement (2' outside the tracks) and permanent closure of access to "At Grade" crossing and closure of the access to the at-grade crossing.

ARTICLE II – BNSF OBLIGATIONS

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. In consideration of the faithful performance of the Agency's covenants contained herein, BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's right-of-way described further on Exhibit A-1, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:
 - (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
 - (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with the Agency's use of the Structure;
 - (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with the Agency's use of the Structure.
2. Prior to commencing any work on BNSF's property or right-of-way, Agency must pay BNSF the sum of one-thousand, two hundred, ninety and No/100 Dollars (\$1,290.00) as compensation for the Temporary Construction License. The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (a) substantial completion of the Structure, or (b) twelve (12) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Structure only and shall not be used by Agency

for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

3. Upon receiving the payment from Agency described in the subsequent sentence and provided Agency is in compliance with the terms and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Structure, substantially in the form of Exhibit B attached to this Agreement and made a part thereof. Agency must pay BNSF the sum of thirty six thousand, fifty and No/100 Dollars (\$36,050.00) as compensation for the Easement within thirty (30) days of issuing a Notice to Proceed pursuant to Article III, Section 16 of this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

4. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- (a) Construction of the Structure. This will be done by BNSF forces under rail traffic. BNSF obligations under this item are limited to construction of the structure as required by BNSF to ensure continued railroad operations, no highway excavation (except necessary excavation and work to accomplish the bridge construction and temporary drainage under the bridge as shown in structure plans, attached hereto as Exhibit A and made a part hereof), or other highway appurtenances related to Project shall be construction by BNSF.
- (b) Procurement of materials, equipment and supplies necessary for the railroad work;
- (c) Preliminary engineering, design, and contract preparation excluding the structure that has been designed by David Evans and Associates, Inc. engineering;
- (d) Furnishing flagging services as required and set forth in further detail on Exhibit C attached to this Agreement and made a part hereof;
- (e) Removal of the existing Webber Canyon Road at-grade crossing, including removal of the automatic warning devices, and obliteration of the crossing between the rails and two feet outside thereof after construction of the new Webber Canyon Road under the structure is open to the public by the County;
- (f) Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project;
- (g) Removal and replacement of approximately 125 feet of main track and 125 feet of storage tracks as required to build the structure;
- (h) Associated signal and track work required for installation of the bridge structure. This signal work, in addition to that in subsection (f) above, includes, but is not limited to, work on the wayside signal systems.

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge Agency for insurance expenses, including self-insurance expenses when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any un-posted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

ARTICLE III – AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Said plans together with a copy of calculations, and a copy of specifications in **English Units**, must be submitted electronically in "PDF" format, to BNSF for approval prior to commencement of any construction. BNSF will give Agency final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.

3. Agency must provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the Project.

4. Agency must acquire all rights of way necessary for the construction of the Project.

5. Agency must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

6. Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:

- (a) Construction of all items associated with the project not identified in Article II above, or required to be performed by BNSF as stated elsewhere in this agreement;
- (b) Establishment of all highway traffic control for the project;
- (c) Obliteration of the existing Webber Canyon Road at-grade crossing upon completion and upon opening for public use the new Webber Canyon Road . Agency shall remove the roadway approaches and restore railway drainage ditches. Agency shall install and keep in place appropriate MUTCD warning devices (i.e. Type III barricades) at the ends of the former roadway for a period of at least 1 year or permanently block the access.
- (d) Excavation of earth under the structure to create roadway underpass for use by traveling public. Prior to any earth being excavated by Agency on BNSF property, Agency shall conform to all State, Federal, and BNSF environmental policies and requirements for removal of earth;
- (e) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

7. Agency must apply and maintain said D.O.T. Crossing number 927487A in a conspicuous location on the Structure.

8. Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

9. In order to prevent damage to BNSF trains and property, Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto and made a part hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

10. Agency or its contractor(s) must submit copy of any plans, electronically in "PDF" format, (including calculations in **English Units**) for proposed shoring or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring or cribbing used by Agency's contractor shall comply with BNSF Bridge Requirements set forth on Exhibit F attached to this Agreement and incorporated herein. Additionally, the shoring and cribbing must comply with all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

11. Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Engineering Representative Rusty Olson (206-625-6189) and/or the

telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

- (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative Rusty Olson to stop construction at no cost to the Agency or BNSF until these items are completed.
- (c) In addition to the liability terms contained elsewhere in this Agreement, and subject to the provisions of Section 4.24.155 of the Revised Code of Washington, the contractor shall indemnify and hold BNSF harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of contractor, its subcontractors, agents, and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by contractor and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way; (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents, and/or employees, on BNSF's property or within BNSF's right-of-way; and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by, a customer or user of such telecommunication company(ies).
- (d) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

12. Agency must incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III, Sections 8, 9, 10, 11, and 13; (ii) the provisions set forth in Article IV, Sections 3, 4, 10 and 11; and (iii) the provisions set forth in Exhibit C-I and Exhibit C-I, attached hereto and by reference made a part hereof.

13. Except as otherwise provided below in this Section 13, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations will be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-I, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency

will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.

- (e) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's representative four (4) weeks advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.
- (f) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth on Exhibit F.

14. Agency must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager of Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

15. To the fullest extent permitted by law, Agency shall release, indemnify, defend, and hold harmless BNSF, its affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents for, from, and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs and attorneys' fees) of any nature, kind, or description of any person (including, without limitation, the employees of the parties hereto) or entity directly or indirectly arising out of, resulting from, or related to (in whole or in part) (i) the use, occupancy, or presence of Agency, its contractors, subcontractors, employees, or agents in, on, or about the construction site within the Easement Area, (ii) the performance, or failure to perform, by the Agency, its contractors, subcontractors, employees, or agents, its work or any obligation under this Agreement, or (iii) the sole or contributing acts or omissions of Agency, its contractors, subcontractors, employees, or agents in, on, or about the construction site. In case of negligence of both COUNTY and CONTRACTOR, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party. Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, its subcontractors, its officers, and its agents.

16. Agency must give BNSF's Manager of Public Projects written notice to proceed with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

17. Agency will immediately take all action to obtain authority to permanently close and vacate the Webber Canyon Road at-grade crossing upon the opening of the grade separation to traffic and must barricade the road approaches prior to completion of the Project. BNSF will cooperate with Agency to achieve the closure and vacation of Webber Canyon Road and will remove the crossing surface within its right-of-way.

18. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to execute the documents set forth in Exhibit C and Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure Railroad Protective Liability insurance.

ARTICLE IV – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F and the detailed plans and specifications approved by BNSF.
3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.
4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Ross Dunfee, PE
Benton County Engineer
620 Market Street
Prosser, WA 99350
(509) 786-5611
5. Agency must supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify the Benton County Engineer for appropriate corrective action.
6. BNSF will contribute five percent (5%) of the total project cost, which is currently estimated to be \$255,280.00, (**hereinafter referred to as "BNSF's Share"**) towards the total actual costs of the Project.

BNSF's Share will be based on the costs for preliminary engineering, right-of-way and construction within the following limits;

- (a) Where a grade crossing is eliminated by grade separation, the structure and approaches required to transition to a theoretical highway profile which would have been constructed if there were no railroad present, for the number of lanes on the existing highway and in accordance with the current design standards of the appropriate state highway agency; and
- (b) Where another facility, such as a highway or waterway, requiring a bridge structure is located within the limits of a grade separation project, the estimated cost of a theoretical structure and approaches as described in 23 CFR 646.210(c)(1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway.

Additionally, local, state and federal funds will be used in the construction of the Project. The total actual cost of construction for the Project is presently estimated to be \$5,105,597.00, more particularly described (together with BNSF's Share) on Exhibit G attached hereto and incorporated herein.

7. Pursuant to this section and Article II, Section 6 herein, Agency must, out of funds made available to it for the construction of the Project, reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement, less BNSF's Share as set forth in Article IV, Section 6 herein. BNSF's Share must be paid upon completion of the Project.

8. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

9. The parties mutually agree that no construction activities for the Project, nor future maintenance of the Structure once completed, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800-832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. Subject to the restrictions imposed by Article IV, Section 9 above, the construction of the Project will not commence until Agency gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number and D.O.T. Crossing No. 927487A and must state the time that construction activities will begin.

11. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and Agency agree to the following terms upon completion of construction of the Project:

- (a) BNSF will, at its sole cost and expense, accept, own, and maintain its roadbed, track, any access gates installed pursuant to the Project, railroad drainage, and all other railroad facilities.
- (b) Agency will own and maintain, at its sole cost and expense, the STRUCTURE, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement. BNSF may, at its option, perform maintenance on the Structure in order to avoid conflicts with train operations. BNSF will notify Agency prior to performing any such maintenance on the Structure. In the event such maintenance involves emergency repairs, BNSF will notify Agency at its earliest opportunity. Agency must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b). Additionally, Agency and BNSF shall perform the necessary work to obtain the permanent closure of Webber Canyon Road.

- (c) Agency may, at Agency's sole cost and expense, keep the Structure painted and free from graffiti.
- (d) Agency must apply and maintain vertical clearance signs which consistently and accurately describe the minimum actual vertical clearance from the bottom of the Structure to the top of any pavement.
- (e) Agency agrees to reimburse BNSF for the cost of track surfacing due to settlement caused by the construction of the Structure for a period not to exceed two (2) years from the date of final inspection pursuant to Article III, Section 14.
- (f) Agency must provide BNSF with any and all necessary permits and maintain roadway traffic controls, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.
- (g) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (h) Agency may, at Agency's sole cost and expense, keep the Structure and surrounding areas clean and free from birds, pigeons, scavengers, vermin, creatures and other animals.
- (i) If Agency (including its contractors and agents) or BNSF, on behalf of Agency, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work to the superstructure of the Structure, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage:

- (1) Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:
 - (i) Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - (ii) Endorsed to include the Limited Seepage and Pollution Endorsement.
 - (iii) Endorsed to remove any exclusion for punitive damages.
 - (iv) No other endorsements restricting coverage may be added.
 - (v) The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

As used in this paragraph, "**Railroad**" means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Agency may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy if available to Agency or its contractors. The limits of coverage are the same as above.

12. Agency hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from Agency property to BNSF tracks for maintenance purposes.

13. BNSF must provide one set of as built plans, electronically in "PDF" format, (prepared in **English Units**) to BNSF, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the software used for the CAD drawings. The "as built plans" must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.

14. Subject to the restrictions imposed by Article IV, Section 9 above, Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for maintenance purposes. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.
15. BNSF may, at its expense, make future changes or additions to the railroad components of the Structure if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the Structure. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the Structure, will be divided between BNSF and Agency in such shares as may be mutually agreed to by the parties hereto.
16. Agency may, at Agency's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic; provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of BNSF's right-of-way to a greater extent than is contemplated by the plans and specifications to be approved by BNSF pursuant to Article III, Section 1 herein, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.
17. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Washington and the Federal Highway Administration for a period of three (3) years from the date of final BNSF invoice under this Agreement.
18. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.
19. In the event construction of the Project does not commence within twelve (12) months of the Effective Date, this Agreement will become null and void.
20. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.
21. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
22. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.
23. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager of Public Projects
2454 Occidental Ave S #1-A
Seattle, WA 98134

Agency:

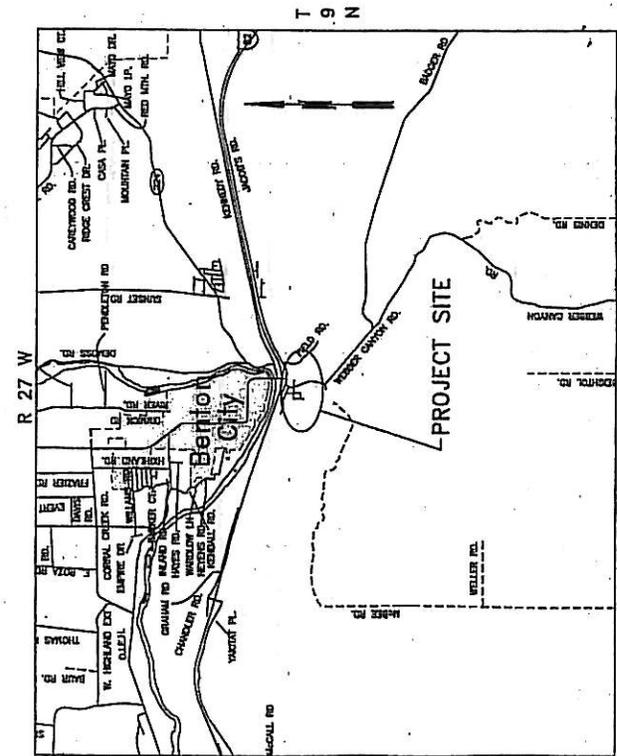
Ross Dunfee, PE
Benton County Engineer
620 Market Street
Prosser, WA 99350

24. The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be (use either "as high as \$50,000.00" or "estimated at \$382.20 per hour per train") per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

25. As an exception to the BNSF-UPRR Guidelines, the Structure only accommodates two existing BNSF tracks without space for a future additional track. Agency agrees to immediately fund, upon BNSF's written request, 100% of structure expansion to accommodate one additional track. The bridge construction will begin no later than 18 months after the BNSF's written request for an additional bridge. BNSF and Agency will at that time sign a separate Agreement covering the terms of the additional bridge construction.

BENTON COUNTY BNSF RAILWA. OVER WEBBER CANYON ROAD STRUCTURE

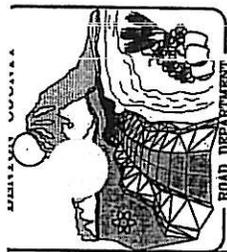
PROJECT NO. CE 1722 CRP



VICINITY MAP

DRAWING INDEX

SHEET	DRAWING NAME	QUANTITY
1	INDEX/VICINITY MAP	
2	BRIDGE LAYOUT	
3	PILE LAYOUT PLAN	
4	ABUTMENTS 1 & 4	1 OF 3
5	ABUTMENTS 1 & 4	2 OF 3
6	ABUTMENTS 1 & 4	3 OF 3
7	ABUTMENTS 1 & 4	
8	PIERS 2 & 3	
9	PIERS 2 & 3	
10	PIERS 2 & 3	
11	MISCELLANEOUS DETAILS 1 OF 2	
12	MISCELLANEOUS DETAILS 2 OF 2	
13	HANDRAIL DETAILS	
14	KICK PLATE DETAILS	
15	PROTECTION TEE DETAILS	
16	BILL OF MATERIAL	
BNSF STANDARD PLANS		
	0000-18003-01A	
	0000-18003-02	
	0000-18003-03	



ROAD DEPARTMENT
BNSF RAILWAY OVER
WEBBER CANYON ROAD
C.E. 1722 CRP

S.P. & S. JCT. TO
ELLENSBURG
BNSF RAILWAY
BRIDGE 23.95
LINE SERG.: 0048

DE DAVID EVANS
AND ASSOCIATES INC.
11111 N. 100th St.
Overland Park, KS 66214
Phone: 303.782.1415

PREPARED UNDER
& APPROVED BY:

ENGINEER
DATE: 7/17/08

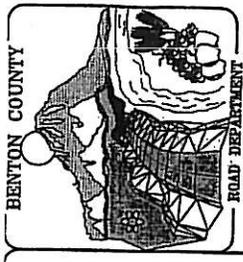
CALL THE WORKING DATE
BEFORE YOU BID
1-800-454-5555

ALL UNDERGROUND UTILITIES AND STRUCTURES
SHOWN ARE APPROXIMATE. THE CONTRACTOR
SHOULD VERIFY THE LOCATION, DEPTH, AND
CONDITIONS OF ALL UTILITIES AND STRUCTURES
BEFORE CONSTRUCTION. NOTIFY ENGINEER FOR RESOLUTION
OF CONFLICTS.

DR No:	D.E.T.
DATE:	07/08
SCALE:	NO SCALE
REVISION:	

Exhibit A
INDEX / VICINITY MAP

PLAN NO: 0048 - 23.95 - 01
SHEET 1 OF 16



BENTON COUNTY
ROAD DEPARTMENT
BNSF RAILWAY OVER
WEBBER CANYON ROAD
C.E. 1722 CRP

S.P. & S. JCT. TO
ELLENSBURG
BNSF RAILWAY
BRIDGE 23.95
LINE SRG.: 0048

DAVID EVANS AND ASSOCIATES INC.
1118 West 10th Ave., Suite 301
Orem, Washington 99025
Phone: 509.762.2115

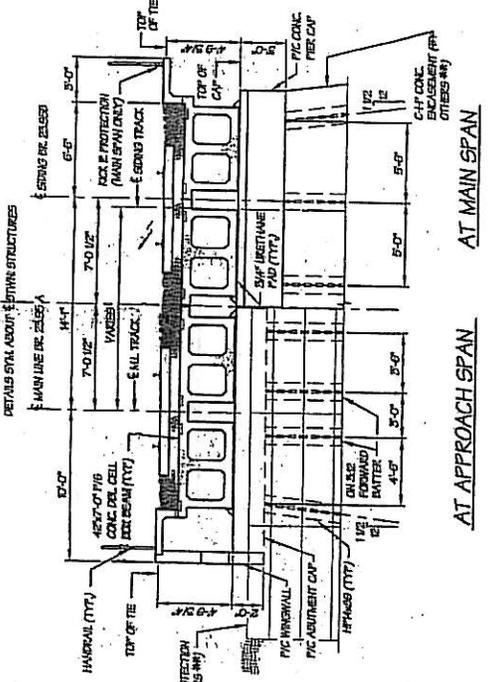
PREPARED UNDER
THE DIRECTION OF
& APPROVED BY:
[Signature]
ENGINEER: *[Signature]*
DATE: 7/17/85

CALL THE WORKING DATES
BEFORE YOU BID
800-484-1886
ALL UNDESIGNED BRIDGES
ARE NOT BIDDABLE
UNLESS THE LOCATION OF THE
BRIDGE IS SHOWN ON THE CONTRACT
DRAWINGS. THE CONTRACTOR
UNDERSTANDING & ASSUME BRIDGE EXISTING
OR NOT EXISTING FOR RESOLUTION
OF CONTRACT.

DR. N:	D.R.T.
DATE:	07/08
SCALE:	AS SHOWN
REVISION:	

Exhibit A
BRIDGE LAYOUT

PLAN NO: 0048 - 23.95 - 02
SHEET 2 OF 16



TYPICAL SECTION
LOOKING WEST

AT APPROACH SPAN

AT MAIN SPAN

BENCH MARK
BASES OF REBAR

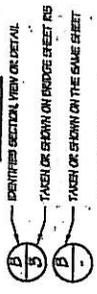
CONTROL POINTS
NO. 30 MP SIGN
N = 25442
E = 18482
REF STA. 12847.5

BNSF STANDARDS:
PLAN NO. 0000-7802-2001 0000-5005-001 02 AND 03

LIFT WEIGHTS:
FM4-BCC = 80700 LBS
FM4-BCC = 81000 LBS
FM4-BW = 87500 LBS
SPC 23.95-1 = 25400 LBS
SPC 23.95-1 = 25400 LBS
PRECAST CAP = 25000 LBS
PRECAST WINGWALL = 27000 LBS
SPW ASLS = 7200 LBS
P3 B5-ACC = 68300 LBS
P3 B5-BWC = 71600 LBS

**ASSEMBLED BASED ON RKT TIES TO
BENTON COUNTY CONTROL POINTS
30 AND 140 IN ISOL.**

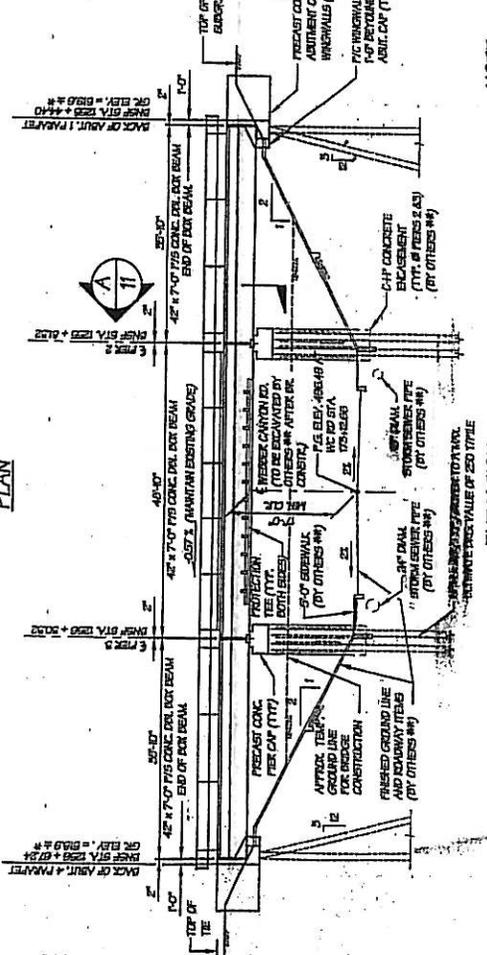
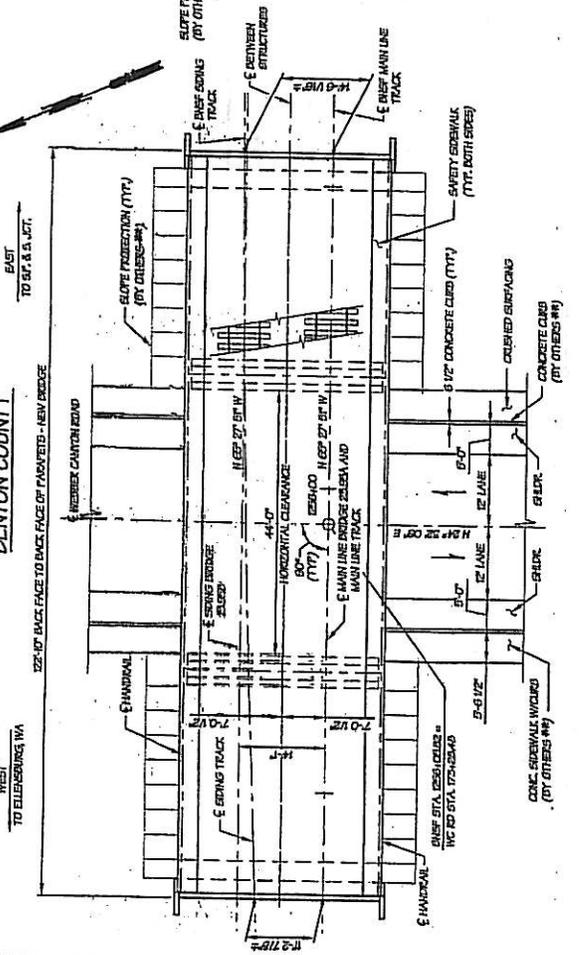
**BRIDGES ARE TO BE OWNED AND
MAINTAINED BY BNSF RAILWAY**



LEGEND
IDENTIFIED SECTIONAL VIEW OR DETAIL
TAKEN OR SHOWN ON BRIDGE SHEET AS
TAKEN OR SHOWN ON THE SAME SHEET
TT = TOP OF THE
RT = RAILWAY
BL = BOTTOM SIDES

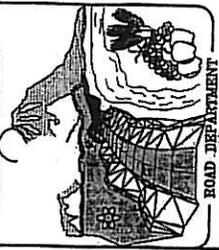
TABLE OF ELEVATIONS - BRIDGE 23.95

LOCATION	AVT. 1	PER 2	PER 3	AVT. 4
TOP OF THE	616.0	616.5	616.5	616.5
TOP OF CAP	616.9	617.0	617.0	617.0
FILE CONTROL	616.9	617.0	617.0	617.0



NOTE:
ALL ELEVATIONS SHOWN ARE CENTER LINES AT TOP OF SOUTH HALF
OF BNSF SOUTH TRACK. MAIN LINE
ELEVATIONS (TOP OF SOUTH HALF ELEVATION) AT SOUTH BRIDGE
PIERS (EA TRACK)

ELEVATION
* GRADE ELEVATIONS SHOWN ARE CENTER LINES AT TOP OF SOUTH HALF
OF BNSF SOUTH TRACK. MAIN LINE
ELEVATIONS (TOP OF SOUTH HALF ELEVATION) AT SOUTH BRIDGE
PIERS.
** SLOPE PROTECTION, PRE-ENCLOSURE, AND EXCAVATION BEHIND
TYPICAL ROADWAY LINE TO FINISHED PROFILE GRADE IS PART OF A
SEPARATE ROADWAY CONTRACT (ADMINISTRATED BY BENTON COUNTY)
AND IS SHOWN FOR INFORMATION ONLY.



BNSF RAILWAY OVER WEBBER CANYON ROAD C.E. 1722 CRP

S.P. & S. JCT. TO ELLENSBURG BNSF RAILWAY BRIDGE 23.95 LINE SERG.: 0048



DAVID EVANS AND ASSOCIATES INC. 1115 West 1st Street, Suite 201 Olympia Washington 98501 Phone: 362.223.1815

PREPARED UNDER THE DIRECTION OF & APPROVED BY:



Engineer: S/S/04 DATE: 7/17/08

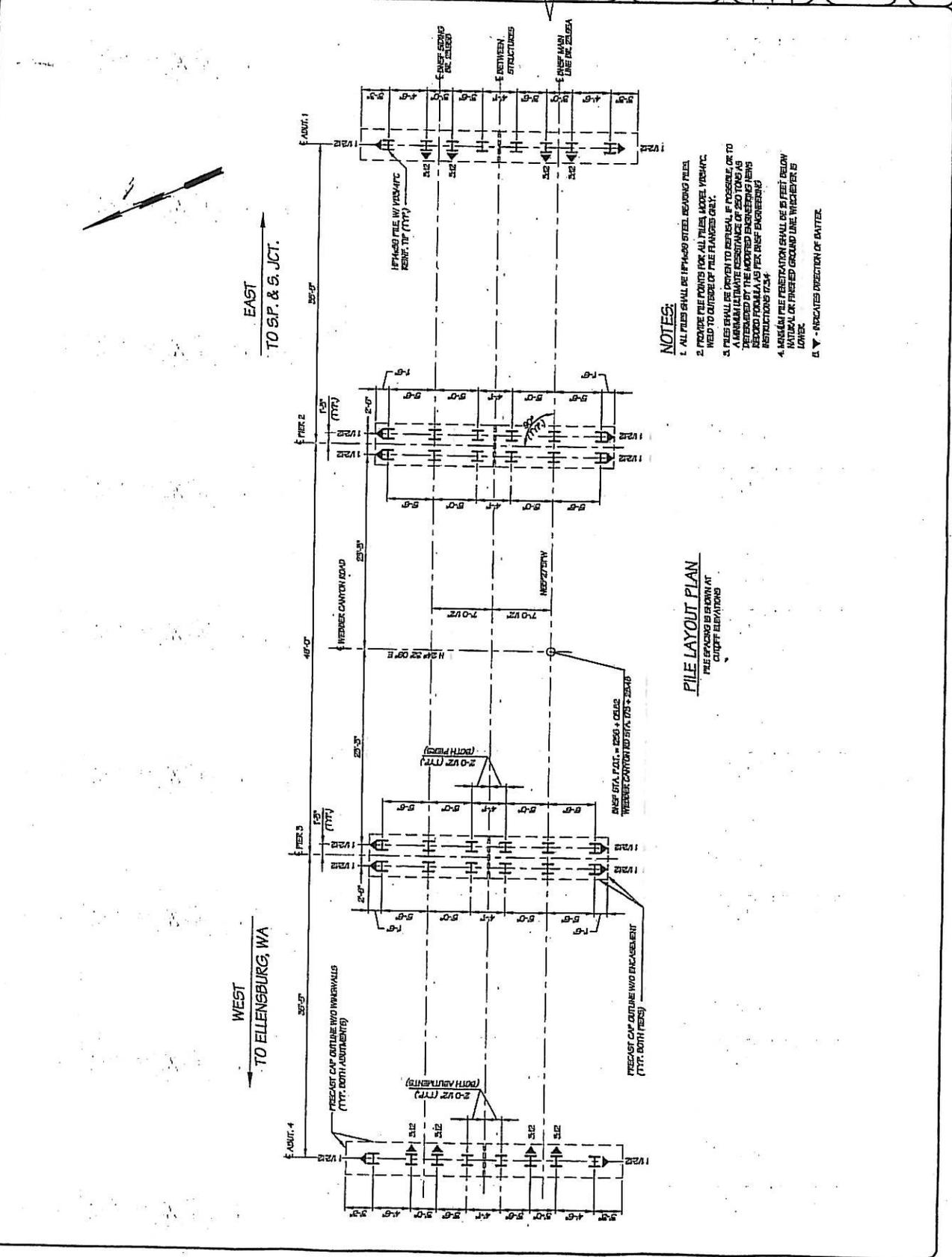
CALL TWO WORKING DAYS BEFORE YOU DRU 1-800-464-8686

ALL DIMENSIONS AND SPACINGS ARE NOT SHOWN. THE LOCATION OF TRUCK STOP AND THE LOCATION OF THE CONCRETE UNDERPINNING SHALL BE DETERMINED BY THE CONTRACTOR UNDERSTANDING A PERMITS BOARD RESOLUTION OF CORRECTION.

DR'N:	D.R.T.
DATE:	07/08
SCALE:	AS SHOWN
REVISION:	

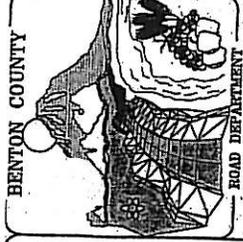
Exhibit A
PILE LAYOUT PLAN

PLAN NO: 0048 - 23.95 - 03
SHEET 3 OF 16



- NOTES:**
1. ALL PILES SHALL BE IFP409 STEEL BEARING PILES.
 2. PROVIDE PILE POINTS FOR ALL PILES UNDER VIBRATIC WELD TO OUTSIDE OF PILE FLANGES ONLY.
 3. PILES SHALL BE INSERTED TO DESIGN, IF POSSIBLE, OR TO FIELD CAPACITY. THE DESIGN OF THE PILES SHALL BE DETERMINED BY THE LICENSED ENGINEERING FIRM IN ACCORDANCE WITH THE BENTON COUNTY ENGINEERING RESTRICTIONS 7.3.4.
 4. MAXIMUM PILE PENETRATION SHALL BE 5 FEET BELOW NATURAL OR FINISHED GROUND LINE WHICHEVER IS LOWER.
 5. ▽ - INDICATES DIRECTION OF BATTER.

PILE LAYOUT PLAN
PILE SPACING IS SHOWN AT
CUTOFF ELEVATIONS



BENTON COUNTY
ROAD DEPARTMENT
BNSF RAILWAY OYER
WEBBER CANYON ROAD
C.E. 1722 CRP

S.P. & S. JCT. TO
ELENBURG
BNSF RAILWAY
BRIDGE 23.95
LINE SEG.: 0048

DAVID EVANS
AND ASSOCIATES INC.
1113 West Bay Drive, Suite 201
Olympia Washington 98513
Phone: 360-352-1235

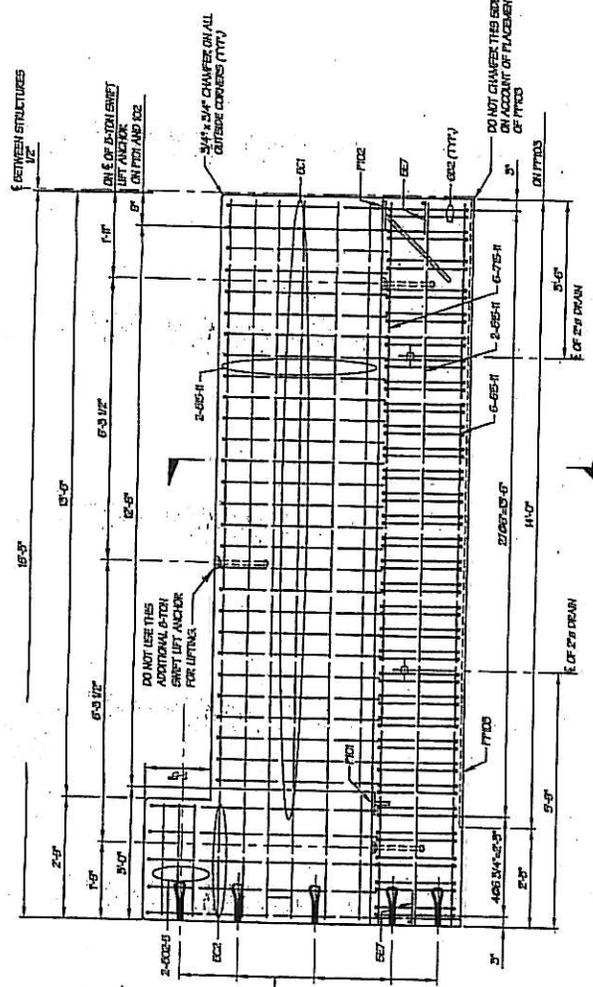
PREPARED UNDER
THE REGULATION OF
& APPROVED BY:
DATE: 7/18/08
S-01 res: 7/18/08
ENGINEER

CALL TWO WORKING DATE
1-800-424-0888
ALL UNDERGROUND UTILITIES AND STRUCTURES
ARE NOT SHOWN. THE LOCATION OF THESE
IS RESPONSIBLE TO FIELD VERIFY WITH
CONTRACTOR & ABOVE CHANGING EXISTING
CONSTRUCTION. VERIFY CHANGES FOR RESUBMITTAL
OF CONTRACT.

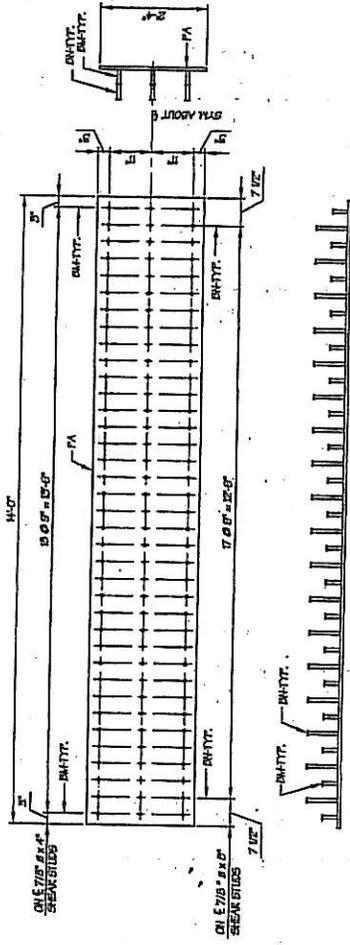
DATE: D.R.T.
DATE: 07/08
SCALE: AS SHOWN
REVISION:

Exhibit A
ABUTMENTS 1 & 4
PRECAST DETAILS 1 OF 3

PLAN NO. 0048 - 02.05 - 05
SHEET 5 OF 10



PRECAST CAP SPC 23.95-1
WITH 2000 LBS YOL-2000 COL YOL. REFER. SPEC. 1807 USE
PRECAST CAP SPC 23.95-1-5 OPPOSITE END OF SPC 23.95-1



PILE PLATE P101
PILE 3/4" x 3/4" x 14'-0" PL
5-7/8" x 4" SHEAR STUDS BH
WEIGHT = 257 LBS

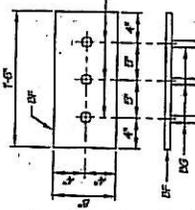


PLATE P101
PILE 3/4" x 3/4" x 14'-0" PL
5-7/8" x 4" SHEAR STUDS BH
WEIGHT = 257 LBS

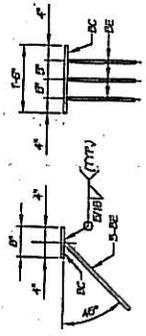
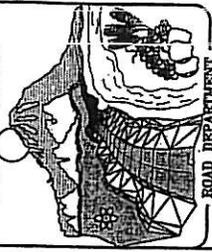


PLATE P102
PILE 3/4" x 3/4" x 14'-0" PL
5-7/8" x 4" SHEAR STUDS BH
WEIGHT = 252 LBS

NOT GENERAL AND WORKMANSHIP SHALL BE AS PER THE CURRENT BNSF STANDARD SPECIFICATIONS.
COL LOOP INSERTS, COL LOOP INSERTS ARE TO BE DOUBLE PLATED TYPE BPT 1 4" x 2" x 1/2" HANDED BY DAYTON-STRANGER AND HAVE A SAFE WORKING LOAD OF 4000 LBS. WITH A 4 TO 1 LEVITY FACTOR. THE INSERTS ARE TO BE COMPLETELY RECESSED WITH 1/4" x 5" SPICAL BOLTS ATTACHED TO CAP FOR SHIMING.
CONCRETE. THE ULTIMATE COMPRESSIVE STRENGTH OF CONCRETE SHALL BE NOT LESS THAN 4000 P.S.I. IN 28 DAYS. CONCRETE MEMBERS SHALL NOT BE CASTING BED BEFORE THE CONCRETE REACHES A STRENGTH OF 2000 P.S.I.
ALL EXPOSED EDGES OF CONCRETE MEMBERS SHALL BE CHAMFERED 3/4".
REINFORCEMENT, LAD STEEL, REINFORCEMENT SHALL MEET THE REQUIREMENTS OF THE CURRENT ACTUAL SPECIFICATIONS AND OR FOR GRADE 60.
POSITION OF REINFORCEMENT SHALL BE IN ACCORDANCE WITH CHAPTER 7 OF THE CURRENT CASE MANUAL OF STANDARD PRACTICE.
MINIMUM CONCRETE COVER ON REINFORCEMENT SHALL BE TWO (2) INCHES.

PRECAST MEMBER	STEEL MEMBER	DESCRIPTION
SPC 23.95-1	SPC 23.95-1-A	REINFORCING STEEL
62	602	(SEE DETAIL SH 0 OF 10)
20	20	601 (SEE DETAIL SH 0 OF 10)
5	5	602 (SEE DETAIL SH 0 OF 10)
2	2	602 (SEE DETAIL SH 0 OF 10)
6	6	602 (STRAIGHT)
4	4	601 (STRAIGHT)
6	6	601 (STRAIGHT)
6	6	601 (STRAIGHT)
1	1	PLATE P01 (SEE DETAIL)
1	1	PLATE P02 (SEE DETAIL)
1	1	PILE PLATE P100 (SEE DETAIL)
6	6	DAYTON - STRANGER DAYTON PLATED COL LOOP INSERT, 1/4" x 2" LONG ALSO USE GIRL (SAFE WORKING LOAD) PLANK



ROAD DEPARTMENT
 BNSF RAILWAY OVER
 WEBBER-CANYON ROAD
 C.E. 1722 CRP

S.P. & S. JCT. TO
 ELLENSBURG
 BNSF RAILWAY
 BRIDGE 23.95
 LINE SEG.: 0048

DAVID EVANS AND ASSOCIATES INC.
 1115 West 10th Street, Suite 201
 Olympia, Washington 98502
 Phone: 360.783.5115

PREPARED UNDER
 THE DIRECTION OF
 & APPROVED BY:

Stamp: **DAVID EVANS AND ASSOCIATES INC.**
 Engineer: **5/15/04**
 DATE: **7/17/08**

CALL TWO WORKING DAYS
 BEFORE YOU BID
 1-800-424-1886

ALL INFORMATION ON THE LOCATION OF UTILITIES
 SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
 UNDERSTANDING A RISKY DECISION EXISTING
 AT THE TIME OF CONSTRUCTION.

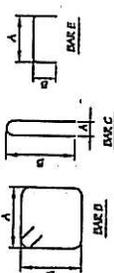
DR'N: D.R.T.
 DATE: 07/08
 SCALE: AS SHOWN
 REVISION:

Exhibit A
 ABUTMENTS 1 & 4
 PRECAST DETAILS 2 OF 3

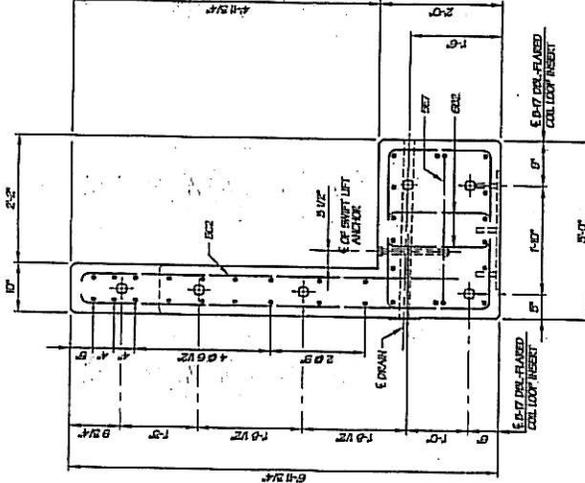
PLAN NO: 0048 - 23.95 - 06
 SHEET 6 OF 16

LIST OF REINFORCING BARS

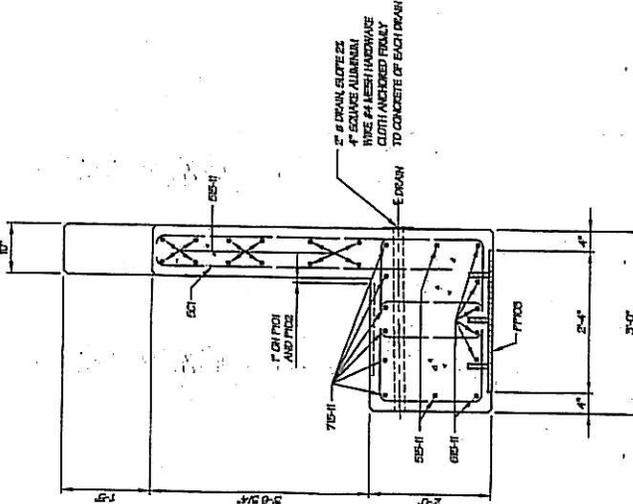
MARK	SIZE	TYPE	A	D	LENGTH
6E2	5	D	4'-3"	2'-2"	14'-7"
6E3	5	N	2'-4"	2'-9"	10'-7"
6E4	6	D	1'-0"	1'-9"	6'-9"
6E5	4	C	0"	6'-7 1/2"	6'-9"
6E6	4	C	0"	5'-0"	7'-2"
6E7	4	C	0"	2'-7"	6'-5"
6E8	4	C	0"	1'-9"	5'-7"
6E9	4	C	0"	1'-9"	4'-3"
6E10	4	C	0"	1'-9"	5'-4"
6E11	6	C	0"	1'-9"	5'-4"
6E12	6	C	0"	1'-9"	5'-4"
6E13	6	C	0"	1'-9"	5'-4"
6E14	6	C	0"	1'-9"	5'-4"
6E15	6	C	0"	1'-9"	5'-4"
6E16	6	C	0"	1'-9"	5'-4"
6E17	6	C	0"	1'-9"	5'-4"
6E18	6	C	0"	1'-9"	5'-4"
6E19	6	C	0"	1'-9"	5'-4"
6E20	6	C	0"	1'-9"	5'-4"
6E21	6	C	0"	1'-9"	5'-4"
6E22	6	C	0"	1'-9"	5'-4"
6E23	6	C	0"	1'-9"	5'-4"
6E24	6	C	0"	1'-9"	5'-4"
6E25	6	C	0"	1'-9"	5'-4"
6E26	6	C	0"	1'-9"	5'-4"
6E27	6	C	0"	1'-9"	5'-4"
6E28	6	C	0"	1'-9"	5'-4"
6E29	6	C	0"	1'-9"	5'-4"
6E30	6	C	0"	1'-9"	5'-4"
6E31	6	C	0"	1'-9"	5'-4"
6E32	6	C	0"	1'-9"	5'-4"
6E33	6	C	0"	1'-9"	5'-4"
6E34	6	C	0"	1'-9"	5'-4"
6E35	6	C	0"	1'-9"	5'-4"
6E36	6	C	0"	1'-9"	5'-4"
6E37	6	C	0"	1'-9"	5'-4"
6E38	6	C	0"	1'-9"	5'-4"
6E39	6	C	0"	1'-9"	5'-4"
6E40	6	C	0"	1'-9"	5'-4"
6E41	6	C	0"	1'-9"	5'-4"
6E42	6	C	0"	1'-9"	5'-4"
6E43	6	C	0"	1'-9"	5'-4"
6E44	6	C	0"	1'-9"	5'-4"
6E45	6	C	0"	1'-9"	5'-4"
6E46	6	C	0"	1'-9"	5'-4"
6E47	6	C	0"	1'-9"	5'-4"
6E48	6	C	0"	1'-9"	5'-4"
6E49	6	C	0"	1'-9"	5'-4"
6E50	6	C	0"	1'-9"	5'-4"
6E51	6	C	0"	1'-9"	5'-4"
6E52	6	C	0"	1'-9"	5'-4"
6E53	6	C	0"	1'-9"	5'-4"
6E54	6	C	0"	1'-9"	5'-4"
6E55	6	C	0"	1'-9"	5'-4"
6E56	6	C	0"	1'-9"	5'-4"
6E57	6	C	0"	1'-9"	5'-4"
6E58	6	C	0"	1'-9"	5'-4"
6E59	6	C	0"	1'-9"	5'-4"
6E60	6	C	0"	1'-9"	5'-4"
6E61	6	C	0"	1'-9"	5'-4"
6E62	6	C	0"	1'-9"	5'-4"
6E63	6	C	0"	1'-9"	5'-4"
6E64	6	C	0"	1'-9"	5'-4"
6E65	6	C	0"	1'-9"	5'-4"
6E66	6	C	0"	1'-9"	5'-4"
6E67	6	C	0"	1'-9"	5'-4"
6E68	6	C	0"	1'-9"	5'-4"
6E69	6	C	0"	1'-9"	5'-4"
6E70	6	C	0"	1'-9"	5'-4"
6E71	6	C	0"	1'-9"	5'-4"
6E72	6	C	0"	1'-9"	5'-4"
6E73	6	C	0"	1'-9"	5'-4"
6E74	6	C	0"	1'-9"	5'-4"
6E75	6	C	0"	1'-9"	5'-4"
6E76	6	C	0"	1'-9"	5'-4"
6E77	6	C	0"	1'-9"	5'-4"
6E78	6	C	0"	1'-9"	5'-4"
6E79	6	C	0"	1'-9"	5'-4"
6E80	6	C	0"	1'-9"	5'-4"
6E81	6	C	0"	1'-9"	5'-4"
6E82	6	C	0"	1'-9"	5'-4"
6E83	6	C	0"	1'-9"	5'-4"
6E84	6	C	0"	1'-9"	5'-4"
6E85	6	C	0"	1'-9"	5'-4"
6E86	6	C	0"	1'-9"	5'-4"
6E87	6	C	0"	1'-9"	5'-4"
6E88	6	C	0"	1'-9"	5'-4"
6E89	6	C	0"	1'-9"	5'-4"
6E90	6	C	0"	1'-9"	5'-4"
6E91	6	C	0"	1'-9"	5'-4"
6E92	6	C	0"	1'-9"	5'-4"
6E93	6	C	0"	1'-9"	5'-4"
6E94	6	C	0"	1'-9"	5'-4"
6E95	6	C	0"	1'-9"	5'-4"
6E96	6	C	0"	1'-9"	5'-4"
6E97	6	C	0"	1'-9"	5'-4"
6E98	6	C	0"	1'-9"	5'-4"
6E99	6	C	0"	1'-9"	5'-4"
6E100	6	C	0"	1'-9"	5'-4"



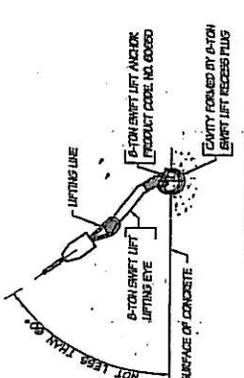
REINFORCING STEEL DETAILS ALL DIMENSIONS SHOWN
 ARE OUT TO OUT OF BARS



VIEW (B) (5)



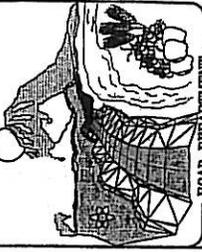
SECTION (A) (5)



LIFTING DETAIL

5-TON SHIFT LIFT RECESS PUGS, ANCHORS AND LIFTING EYES
 ARE AVAILABLE FROM BENTON COUNTY PUBLIC WORKS, 721 N. HAYWARD ST.,
 BENTON, OHIO 45812. TELEPHONE (607) 866-0701. THE
 MATERIALS FOR THIS LIFTING SYSTEM ARE NOT INCLUDED IN THE
 BILL OF MATERIALS BUT ARE TO BE ORDERED AS REQUIRED.

NOTES:
 1. ALL MATERIAL AND WORKMANSHIP SHALL BE AS PER THE CURRENT
 BNSF STANDARD SPECIFICATIONS.
 2. THE ULTIMATE COMPRESSIVE STRENGTH OF CONCRETE SHALL
 BE NOT LESS THAN 4000 P.S.I. IN 28 DAYS. CONCRETE MEMBERS SHALL
 NOT BE REMOVED FROM THE CASTING BED BEFORE THE CONCRETE REACHES
 A STRENGTH OF 2500 P.S.I.
 3. ALL EXPOSED EDGES OF CONCRETE MEMBERS SHALL BE CHAMFERED 3/4".
 4. REINFORCEMENT, 180° STEEL REINFORCEMENT SHALL MEET THE REQUIREMENTS
 OF THE CURRENT ASTM DESIGNATION FOR 180° STEEL REINFORCEMENT.
 5. FABRICATION OF REINFORCEMENT SHALL BE IN ACCORDANCE WITH CHAPTER 7 OF
 THE CURRENT CANAL MANUAL OF STANDARD PRACTICE.
 6. MINIMUM CONCRETE COVER ON REINFORCEMENT SHALL BE TWO (2) INCHES.



ROAD DEPARTMENT

BNSF RAILWAY OVER
WEBBER CANYON ROAD
C.E. 1722 GRP

S.P. & S. JCT. TO
ELLENBURG
BNSF RAILWAY
BRIDGE 23.95
LINE SEG.: 0048

DE
DAVID EVANS
AND ASSOCIATES INC.
1115 West Bay Drive NW, 2645 SE
Tusculum, VA 22957
PHONE: 540-231-1115

PREPARED UNDER
THE DIRECTION OF
& APPROVED BY:



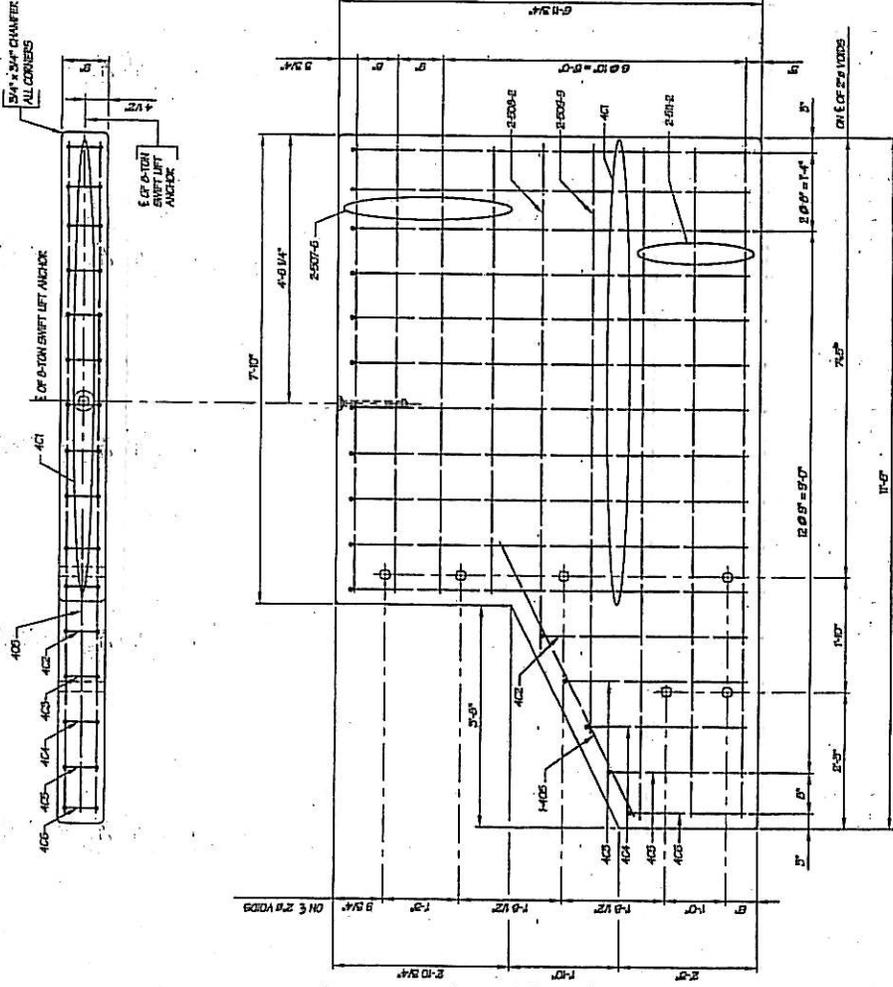
Engineer: *David Evans*
DATE: 7/17/88

CALL THE NUMBER ABOVE
FOR MORE INFO
1-800-484-6650

DR'N: D.R.T.
DATE: 07/08
SCALE: AS SHOWN
REVISION:

Exhibit A
ABUTMENTS 1 & 4
PRECAST DETAILS 3 OF 3

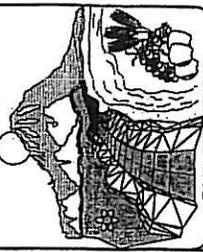
PLAN NO: 0048 - 23.95 - 07
SHEET 7 OF 16



PRECAST WINGWALL SPW 23.95

WT = 7700 LBS, VOL = 1.04 CU YDS, REINFC STEEL = 200 LBS

SPW/CBS	DESCRIPTION
11	REINFORCING STEEL
1	4C1 (SEE DETAIL SHIT. 6)
1	4C2 (SEE DETAIL SHIT. 6)
1	4C3 (SEE DETAIL SHIT. 6)
1	4C4 (SEE DETAIL SHIT. 6)
1	4C5 (SEE DETAIL SHIT. 6)
1	4C6 (STRONG)
2	4C7 (STRONG)
2	4C8 (STRONG)
2	4C9 (STRONG)



ROAD DEPARTMENT

**BNSF RAILWAY OVER
WEBBER CANYON ROAD
C.E. 1722 CRP**

**S.P. & S. JCT. TO
ELLENSBURG
BNSF RAILWAY
BRIDGE 23.95
LINE SEC.: 0048**

**DAVID EVANS
AND ASSOCIATES INC.**
111 West Bay Drive N.W., Suite 201
Dunlap, Washington, MO 65025
Phone: 380-762185

PREPARED UNDER
THE SUPERVISION OF
& APPROVED BY:

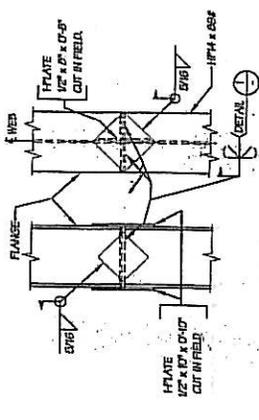
Supervisor
DATE: 7/1/08
ENGINEER

CUTTED FORWARD DAYS
1-800-484-4885

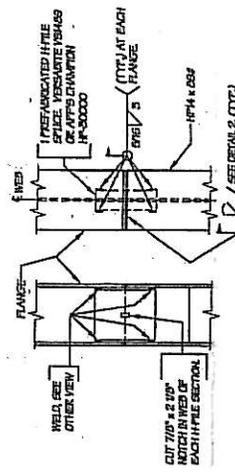
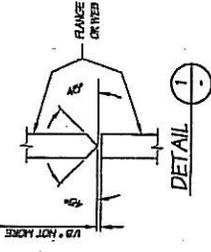
DR'N:	D.E.T.
DATE:	07/08
SCALE:	AS SHOWN
REVISION:	

Exhibit A
**PIERS 2 & 3
PILE DETAILS**

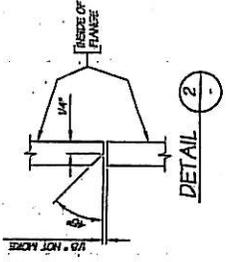
PLAN NO. 0048 - 23.95 - 001
SHEET 8 OF 16



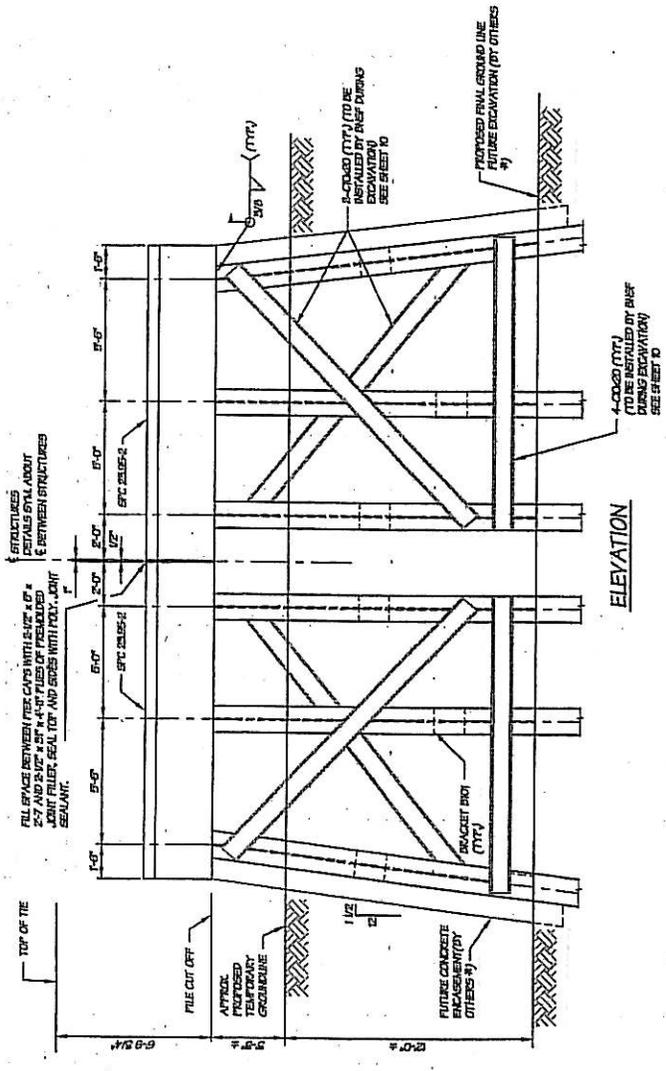
ALTERNATE PILE SPLICE 1
REINFORCING PLATES ARE REQUIRED WHEN THE SPICE IS WITHIN 5 FEET OF THE FINISHED GRADELINE. REINFORCING PLATES MAY BE OMITTED ONLY WHEN PILE SPLICE IS BELOW 5 FEET OF THE FINISHED GRADELINE.



ALTERNATE PILE SPLICE 2



H-PILE SPLICE DETAILS

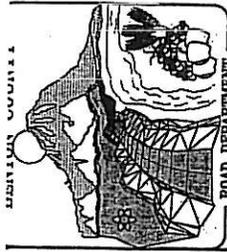


ELEVATION

NOTES:

- ALL PILES ARE H-PIERS-200 STEEL BEARING PILES
- AFTER PRECAST CONCRETE MEMBERS ARE SET, PILL RECESSES AT JUNT, ANCHORS WITH CELENT GROUT TO TOP OF SURROUNDING CONCRETE.
- ALL COLOD BRACKETS & BRACKETS MUST BE INSTALLED AFTER THE GROUND LINE IS EXCAVATED TO FINAL GRADE. SEE SHEET TO PILE DETAILS.

* WORK IS PART OF A SEPARATE ROADWAY CONTRACT (ADMINISTRATED BY BENTON COUNTY)



ROAD DEPARTMENT
 BNSF RAILWAY OVER
 WEBBER CANYON ROAD
 C.E. 1722 CRP

S.P. & S. JCT. TO
 ELLENSBURG
 BNSF RAILWAY
 BRIDGE 23.95
 LINE SEG.: 0048

DAVID EVANS INC.
 ENGINEERS
 1115 W. 11th Street, Suite 201
 Reno, NV 89502
 Phone: 775-784-2115

PREPARED UNDER
 THE DIRECTION OF
 & APPROVED BY:

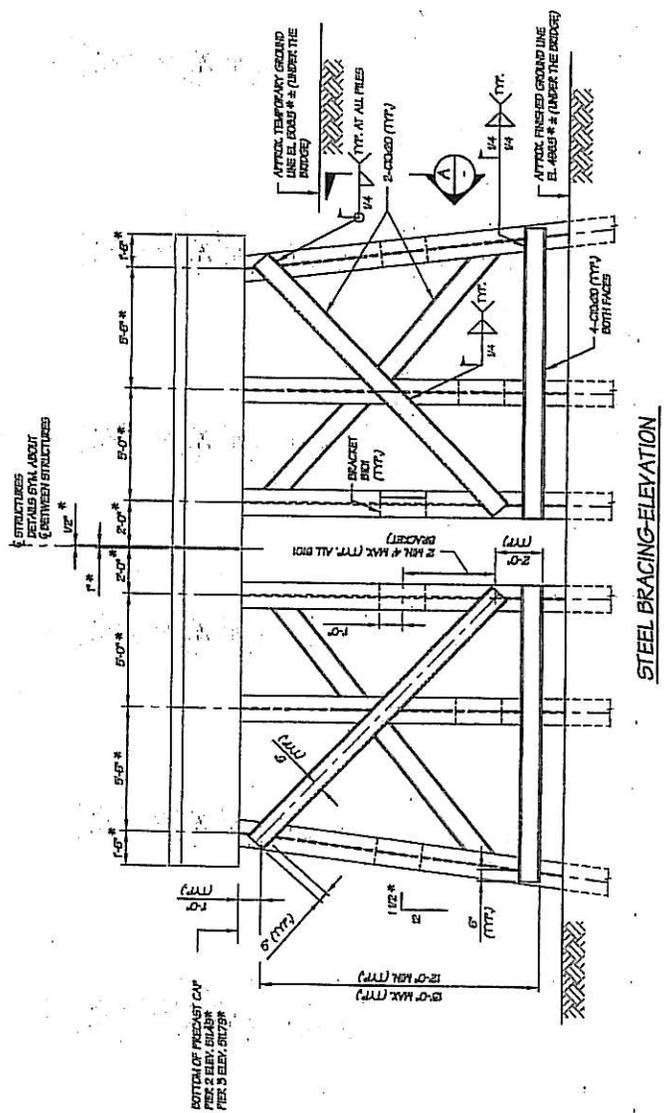
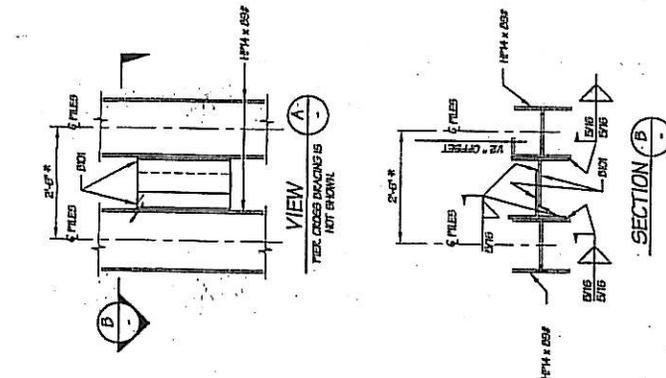
 Engineer: s116107
 DATE: 7/17/88

CALL AND VISITING DAYS
 MONDAY THROUGH FRIDAY
 8:00-4:30
 1-800-484-6685
 ALL UNDERGROUND UTILITIES AND STRUCTURES
 SHALL BE MAINTAINED AND PROTECTED
 THROUGHOUT THE CONSTRUCTION PERIOD.
 IT IS THE RESPONSIBILITY OF THE CONTRACTOR
 TO VERIFY THE LOCATION AND DEPTH OF
 ALL UTILITIES AND STRUCTURES PRIOR TO
 CONSTRUCTION. ANY CHANGES TO THE
 LOCATION OR DEPTH OF UTILITIES OR
 STRUCTURES SHALL BE REPORTED TO THE
 ENGINEER IMMEDIATELY.

DR'N:	D. E. T.
DATE:	07/08
SCALE:	AS SHOWN
REVISION:	

Exhibit A
 PIERS 2 & 3 PILE
 BRACING DETAILS

PLAN NO: 0048 - 23.95 - 010
 SHEET 10 OF 16

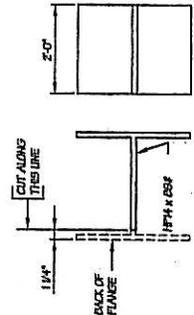


STEEL BRACING-ELEVATION

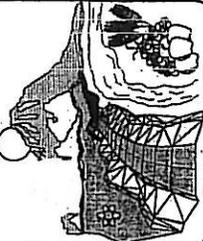
* VERIFY ELEVATIONS AND ALL DIMENSIONS BEFORE STARTING CONSTRUCTION

NOTES:

1. ALL CROSS BRACING IS 2X UNLESS OTHERWISE NOTED. ALL CHANNEL BRACING SHALL BE CUT TO FIT IN FIELD.
2. ALL STEEL SHALL BE ASTM A500 OR A588 GR 40.
3. EXCAVATION WITHIN TOP OF THE STEEL PILES SHALL BE MANUALLY PERFORMED. COORDINATION WITH ROADWAY CONTRACTOR (UNDER SEPARATE CONTRACT ADMINISTERED BY NEVADA COUNTY) WILL BE REQUIRED.
4. PILING EXCAVATION STEEL PILES SHALL BE BRACED IN BOTH LATERAL AND LONGITUDINAL DIRECTIONS UNTIL PERMANENT STEEL BRACINGS ARE IN PLACE. PERMANENT STEEL BRACINGS SHALL BE MANUALLY PERFORMED. COORDINATION WITH ROADWAY CONTRACTOR (UNDER SEPARATE CONTRACT ADMINISTERED BY NEVADA COUNTY) WILL BE REQUIRED.



BRACKET B101
 FIELD CUT FROM 1FPM x 85F PILE HEIGHT
 TO USE



ROAD DEPARTMENT

BNSF RAILWAY OYER
WEBBER CANYON ROAD
C.E. 1722 CRP

S.P. & S. JCT. TO
ELLENSBURG
BNSF RAILWAY
BRIDGE 23.95
LINE SEG.: 0048



DAVID EVANS
AND ASSOCIATES INC.
1115 West Bay Lane B.W. Suite 201
Olympia Washington 98512
Phone: 360.752.1118

PREPARED UNDER
THE DIRECTION OF
& APPROVED BY:



Exp. No.: 5/13/01
ENGINEER
DATE: 7/1/08

CUL. TWO FORDING DAYS
1-100-484-8535

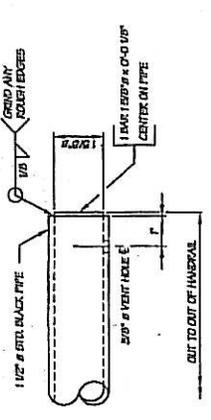
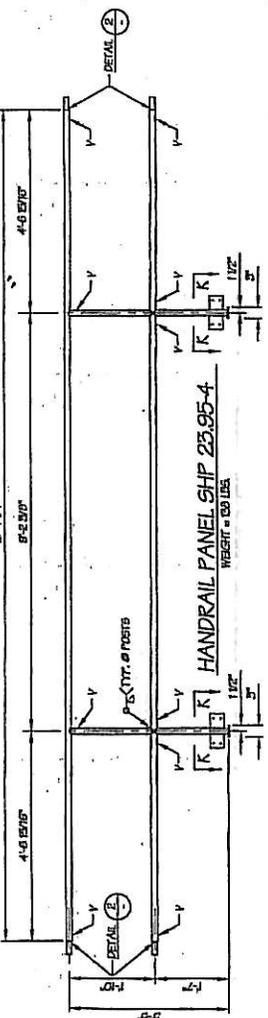
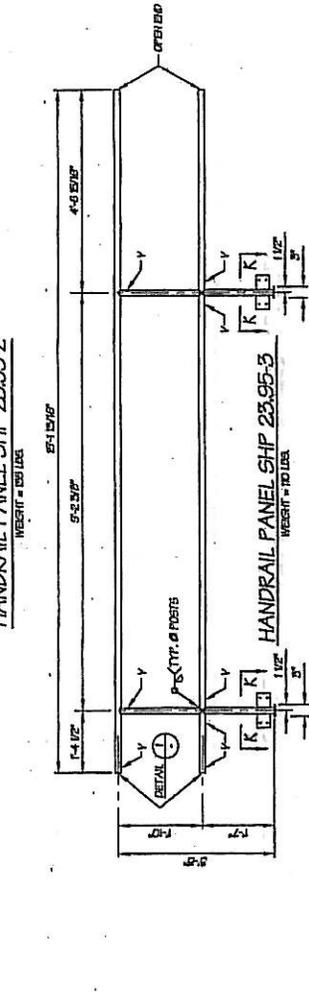
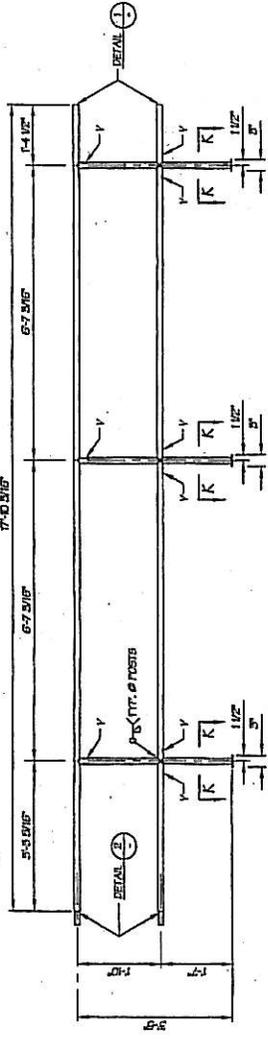
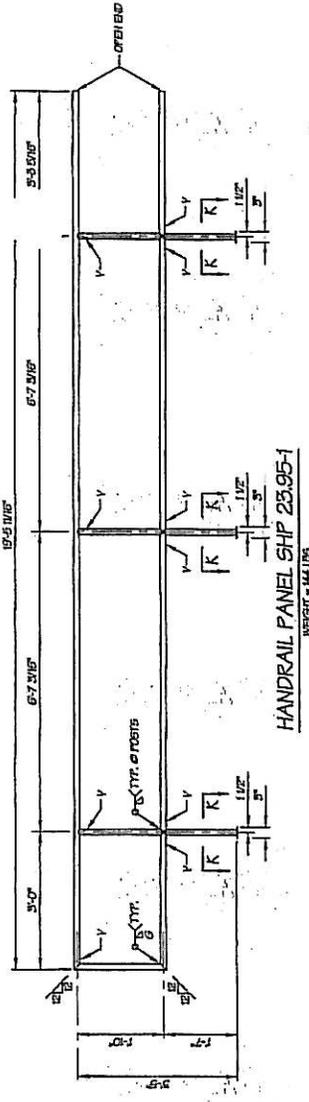
ALL UNDERGROUND UTILITIES AND STRUCTURES
ARE NOT SHOWN. THE LOCATION OF SAME
IS THE RESPONSIBILITY OF THE FIELD WORKER.
IT IS RECOMMENDED TO FIELD VERIFY WITH
CONTRACTOR & APPROVED DESIGNER
CONDITIONAL LIGHT SHOWER FOR RESOLUTION
OF CONFLICTS.

DR#N:	D.E.T.
DATE:	7/08
SCALE:	AS SHOWN
REVISION:	

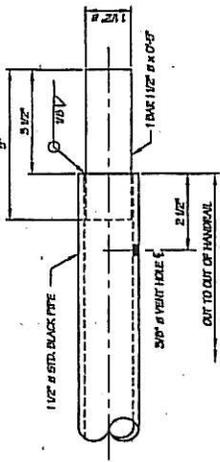
Exhibit A
HANDRAIL
DETAILS

PLAN NO: 0048 - 24.05 - 13
SHEET 13 OF 16

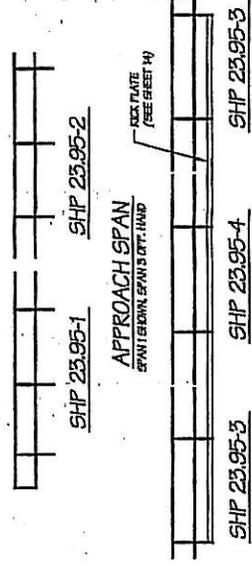
- NOTES:**
1. MATERIAL STRUCTURAL STEEL SHALL MEET THE REQUIREMENTS OF THE CURRENT ASTM DESIGNATION AND.
 2. HANDRAIL PANELS ARE TO BE FABRICATED USING 1 1/2" STANDARD BLACK PIPE. STANDARD BLACK PIPE SHALL MEET THE REQUIREMENTS OF THE CURRENT ASTM DESIGNATION AND. UNCOATED PIPE SHALL BE USED.
 3. SHEET NOTES, FABRICATION AND ASSEMBLY OF STRUCTURAL STEEL AND HANDRAIL SHALL BE REFERRED TO FOR ALL DIMENSIONS AND CONNECTIONS. ALL DIMENSIONS SHALL BE TO UNLESS OTHERWISE NOTED. ALL DIMENSIONS SHALL BE TO UNLESS OTHERWISE NOTED. ALL DIMENSIONS SHALL BE TO UNLESS OTHERWISE NOTED.
 4. GALVANIZING: HANDRAIL PANELS SHALL BE GALVANIZED AFTER FABRICATION IN ACCORDANCE WITH THE CURRENT ASTM DESIGNATION AND.
 5. AFTER GALVANIZING ALL ELEMENTS SHALL BE FREE OF FRICTION, IMPROPER COLOR OR SHARP EDGES AND OTHER SURFACE DEFECTS.
 6. 1/2" x 3/8" x 1/8" GALVANIZED VENT HOLES FROM JOINT SOCIETY AS NOTED IN DETAIL "2".



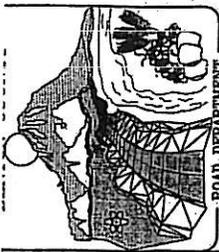
DETAIL 1



DETAIL 2



NOTE SEE SHEET H FOR SECTION F&G



ROAD DEPARTMENT
 BNSF RAILWAY OVER
 WEBBER CANYON ROAD
 C.E. 1722 CRP

S.P. & S. JCT. TO
 ELLENBURG
 BNSF RAILWAY
 BRIDGE 23.95
 LINE SEG.: 0048

DE
 DAVID EVANS
 AND ASSOCIATES INC.
 1110 Westway Drive NW, Suite 201
 Atlanta, Georgia 30328
 Phone: 404.762.2185

PREPARED UNDER
 THE DIRECTION OF
 THE APPROVED BY:

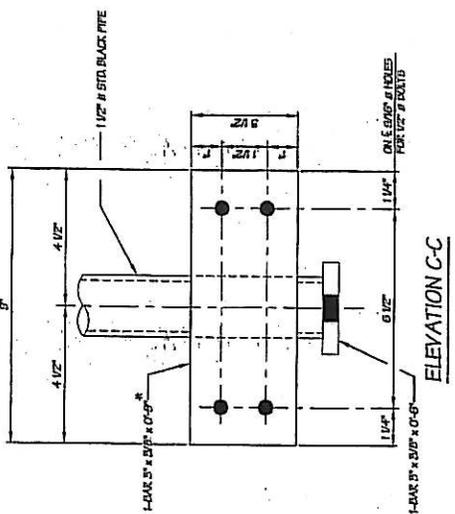
 Engineer
 DATE: 7/7/08

ALL UNDERGROUND UTILITIES AND STRUCTURES
 ARE NOT SHOWN. THE LOCATION OF THESE
 UTILITIES IS THE RESPONSIBILITY OF THE CONTRACTOR.
 THE CONTRACTOR SHALL VERIFY THE LOCATION
 OF ALL UTILITIES AND STRUCTURES BEFORE
 CONSTRUCTION. NOTIFY ENGINEER FOR RESOLUTION
 OF CONFLICTS.

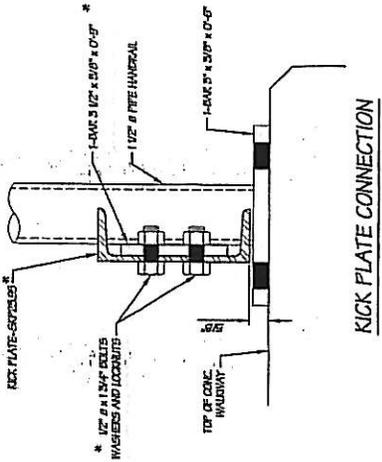
DPN:	D.R.T.
DATE:	7/7/08
SCALE:	AS SHOWN
REVISION:	

Exhibit A
 KICK PLATE
 DETAILS

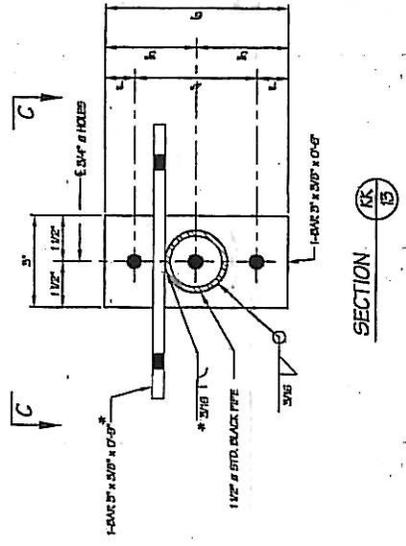
PLAN NO: 0048 - 03.05 - 14
 SHEET 14 OF 16



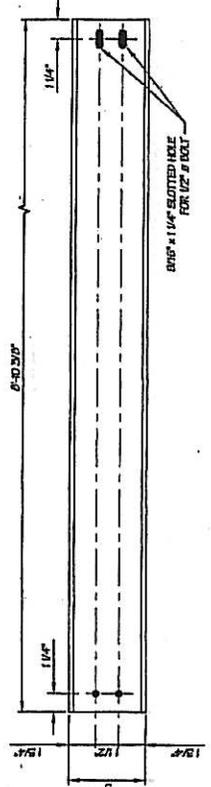
ELEVATION C-C



KICK PLATE CONNECTION

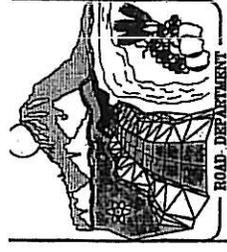


SECTION



KICK PLATE - SKP 23.95
 1/2\"/>

* FOR WISCONSIN
 SKP 23.95-3 AND SKP 23.95-4 ONLY



ROAD DEPARTMENT
 BNSF RAILWAY OVER
 WEBBER CANYON ROAD
 C.E. 1722 CRP

S.P. & S. JCT. TO
 ELLENSBURG
 BNSF RAILWAY
 BRIDGE 23.95
 LINE SEC.: 0048

DAVID EVANS AND ASSOCIATES INC.
 1115 West 1st Ave. (N.W.) Suite 317
 Olympia, Washington 98502
 Phone: 360/9352188

PREPARED UNDER
 THE DIRECTION OF
 & APPROVED BY:

 DATE: 7/12/88
 Engineer: S. J. [Signature]

CALL FOR MATERIAL DATA
 1-800-44-4838
 ALL UNDERGROUND UTILITIES AND STRUCTURES
 ARE NOT SHOWN. THE LOCATION OF THESE
 UTILITIES AND STRUCTURES IS THE RESPONSIBILITY
 OF THE CONTRACTOR. THE CONTRACTOR IS
 RESPONSIBLE TO FIELD VERIFY ALL UTILITIES
 UNDEGROUND & ABOVE GROUND BEFORE
 BEGINNING ANY WORK. NOTIFY ENGINEER FOR RESOLUTION
 OF CONFLICT.

DR'N: D.E.T.
 DATE: 7/08
 SCALE: AS SHOWN
 REVISION:

Exhibit A
 BILL OF
 MATERIAL

PLAN NO: 0048 - 23.95 - 10
 SHEET 16 OF 16

LINE#	QUANTITY	UNITS	DESCRIPTION	MARK	SIZE	LENGTH	REMARKS	DELIVERY DATE	COST CLASS	ACTN. NO.	WORK ORDER NO.	TAX CODE	TAI NO.
1	2000	LSB	STEEL REINFORCING TIE (40 RECESSED, ASTM A675, G50)		1/2" DIA	60'-0"							
2	40	EA	TIE PORTS FOR 1/2" DIA		1/2" DIA	20'-0"							
3	12000	LSB	CHANNEL IRONING (40 RECESSED) FOR CROSS BRACE OF P.T. C.P.S.#		CROSS	20'-0"							
4	24	EA	BRACKET		1/2" DIA	5'-0"	DETAILED PLAN 0048 - 23.95 - 10						
5	2	EA	PRESSTRESS CONC. CHL. CHL. FOR BEAM W/ WALK & INSERTS FOR PROTECT "T" ATTACH		4" x 8"	46'-10"	STANDARD PLAN 0000-90003-01R, 02 & 03 & PLAN 0048-23.95-10						
6	2	EA	PRESSTRESS CONC. CHL. CHL. FOR BEAM		4" x 8"	46'-10"	STANDARD PLAN 0000-90003-01R, 02 & 03						
7	4	EA	PRESSTRESS CONC. CHL. CHL. FOR BEAM W/ WALK		36" x 6"	36'-0"	STANDARD PLAN 0000-90003-01R, 02 & 03						
8	4	EA	PRESSTRESS CONC. CHL. CHL. FOR BEAM		36" x 6"	36'-0"	STANDARD PLAN 0000-90003-01R, 02 & 03						
9	4	EA	PRECAST CONC. WINGWALL		11'-6"	11'-6"	DETAILED PLAN 0048 - 23.95 - 07						
10	4	EA	PRECAST CONC. ABUT. CH.		10'-5"	10'-5"	DETAILED PLAN 0048 - 23.95 - 0429 & 06						
11	2	EA	PRECAST CONC. ABUT. CH.		10'-5"	10'-5"	DETAILED PLAN 0048 - 23.95 - 0429 & 06						
12	24	EA	WATER GUARDRAIL (PRECAST WINGWALLS)		14'-0"	14'-0"	DETAILED PLAN 0048 - 23.95 - 04 & 05						
13	24	EA	WATER GUARDRAIL (PRECAST WINGWALLS)		14'-0"	14'-0"	DETAILED PLAN 0048 - 23.95 - 04 & 05						
14	4	EA	DECK PLATE GALVANIZED, ASTM A53		1/2" DIA	7'-0"	DETAILED PLAN 0048 - 23.95 - 12						
15	4	EA	DECK PLATE GALVANIZED, ASTM A53		1/2" DIA	7'-0"	DETAILED PLAN 0048 - 23.95 - 12						
16	20	EA	DECK PLATE GALVANIZED, ASTM A53		1/2" DIA	7'-0"	DETAILED PLAN 0048 - 23.95 - 12						
17	2	EA	DECK PLATE GALVANIZED, ASTM A53		1/2" DIA	7'-0"	DETAILED PLAN 0048 - 23.95 - 12						
18	2	EA	DECK PLATE GALVANIZED, ASTM A53		1/2" DIA	7'-0"	DETAILED PLAN 0048 - 23.95 - 12						
19	2	EA	DECK PLATE GALVANIZED, ASTM A53		1/2" DIA	7'-0"	DETAILED PLAN 0048 - 23.95 - 12						
20	10	EA	BRACKET		1/2" DIA	0'-0"	DETAILED PLAN 0048 - 23.95 - 11						
21	4	EA	HANDRAIL PANEL, GALVANIZED		1/2" DIA	15'-0"	DETAILED PLAN 0048 - 23.95 - 03						
22	4	EA	HANDRAIL PANEL, GALVANIZED		1/2" DIA	15'-0"	DETAILED PLAN 0048 - 23.95 - 03						
23	4	EA	HANDRAIL PANEL, GALVANIZED		1/2" DIA	15'-0"	DETAILED PLAN 0048 - 23.95 - 03						
24	2	EA	HANDRAIL PANEL, GALVANIZED		1/2" DIA	15'-0"	DETAILED PLAN 0048 - 23.95 - 03						
25	50	EA	PAV. FOOT PLATE GALVANIZED		1/2" DIA	0'-0"	DETAILED PLAN 0048 - 23.95 - 12						
26	75	EA	PAV. FOOT PLATE GALVANIZED		1/2" DIA	0'-0"	DETAILED PLAN 0048 - 23.95 - 12						
27	100	EA	WASHER PLAT. HOLE, GALVANIZED		1/2" DIA	0'-0"	DETAILED PLAN 0048 - 23.95 - 12						
28	100	EA	WASHER PLAT. HOLE, GALVANIZED		1/2" DIA	0'-0"	DETAILED PLAN 0048 - 23.95 - 12						
29	40	EA	DECK PLATE GALVANIZED, ASTM A53		1/2" DIA	1'-0"	DETAILED PLAN 0048 - 23.95 - H						
30	40	EA	DECK PLATE GALVANIZED, ASTM A53		1/2" DIA	1'-0"	DETAILED PLAN 0048 - 23.95 - H						
31	24	EA	URTHANE BEARING PAD (DIAMETER 70)		5/8" x 3/4"	5/8" x 3/4"	DETAILED PLAN 0048 - 23.95 - 15						
32	4	EA	PRESMIXED JOINT FILLER (ASPHALT IMPREGNATED)		4" x 4"	4" x 4"							
33	4	EA	PRESMIXED JOINT FILLER (ASPHALT IMPREGNATED)		4" x 4"	4" x 4"							
34	4	EA	PRESMIXED JOINT FILLER (ASPHALT IMPREGNATED)		4" x 4"	4" x 4"							
35	4	EA	PRESMIXED JOINT FILLER (ASPHALT IMPREGNATED)		4" x 4"	4" x 4"							
36	4	EA	PRESMIXED JOINT FILLER (ASPHALT IMPREGNATED)		4" x 4"	4" x 4"							
37	20	EA	POLYURETH. JOINT SEALANT		1/2" DIA	4" x 1"							
38	2	EA	PRECAST I.T.E. GALVANIZED, ASTM A53		11" x 14"	35'-0"							
39	0	EA	REINFORCED W/ WALK		11" x 14"	11" x 14"							
40	2	EA	BERM BRIDGE NO. (ATTACH TO BRIDGE)		23" x 8"		BERM STANDARDS						
41	2	EA	BERM BRIDGE NO. (ATTACH TO BRIDGE)		23" x 8"		BERM STANDARDS						
42	2	EA	BERM BRIDGE NO. (ATTACH TO BRIDGE)		23" x 8"		BERM STANDARDS						
43	2	EA	BERM BRIDGE NO. (ATTACH TO BRIDGE)		23" x 8"		BERM STANDARDS						

* CHANNEL IRONINGS ARE NEEDED ONLY DURING THE EXCAVATION TO FINAL GRADE LINES, UNLESS OTHERWISE DIRECTED BY THE ENGINEER.



ROAD DEPARTMENT
 WEBBER CANYON
 ROAD UNDERPASS
 BNSF RAILWAY
 C.E. 1722 CRP

**SKILLINGS
 CONNOLLY**

PREPARED UNDER
 THE DIRECTION OF
 & APPROVED BY:



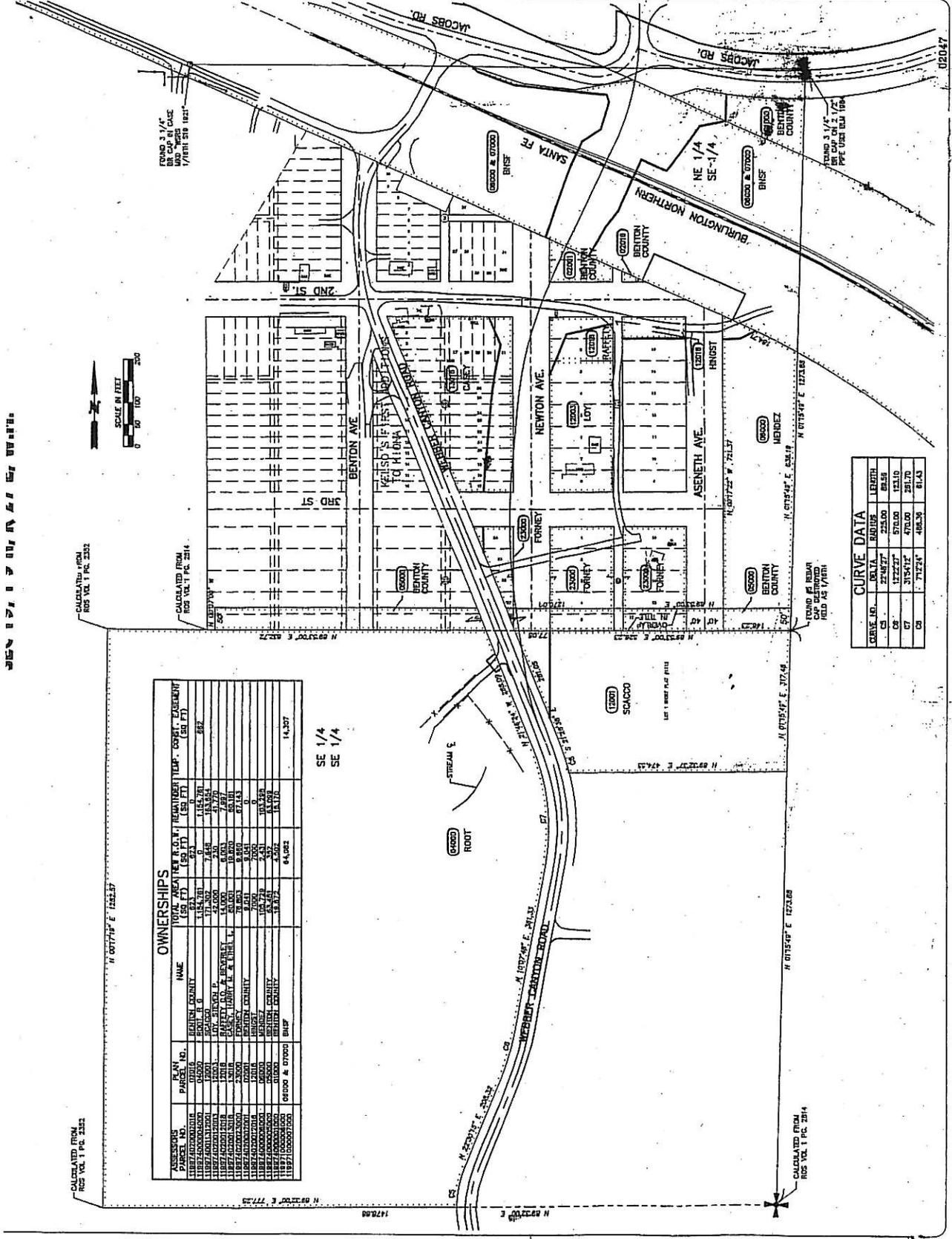
DATE: 6/09/05
 Exhibit A-1
 Sheet 1

DR N:	CH
DATE:	6/05
SCALE:	AS SHOWN
REVISION:	CHANGES MADE TO OWNER PER AUG 2-05

RIGHT-OF-WAY
 PLANS
 TOTAL PARCEL DETAIL

SHEET 1 OF 3

JUN 17 1 7 00 PM '05



OWNERSHIPS

ASSESSORS PARCEL NO.	PARCEL NO.	NAME	TOTAL AREA (SQ. FT.)	ACRES	COMMENTS
1188740000100	010010	BENTON COUNTY	1,874,781	42.65	
1188740000200	010020	BENTON COUNTY	1,174,500	26.84	
1188740000300	010030	BENTON COUNTY	7,448	0.17	
1188740000400	010040	BENTON COUNTY	44,000	1.00	
1188740000500	010050	BENTON COUNTY	19,870	0.45	
1188740000600	010060	BENTON COUNTY	9,850	0.22	
1188740000700	010070	BENTON COUNTY	7,900	0.18	
1188740000800	010080	BENTON COUNTY	15,449	0.35	
1188740000900	010090	BENTON COUNTY	5,502	0.12	
1188740001000	010100	BENTON COUNTY	64,082	1.47	

CURVE DATA

CURVE NO.	BEARING	RADIUS	LENGTH
C1	274°27'	250.00	88.58
C2	172°27'	570.00	131.10
C3	315°41'	470.00	201.70
C4	71°22'	485.38	81.43

CALCULATED FROM
 RES VOL 1 PG 282

CALCULATED FROM
 RES VOL 1 PG 284

CALCULATED FROM
 RES VOL 1 PG 282

CALCULATED FROM
 RES VOL 1 PG 284



ROAD DEPARTMENT

WEBBER CANYON
ROAD UNDERPASS
BNSF RAILWAY

C.E. 1722 CRP



PREPARED UNDER
THE DIRECTION OF
& APPROVED BY:



DATE: 6/01/05

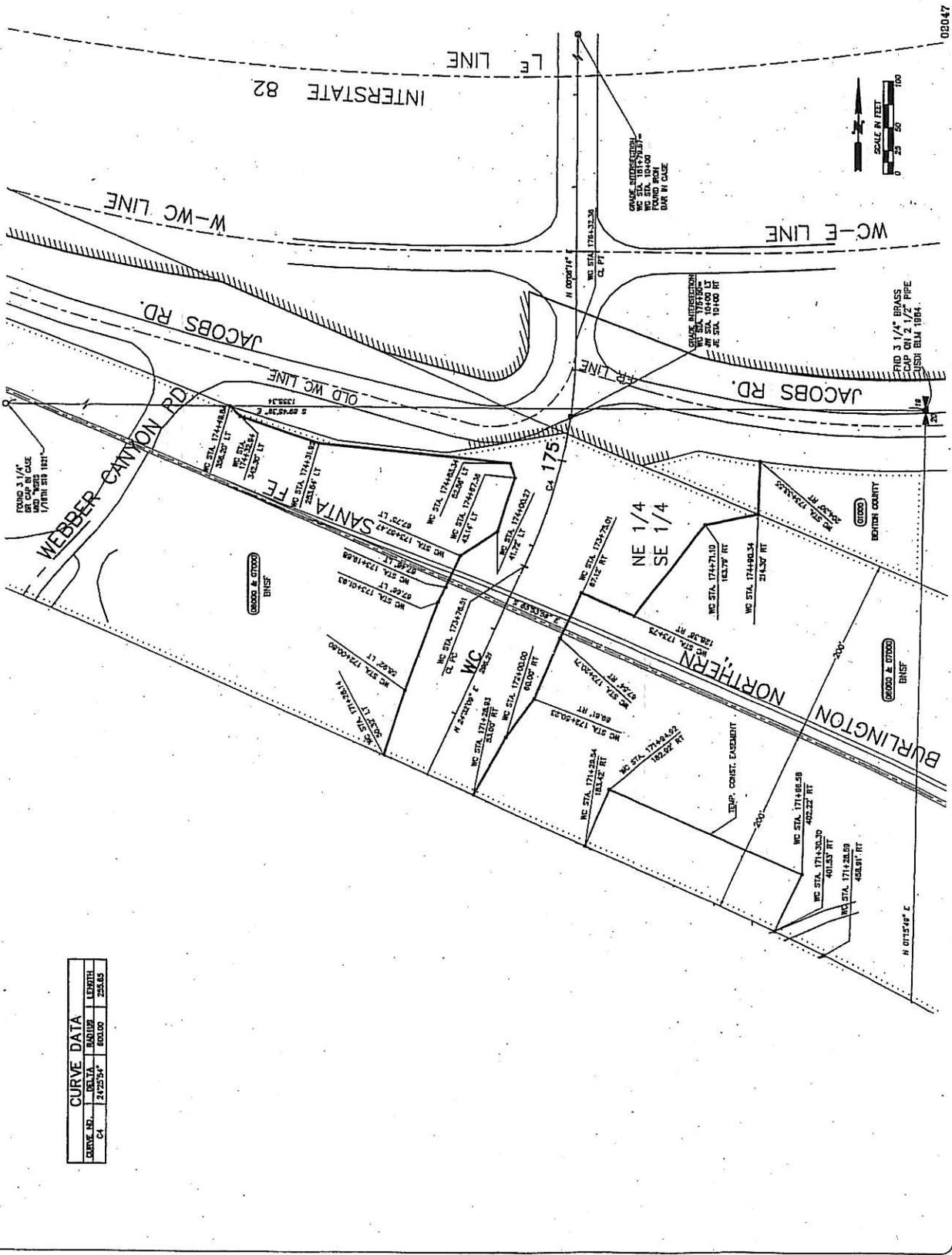
Exhibit A-1
Sheet 2

DR'N:	CH
DATE:	9/05
SCALE:	AS SHOWN
REVISION:	

RIGHT-OF-WAY
PLANS

SHEET 3 OF 3

SEC 19, T 9 N, R 27 E, W.M.



08047

CURVE DATA		
CURVE NO.	BEVIA	LENGTH
CA	21725.54'	600.00
		254.85

Attachment to Exhibit A-1

PERPETUAL, NON-EXCLUSIVE EASEMENT

That portion of the Burlington Northern Santa Fe Railway right of way lying within the Northeast ¼ of the Southeast ¼ of Section 19, Township 9 North, Range 27 East, W.M.

Beginning at the Northeast corner of said described Southeast ¼, thence South 01° 15' 49" West along the East line of said Southeast ¼ a distance of 119.66 feet; thence North 88° 44' 11" West, 169.96 feet to the Northerly right of way margin of the Burlington Northern Santa Fe Railway and the True Point of Beginning; thence South 77° 58' 20" West, 56.49 Feet; thence South 36° 35' 31" West, 124.15 feet; thence North 65° 27' 15" West, 61.26 feet; thence South 24° 05' 50" West, 54.30 feet; thence South 22° 51' 10" West, 70.51 feet; thence South 35° 22' 01" West, 51.14 feet; thence South 30° 09' 34" West, 71.42 feet to the Southerly right of way margin of the Burlington Northern Santa Fe Railway; thence North 65° 53' 59" West along said Southerly margin 103.32 feet; thence North 17° 46' 58" East, 73.17 feet; thence North 19° 34' 04" East, 100.97 feet; thence North 25° 11' 00" East, 18.29 feet; thence North 24° 05' 50" East, 37.79 feet; thence North 56° 25' 01" East, 48.46 feet; thence North 17° 45' 11" East, 62.33 feet; thence North 17° 31' 44" West, 17.46 feet; thence North 84° 00' 26" West, 204.41 feet; thence North 70° 28' 23" West, 88.77 feet; thence North 44° 42' 46" West, 15.59 feet to the Encroachment Line as depicted on the Washington Department of Highways right of way plan entitled Kiona Interchanged Vicinity, Sheet 4 of 6 Sheets, dated January 14, 1671; thence South 68° 04' 08" East along said Encroachment Line 3.66 feet; thence continuing along said Encroachment Line South 72° 03' 42" East, 117.21 feet; thence continuing along said Encroachment Line South 83° 25' 56" East, 114.83 feet; thence continuing along said Encroachment Line North 79° 55' 47" East, 128.67 feet to the Northerly right of way margin of the Burlington Northern Santa Fe Railway; thence South 65° 54' 15" East along said Northerly margin 222.50 feet to the Point of Beginning.

Containing 64,082 Sq. Ft. more or less or 1.471 Acres more or less.

TEMPORARY CONSTRUCTION EASEMENT

That portion of the Burlington Northern Santa Fe Railway right of way lying within the Northeast ¼ of the Southeast ¼ of Section 19, Township 9 North, Range 27 East, W.M.

Beginning at the Northeast corner of said described Southeast ¼, thence South 01° 15' 49" West along the East line of said Southeast ¼ a distance of 480.83 feet; thence North 88° 44' 11" West, 343.01 feet to the Southerly right of way margin of the Burlington Northern Santa Fe Railway and the True Point of Beginning; thence North 24° 06' 01" East, 65.00 feet; thence South 65° 53' 59" East, 219.30 feet; thence South 24° 06' 01" West, 66.31 feet more or less to the Southerly right of way margin of the Burlington Northern Santa Fe Railway; thence Northwesterly along said right of way margin 220 feet to the Point of Beginning.

Containing 14307 Sq. Ft. more or less or 0.328 Acres more or less.

EXHIBIT "B"

EASEMENT AGREEMENT

FOR _____
(C&M Agreement)

THIS EASEMENT AGREEMENT FOR _____ ("**Easement Agreement**") is made and entered into as of the ____ day of _____ 20__ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), and _____, a _____ ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of County of Benton, State of Washinton, at Mile Post 23.95, [Project # _____], as described or depicted on **Exhibit "A-1"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of _____ concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

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

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;

- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 **Term of Easement.** The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. **[If this is a temporary easement replace the preceding sentence with the following:** The term of this Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is _____ after the Effective Date.]

Section 3 **No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 **Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 **Improvements.** Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any

adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 **Compliance with Environmental Laws.** Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 **Notice of Release.** Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 **Remediation of Release.** In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 **Preventative Measures.** Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

Section 8 Default and Termination.

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to

the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 **Liens.** Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 **Tax Exchange.** Grantor reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("**Apex**"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

Section 12 **Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 **Recordation.** It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. *[IF LEGAL DESCRIPTION IS NOT AVAILABLE USE THE FOLLOWING IN PLACE OF THE PRIOR SENTENCE: As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**").]* The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within ___ days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 **Miscellaneous.**

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of **[Texas]** without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary

disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

14.7 The terms of the C&M Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

[Signature page follows]

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

a _____

By: _____
Name: _____
Title: _____

EXHIBIT "B"

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this ___ day of _____, 20___, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and Benton County, a _____ ("**Grantee**"), whose address for purposes of this instrument is _____, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Benton County, Washington, as described on Exhibit "A-1" attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. *[If this is a temporary easement, replace the preceding sentence with the following:* The term of this Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is _____ after the Effective Date.] Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 200__, by _____ (name) as _____ (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

Notary Public
(Seal)
My appointment expires: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 200__, by _____ (name) as _____ (title) of _____, a _____.

Notary Public
(Seal)
My appointment expires: _____

EXHIBIT "C"
CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the Webber Canyon Road Underpass.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify Benton County at (509) 786-5611 and Railway's Manager Public Projects, telephone number 206-625-6146 at least thirty (30) calendar days before commencing any work on Railway Property. Contractors' notification to Railway must refer to Railroad's file 927487A.
- **1.01.07** For any falsework above any tracks or any excavations located, whichever is greater, within twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 1 ½ horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings

showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Superintendent at 509-546-3252 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to Benton County and must not be undertaken until approved in writing by the Railway, and until the Benton County has obtained any necessary authorization from the State Regulatory

Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by Benton County for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Private Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.05 Protection of Railway Facilities and Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone 206-625-6880) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic

occurrence, but not limited thereto for the following conditions:

- 1.05.02a When, upon inspection by Railway's Representative, other conditions warrant.
- 1.05.02b When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
- 1.05.02c When work in any way interferes with the safe operation of trains at timetable speeds.
- 1.05.02d When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- 1.05.02e Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- 1.05.03 Flagging services will be performed by qualified Railway flaggers.
- 1.05.03a Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- 1.05.03b Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- 1.05.03c The cost of flagger services provided by the Railway will be borne by the (Agency). The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- 1.05.03d The average train traffic on this route is 5 freight trains per 24-hour period at a timetable speed 45 MPH and 0 passenger trains at a timetable speed of 0 MPH.

1.06 Contractor General Safety Requirements

- 1.06.01 Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- 1.06.02 Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- 1.06.03 Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires,

or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (206-625-6189). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.

- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather _____
(if non-Railway location)
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____

12. Treatment:
- First Aid Only
 - Required Medical Treatment
 - Other Medical Treatment

13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX**

EXHIBIT "C-1"

Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: 927487A

Agency Project: Webber Canyon Road Underpass

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 200_, with Benton County for the performance of certain work in connection with the following project Webber Canyon Road Underpass. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for Benton County (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to

Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to *Railroad* payments related to the Federal Employers Liability Act or a *Railroad* Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Washington's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the *Railroad* as the Insured with coverage of at

least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the *Railroad* prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against *Railroad* for all claims and suits against *Railroad*. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against *Railroad* for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against *Railroad* for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by *Railroad*. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and *Railroad* must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming *Railroad* as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of *Railroad*. If granted by *Railroad*, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all *Railroad* liabilities that would otherwise, in accordance with the provisions of this *Agreement*, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to *Railroad* an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify *Railroad* in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from *Railroad*, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

BNSF RISK MANAGEMENT
2500 Lou Menk Drive AOB-1
Fort Worth, TX 76131-2828
Fax: 817-352-7207

Any insurance policy must be written by a reputable insurance company acceptable to *Railroad* or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this *Agreement* has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this *Agreement*. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section will entitle, but not require, **Railroad** to terminate this **Agreement** immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this **Agreement**. Damages recoverable by **Railroad** will not be limited by the amount of the required insurance coverage.

For purposes of this section, **Railroad** means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be as high as \$50,000.00 per incident.

Contractor and its subcontractors must give Railway's representative four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work

windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

Accepted and effective this _____ day of 20__.

City: _____ State: ___ Zip: _____
Fax: _____
Phone: _____
E-mail: _____

EXHIBIT D

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
BENTON COUNTY

LOCATION EAST KIONA

DETAILS OF ESTIMATE

PLAN ITEM : 000140968

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP - BRIDGE PROJECT - WEBBER CANYON UNDERPASS
CONSTRUCT 2 NEW BRIDGES 36', 49', 36' TDBX (2 BRIDGES - 122'X22')
W/ 4-4 PILES BT, 4-6 PILES/PT, 90' PILES, WALK 3 SIDES,
NO TRK RAISE; SHT PILES (SUBS 2 & 3)
LS 48 - MP 23.95
YAKIMA VALLEY SUBDIVISION
NORTHWEST NORTH DIVISION
STRUCTURES SUPERVISOR - JH WAGGONER
STRUCTURES MANAGER - KENNETH KIRSCHLING
100% BILLABLE TO BENTON COUNTY, WA

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$

LABOR			

CONSTRUCT STRUCTURE - OPERATING	471.7 MH	11,338	
DRIVE PILES	1352.0 MH	32,496	
FINALIZE PROJECT	143.8 MH	3,457	
PLACE CAPS	336.0 MH	8,076	
PLACE FIELD WELDS - CAP	246.4 MH	5,611	
PLACE SPANS	376.9 MH	9,059	
PLACE TRACK PANELS - ADDITION - CAP	128.0 MH	2,878	
PREPARE FOR STRUCTURE CHANGOUT	718.8 MH	17,277	
REMOVE/REPLACE TRACK	113.6 MH	2,554	
REPLACE CROSS TIES - CAP	103.83 MH	2,496	
SIGNAL FIELD LABOR - CAP	20.0 MH	452	
UNLOAD BALLAST - REPLACEMENT - CAP	45.2 MH	1,017	
UNLOAD MATERIAL	87.1 MH	2,094	
PAYROLL ASSOCIATED COSTS		67,972	
EQUIPMENT EXPENSES		52,360	
DA LABOR OVERHEADS		105,714	
INSURANCE EXPENSES		15,804	
TOTAL LABOR COST		340,655	340,655

MATERIAL			

BALLAST, ROCKY POINT (REPL DELTA) (HIPOL AND	377.0 NT **	3,914	
TRACK PANEL, 136 LB 40 FT- 10 FT TIES-PANDROL	9.0 EA **	47,376	
RAIL, TRANSN,BE,40 FT,136 - 1/4 WORN 132	4.0 EA **	4,839	
TIE, TRK,10FT,PRE-PLATED,PANDROL,6IN,ROUND HOLE	40.0 EA **	4,800	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	28.0 KT X	1,574	
BRIDGE MATERIAL	1.0 LS	594,730	
SIGNAL MATERIAL	2.0 DAY	400	
MATERIAL HANDLING		32,878	
ONLINE TRANSPORTATION		3,848	
USE TAX		55,238	
OFFLINE TRANSPORTATION		6,487	
TOTAL MATERIAL COST		756,954	756,954

OTHER			

CONTRACTED SERVICES	1.0 LS	310,000	
SIGNAL LEASED VEHICLE	2.0 DAY	100	
TOTAL OTHER ITEMS COST		310,100	310,100
PROJECT SUBTOTAL			1,407,709
CONTINGENCIES			135,835
BILL PREPARATION FEE			15,436
GROSS PROJECT COST			1,558,980
LESS COST PAID BY BNSF			0

EXHIBIT D

CEPS PLAN ITEM DOCUMENT

(FOR INTERNAL BNSF RAILWAY USE ONLY)

LOCATION : EAST KIONA
PLANITEM NUMBER : 000141338
PROPERTY OF : BNSF RAILWAY COMPANY
OPERATED BY : BNSF RAILWAY COMPANY
JOINT FACILITY :
% BILLABLE (+/-) : 0.0
REQUESTOR ID : C059
PROJECT TYPE : CMT
DOT NUMBER :

LINE SEGMENT : 48
MILEPOST : 23.95
DIVISION : NW
SUBDIVISION : YAKIMA VALLEY
ENGR. DIVISION : NORTHWEST NORTH
TAX STATE : WA, CO: BENTON
MATL DATE :
LOCATION CODE : 513021
TRACK TYPE : S

AFE NUMBER :
RFA NUMBER :
CPAR NUMBER :
BUDGET YEAR : 2009
BUDGET CLASS : 6
REPORTING OFFICE : 716
SPONSOR : VP ENGINEERING
DEPT CODE : EXPBN
DERAILMENT CODE :

PURPOSE, JUSTIFICATION AND DESCRIPTION

(TRACK) KIONA, WA - WORK IN SUPPORT OF UNDERPASS CONSTRUCTION
REMOVE XING FROM EXISTING ROADWAY - 45 DAYS FLAGGING
LS 48 - MP 23.95
YAKIMA VALLEY SUBDIVISION
NORTHWEST NORTH DIVISION
RDM VULGAS
DE BEFORT

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	98,357	0	0	0	0	98,357
MATERIAL COSTS	67,631	0	0	0	0	67,631
OTHER COSTS	36,398	0	0	0	0	36,398
TOTALS	202,386	0	0	0	0	202,386

SYSTEM MAINTENANCE AND PLANNING - KANSAS CITY

ESTIMATE REF. NUMBER : 000141338 - 1-1

COSTING DATE : 01/01/2009

PRINTED ON : 11/17/2008

ESTIMATED BY : STEFFEN

PRINTED BY : STEFFEN

EXHIBIT D

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
STATE OF WASHINGTON

LOCATION EAST KIONA TO KIONA

DETAILS OF ESTIMATE

PLAN ITEM : 000114750

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

MONTHLY POWER UTILITY COST CENTER : 61504
2008 PX INSTALL NEW SIGNAL CABLE IN RELATION WITH NEW UNDERPASS AT WEBER CANYON ROAD IN KIONA, WA. NORTHWEST DIV., YAKIMA SUBDIV., L/S 0048, M.P. 23.95, DOT # 104562K

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY. CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD. THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS, DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED. THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

***** SIGNAL WORK ONLY *****

THE STATE OF WASHINGTON IS FUNDING THIS PROJECT APPROXIMATELY 95%. THE BNSF RR IS FUNDING APPROXIMATELY 5%. MAINTAIN PROPRIETARY CONFIDENTIALITY.

REVISED TO NEW PRICING LIST 09/04/03

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$

LABOR			

SIGNAL FIELD LABOR - CAP	2700 MH	6,508	
PAYROLL ASSOCIATED COSTS		4,477	
EQUIPMENT EXPENSES		1,692	
DA LABOR OVERHEADS		6,963	
INSURANCE EXPENSES		1,041	
TOTAL LABOR COST		20,681	20,681

MATERIAL			

CABLE	1.0 LS N	23,223	
CONDUIT, STEEL 4"	700.0 FT N	11,354	
MISC. MATERIAL	1.0 LS N	2,700	
USE TAX		3,129	
OFFLINE TRANSPORTATION		372	
TOTAL MATERIAL COST		40,778	40,778

OTHER			

CONTRACT ENGR.	1.0 EA N	7,500	
TOTAL OTHER ITEMS COST		7,500	7,500
PROJECT SUBTOTAL			68,959
CONTINGENCIES			6,895
BILL PREPARATION FEE			759
GROSS PROJECT COST			76,613
LESS COST PAID BY BNSF			3,831
TOTAL BILLABLE COST			72,782

Exhibit E

[Public Projects Manager's letterhead]

Date: _____

Mr. Ross Dunfee, PE
Benton County Engineer
620 Market Street
Prosser, WA 99350

Re: Final Approval of Plans and Specifications dated _____, 20____, drafted by David Evans and Associates Engineering (**hereinafter called, the "Plans and Specifications"**)

Dear Mr. Dunfee;

This letter serves as BNSF RAILWAY COMPANY's ("BNSF") final written approval of the Plans and Specifications covering the construction of the Webber Canyon Road Underpass. This final written approval is given to Benton County ("Agency") pursuant to Article III, Section 1 of that certain Underpass Agreement between BNSF and Agency, dated _____, 20____. If the Plans and Specifications are revised by Agency subsequent to the date set forth above, this letter shall no longer serve as final written approval of the Plans and Specifications and Agency must resubmit said Plans and Specifications to BNSF for final written approval.

Regards,

Megan T. McIntyre

Manager Public Projects
BNSF Railway Co.

Exhibit F

Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Bridge design calculations will be submitted to BNSF for review and approval. Design calculations will be summarized on a cover sheet to state the design dead load, design live load and amount of impact and any secondary loads considered. Bridge design by other than a BNSF pre-approved consultant will be subject to a third party design check at the Agency's expense.

For railroad bridges and culverts over waterways, BNSF will be provided with the Hydrology and Hydraulic design criteria, calculations and site specific data, including electronic data utilized in computer simulation modeling. Design considerations should include future land use changes that would increase the volume, velocity or sediment transport characteristics of the streambed flows. Design shall include sediment transport calculations and erosion control mitigation measures if necessary.

Bridge plans will be submitted to BNSF for review and approval at the 30%, 60% and 90% stage of design. The final set of plans must be approved by BNSF prior to letting of bids for the Project.

Prior to issuing any invitation to bid on construction of the Structure, the Agency should conduct a pre-bid meeting where prospective Contractors have the opportunity to communicate with BNSF personnel as to the site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and specifications for the Structure and the Project must be submitted to BNSF for review and approval prior to letting of bids for the Project.

BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Contractor entering BNSF right of way, the Agency should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF will require an experienced Quality Control Inspector to be present during certain critical times of the Project, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. Certain components, normally produced off site, will require a QC inspector to be present, including the production of precast concrete components and steel fabrication. The QC inspector will provide reports to BNSF including pile driving records, concrete compressive test records, and other such reports requested by BNSF. QC Inspection services can be provided by the Agency subject to acceptance by BNSF. If the QC services provided are not acceptable, BNSF will provide an independent QC Inspection service to supplement the deficiencies. The Agency shall reimburse BNSF for all costs of supplemental QC Inspection services.

Within 90 days of the conclusion of the Project and final acceptance by BNSF, the Agency will provide BNSF with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station *.dgn electronic format (preferred) or AutoCAD *.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. The plans must show dimensioned locations of existing and relocated utilities.

BRIDGE MAINTENANCE:

BNSF will be responsible for maintenance of the track, and ballast over the bridge and the earth embankment approaches. The Agency will be responsible for maintenance of the structural components of the bridge, including deck waterproofing and paint.

For bridges over roadways, the Agency will maintain the roadways under the bridge including signs, pedestrian walkways, fences, drains, landscaping, earth retention components, embankment slopes, erosion control, surface drainage, paint, walkways, handrails, lighting and other improvements associated with the Project. The Agency will be responsible to post highway vertical clearance signs and maintain such signs to reflect potential future pavement profile elevation changes. Clearance signs, traffic control signals or other signs should not be attached to a load-carrying member of the railroad bridge.

For railroad bridges over waterways, the Agency will be responsible for all aspects of channel maintenance across BNSF's right-of-way, including toe of slope erosion control where the railroad embankment meets the streambed. The Agency will be responsible for debris removal that may accumulate at bridge piers as well as silt removal, local and general scour and remediation and streambed lateral migration and streambed degradation remediation.

Fencing and other trespass controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the Agency. Graffiti removal will be the responsibility of the Agency.

BRIDGE INSPECTION:

BNSF will conduct annual routine structural inspections of railroad bridges over public roadways and waterways at no cost to the Agency. The Agency shall provide traffic control under those bridges spanning roadways to enable BNSF personnel or representatives to safely conduct the annual inspections. For routine annual inspections, BNSF will give the public agency 7 days advance notice of traffic control requirements. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Agency will provide traffic control in roadways to allow immediate inspection by BNSF personnel or representatives. Traffic control will include lane closures or other such measures to allow BNSF personnel, contractors and equipment to be safely positioned under the superstructure.

Upon the conclusion of the BNSF inspection, the Agency will be notified of items in need of repair. If the Agency does not complete the repairs requested by BNSF within a reasonable time period, BNSF personnel and/or contractors will perform the repairs and invoice the Agency for the entire cost of such repairs. Regardless of the nature or cause of such maintenance and repairs, traffic control will be provided by the Agency at no cost to BNSF to allow safe access to the bridge.

EXHIBIT G

**Webber Canyon Road Underpass
Estimated Total Project Cost**

WEBBER CANYON ROAD UNDERPASS

EXHIBIT 'G'

TOTAL COST ESTIMATE

ITEM NO	STD ITEM NO	SPECIAL PROV.	QUANT	ITEM	UNIT	TOTAL QUANTITY	UNIT PRICE	ITEM COST
PREPARATION								
1	0001	STD	PERC	MOBILIZATION (10%)	L.S.	1	\$185,216	\$185,216
2	0025	STD	PLAN	CLEARING AND GRUBBING	ACRE	5.39	\$2,500	\$13,475
3	0050	SPECIAL	PLAN	REMOVAL OF STRUCTURE AND OBSTRUCTION	L.S.	1	\$5,000	\$5,000
4		SPECIAL		REMOVING EXISTING ROADWAY	L.S.	1	\$30,000	\$30,000
GRADING								
5	0310	STD	PROF	ROADWAY EXCAVATION INCL. HAUL	C.Y.	32130	\$14	\$449,820
6	0330	STD	PROF	ROADWAY EXCAVATION INCL. HAUL - AREA A	C.Y.	1205	\$25	\$30,125
7	0470	STD	PLAN	ROADWAY EXCAVATION INCL. HAUL - AREA POND	C.Y.	5750	\$14	\$80,500
				EMBANKMENT COMPACTION	C.Y.	8240	\$2	\$16,480
DRAINAGE								
8	1086	STD	SN	QUARRY SPALLS	TON	7	\$50	\$350
9	1182	STD	SN	SCHEDULE A CULV. PIPE 12 IN. DIAM.	L.F.	127	\$50	\$6,350
STORM SEWER								
10	3091	STD	SN	CATCH BASIN TYPE 1	EACH	7	\$1,500	\$10,500
11	3105	STD	SN	CATCH BASIN TYPE 2 48 IN. DIAM.	EACH	13	\$3,000	\$39,000
12	3151	STD	SN	TESTING STORM SEWER PIPE	L.F.	2579	\$2	\$5,158
13	3541	STD	SN	SCHEDULE A STORM SEWER PIPE 12 IN. DIAM.	L.F.	520	\$35	\$18,200
14	3542	STD	SN	SCHEDULE A STORM SEWER PIPE 18 IN. DIAM.	L.F.	421	\$55	\$23,155
15	3543	STD	SN	SCHEDULE A STORM SEWER PIPE 24 IN. DIAM.	L.F.	1638	\$70	\$114,660
STRUCTURE								
16		SPECIAL	BPLAN	PIER ENCASEMENT	L.S.	1	\$176,500	\$176,500
SURFACING								
	5100	STD		CRUSHED SURFACING BASE COURSE	TON	6765	\$23	\$155,595
	5120	STD		CRUSHED SURFACING TOP COURSE	TON	2380	\$26	\$61,880
LIQUID ASPHALT								
19	5334	STD		ANTI-STRIPPING ADDITIVE	DOL	3010	\$1	\$3,010
HOT MIX ASPHALT								
20	5717	AMEND		HMA FOR PRELEVEL CL. 1/2 In. PG 58-22	TON	200	\$95	\$19,000
21	5767	AMEND		HMA CL. 1/2 In. PG 58-22	TON	2810	\$90	\$252,900
22	5830	STD	CALC	JOB MIX COMPLIANCE PRICE ADJUSTMENT	CALC	3950	\$1	\$3,950
23	5835	STD	CALC	COMPACTION PRICE ADJUSTMENT	CALC	1700	\$1	\$1,700
EROSION CONTROL AND PLANTING								
24	6403	STD		ESC LEAD	DAY	12	\$300	\$3,600
25		SPECIAL		CSTC FOR SLOPE PROTECTION	TON	2730	\$35	\$95,550
26	6414	STD	PROF	SEEDING, FERTILIZING, AND MULCHING	ACRE	4.86	\$1,800	\$8,748
27	6490	STD		EROSION/WATER POLLUTION CONTROL	EST.	1	\$6,000	\$6,000
28	7736	STD		SPCC PLAN	L.S.	1	\$500	\$500
TRAFFIC								
29	6700	STD	QTAB	CEMENT CONC. TRAFFIC CURB AND GUTTER	L.F.	1995	\$25	\$49,875
30	6806	STD	QTAB	PAINT LINE	L.F.	10115	\$0.20	\$2,023
31	6858	STD	QTAB	PAINTED STOP LINE	L.F.	245	\$5	\$1,103
32	6890	STD		PERMANENT SIGNING	L.S.	1	\$5,000	\$5,000
33	6971	AMEND		PROJECT TEMPORARY TRAFFIC CONTROL	L.S.	1	\$5,000	\$5,000

WEBBER CANYON ROAD UNDERPASS TOTAL COST ESTIMATE

		OTHER ITEMS					
34	7006	STD	STRUCTURE EXCAVATION CLASS B INCL. HAUL	C.Y.	2060	\$18	\$37,074
35	7008	STD	SHORING OR EXTRA EXCAVATION CLASS B	S.F.	12868	\$1	\$12,868
36	7055	STD	CEMENT CONC. SIDEWALK	S.Y.	443	\$37	\$16,391
37	7059	STD	CEMENT CONC. DRIVEWAY ENTRANCE TYPE 1	S.Y.	72	\$70	\$5,040
38	7058	STD	CEMENT CONC. SIDEWALK RAMP TYPE 2	EACH	3	\$2,000	\$6,000
39		SPECIAL	CONC. SLOPE PROTECTION	L.S.	1	\$41,000	\$41,000
40	7086	STD	CHAIN LINK FENCE TYPE 3	L.F.	637	\$20	\$12,740
41	7097	STD	END, GATE, AND PULL POST FOR CHAION LINK FENCE	EACH	16	\$300	\$4,240
42	7100	STD	SINGLE 6 FT. CHAIN LINK GATE	EACH	2	\$1,000	\$2,000
43	7102	STD	DOUBLE 14 FT. CHAIN LINK GATE	EACH	1	\$1,500	\$1,500
44		SPECIAL	MODIFY EXISTING WELL	EST.	5000	\$1	\$5,000
45	7480	STD	ROADSIDE CLEANUP	EST.	2500	\$1	\$2,500
46	7490	STD	TRIMMING AND CLEANUP	L.S.	1	\$3,000	\$3,000
47	7500	GSP	FIELD OFFICE BUILDING	L.S.	1	\$6,000	\$6,000
48	7562	STD	MAILBOX SUPPORT TYPE 1	EACH	2	\$300	\$600
49	7562	STD	MAILBOX SUPPORT TYPE 2	EACH	3	\$500	\$1,500
50	7728	STD	MINOR CHANGE	EST.	-1	\$1	-\$1
ROADS SUBTOTAL							\$2,037,375
				CONST. ENG. ROADS 20%			\$407,475
		BNSF RAILROAD ITEMS					
		CONSTRUCT TWO NEW BRIDGES		LS	1	\$1,558,980	\$1,558,980
		SIGNAL WORK		LS	1	\$72,782	\$72,782
		REMOVE EXISTING CROSSING		LS	1	\$202,386	\$202,386
		SIGNAL REMOVAL		LS	1	\$15,182	\$15,182
				SUBTOTAL			\$4,294,180
				SALES TAX		8.3%	\$356,417
				R/W ACQUISITION			\$0
				PRE. ENGINEERING			\$450,000
COUNTY FORCES - BELOW THE LINE				MONUMENTS			\$5,000
				PROJECT TOTAL			\$5,105,597
BNSF PROJECT SHARE 5%							\$255,280

W

Exhibit "C"

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AN AGREEMENT BETWEEN THE CITY OF WEST RICHLAND AND BENTON COUNTY TO SEAL COAT ROADS

WHEREAS, Benton County will be will be seal coating County roads in the West Richland area as a part of the Bituminous Surface Treatment 2009 program, and

WHEREAS, the City of West Richland desiring to have certain streets within the City limits seal coated, has requested that Benton County undertake the seal coating of those certain streets as a part of Benton County's contract to seal coat, and

WHEREAS, an Interlocal Agreement defining the responsibilities of the County and the City has been prepared and has been Approved as to Form by the Prosecuting Attorney's Office and has been approved by the City of West Richland, and

WHEREAS, the Director of Public Works has recommended approval of said Interlocal Agreement, NOW, THEREFORE,

BE IT RESOLVED that the Interlocal Agreement by and between the City of West Richland and Benton County for the Bituminous Surface Treatment 2009 is hereby approved and the Chairman is authorized to sign said agreement.

Dated this _____ day _____ 2009.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

RBD:SWB

Return to: Benton County Engineer
P.O. Box 1001
Prosser, WA 99350

**INTERLOCAL COOPERATION AGREEMENT
BITUMINOUS SURFACE TREATMENT 2009**

THIS AGREEMENT is made and entered into this ___ day of _____, 2009, by and between the City of West Richland whose address is 3805 Van Giesen, West Richland, WA 99353 (hereinafter "the City") and Benton County, whose address is P.O. Box 1001, Prosser, Washington, 99350 (hereinafter "Benton County").

WHEREAS, in the interest of public safety and motor vehicle traffic safety, the City desires to have Benton County seal coat certain city streets as defined in **Exhibit "A"**, in conjunction with Benton County's 2009 Bituminous Surface Treatment Program; and

WHEREAS, the parties hereto agree that Benton County should act as the Contract Administrator pursuant to the Washington Interlocal Cooperation Act, RCW 39.34, and RCW 35.21.730 - .740 and in furtherance thereof, Benton County will execute the contract for the convenience and benefit of the City.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, the parties agree as follows:

1. **Contract Administration.** Benton County agrees to administer and oversee implementation of the bituminous surface treatment of certain city streets as defined in **Exhibit "A"**, attached hereto and by this reference incorporated herein. Benton County contract administration responsibilities will include the following:
 - A. The preparation of plans, specifications, estimates, and bid solicitation documents.
 - B. The selection of a contract in accordance with all federal, state, and local laws and bidding requirements.
 - C. The execution of the Bituminous Surface Treatment 2009 contract and administration oversight of contract implementation.

- D. The submission to the City of a certified statement setting forth all of Benton County's labor, engineering services, equipment, supplies and expenses involved in project design and contract administration.
 - E. Certify all payrolls to ensure that the amounts are appropriate for the local area and in compliance with all federal, state, and local laws.
 - F. Ensure that the contractor complies with all provisions of the seal coat contract and that all work is performed in accordance with Washington State Department of Transportation and Federal Highway Administration rules, regulations, and standards.
- 2. Responsibilities of the City of West Richland:** The City shall have the following duties and responsibilities under this Agreement:
- A. Approve all specifications, plans, estimates, bid documents, and contract provisions.
 - B. Pay directly to Benton County all amounts set forth in certified statements of Benton County's labor, engineering services, equipment, supplies, and expenses involved in project design and contract administration allocated to the specific project described herein within thirty (30) days of receipt of a certified statement of these documents.
 - C. City maintenance forces shall have all streets listed in **Exhibit "A"** crack sealed, patched, and power broomed prior to the bituminous surface treatment options. This work shall be completed by May 1, 2009.
 - D. City maintenance forces shall locate and cover all City monuments, manholes, water/sewer valves, and irrigation valves during the bituminous surface treatment operations for the roads listed in **Exhibit "A"**. "
 - E. City maintenance forces shall perform all layout striping.

3. Representation, Warranties, and Indemnities:

- A. The City represents and warrants to Benton County that it has authority to enter into this Interlocal Agreement pursuant to RCW 39.34.030(2). The City agrees to assume and accept Benton County's contract obligations arising out of the City's portion of the Bituminous Surface Treatment 2009 contract to be executed between Benton County and the contractor, notwithstanding the fact that Benton County will actually sign said contract for the convenience and benefit of the City. The City shall not at any time allow Benton County to become responsible for actual payment of any amounts due to the contractor under their portion of the Bituminous Surface Treatment 2009 contract regardless of whether any dispute may arise with said contractor.
- B. Benton County represents and warrants to the City that it has the authority to enter into this Interlocal Agreement pursuant to RCW 39.34.030(2). Benton County shall

not at any time allow the City to become responsible for actual payment of any amounts due to the contractor under their portion of the Bituminous Surface Treatment 2009 contract regardless of whether any dispute may arise with said contractor.

- C. Each party shall defend, protect, and hold harmless the other party from and against all claims, suits, and/or actions arising from negligent or intentional acts or omissions of that party's employees and agents while performing this Agreement. In case of joint negligence, any damages allowed shall be levied in proportion to the percentage of negligence attributed to each party. In addition, Benton County shall indemnify the City for any damages recovered from the performance bond of the contractor.
4. **Duration of Agreement.** The term of this Agreement shall commence upon the execution by both parties and shall expire on or before December 31, 2009.
 5. **Termination of Agreement.** This Agreement may be terminated by either party, by providing written notice to the designated contacts for each party identified in Section 12 of this Agreement. This written notice must be served on the other party within sixty days (60) of the date of termination.
 6. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provisions of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provisions herein, and such other provisions shall remain in full force and effect.
 7. **No Third-Party Rights.** Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the covenants and agreements herein not to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of nonperformance hereunder.
 8. **Assignability.** The rights, duties, and other obligations of either party to this Agreement may not be assigned to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld.
 9. **Entire Agreement.** This Agreement, including **Exhibit "A"** and any amendments thereto mutually agreed to by the parties, constitutes the entire Agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties. Either party may request changes to the Agreement. Proposed changes that are mutually agreed upon shall be incorporated by written amendment hereto.
 10. **Dispute Resolution.** It is the parties' intent to resolve any disputes relating to the interpretation or application of this Agreement informally through discussions at the staff

level. In the event disputes cannot be resolved informally at the staff level, then the parties agree to first submit the dispute to non-binding mediation/dispute resolution before resorting to litigation.

11. Litigation. In the event that any suit or action is instituted by either party to enforce compliance with or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party shall be entitled to collect, in addition to necessary court costs, such sums as the court may adjudge as reasonable attorney fees. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court for Benton County, Washington.

12. Notices. All notices and demands shall be in writing and sent to the parties hereto at their address as follows:

To Benton County:

Benton County Public Works
P.O. Box 1001
Prosser, WA 99350-0954

To City of West Richland:

City of West Richland
3805 Van Giesen
West Richland, WA 99353

13. Filing of Agreement. A copy of this Agreement shall be filed with the City Clerk of the City of West Richland and with the Benton County Auditor.

14. Evidence of Authority. Upon execution of this Agreement, the City shall provide Benton County and Benton County shall provide the City with a certified copy of the resolution, ordinance, or other authority given to execute this Agreement pursuant to RCW 39.34.030(2), and said document will be attached hereto and incorporated herein as **Exhibit "B"** (City) and **Exhibit "C"** (County).

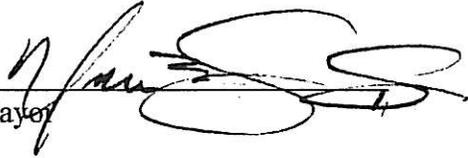
IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

CITY OF WEST RICHLAND,
WASHINGTON

BENTON COUNTY,
WASHINGTON

By: _____

Mayer



By: _____

Chairman, Board of County
Commissioners

Attest:

Attest:



City Clerk

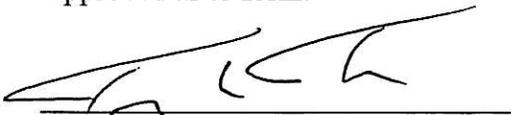
Date: 1-5-09

Clerk of the Board

Date: _____

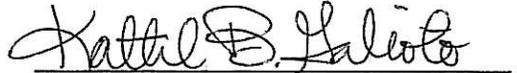
Approved as to form:

Approved as to form:



Attorney, City of West Richland

Date: 1-13-09



Benton County Prosecuting Attorney

Date: 01/15/09

Exhibit "A"

2009 CHIP SEAL LIST

Road	Limits	Length (in feet)	Width (in feet)	Square Yards	STRIPING	
					Edge Line (in feet)	Center Line (in feet)
Harrington Road	Twin Bridges to City Limits	4,180	26	12,076	8,360	4,180
Ruppert Road	Van Giesen to City Limits	14,600	27	43,800	29,200	14,600
Austin Drive	Bombing Range Road to Hampton Drive	2,690	21	6,277		
Everett Street	Bombing Range Road to Austin Drive	850	20	1,889		
S. 45th Ave.	Hampton To Everett	900	20	2,000		
S. 46th Ave.	Hampton to Bombing Range Road	370	19	781		
Hampton Dr.	Austin Dr. to S. 45th Ave.	330	21	770		
Hampton Dr.	S. 45th Ave. to S. 46th Ave.	350	19	739		
Arena Road	Kennedy Road to Dallas Road	1,550	26	4,478	3,100	1,550
Canal Drive	Van Giesen To City Limits	3,840	18	7,680		
N. 46th Ave.	Arlington to City Limits	1,360	22	3,324		
Kennedy Road	Dallas Road to City Limits	4,850	36	19,400	9,700	4,850
West Lattin Road	Keene Rd. to Watkins Way	1,575	21	3,675		
West Lattin Road	Watkins Way to Riverwood Subdivision	2,300	28	7,156		
Collins Road	Bombing Range Road to curb & gutter	4,790	28	14,902		4,790
Dallas Road	City Limits to Kennedy Road	670	32	2,382	1,340	670

**CITY OF WEST RICHLAND
RESOLUTION NO. 1- 09**

**A RESOLUTION OF THE CITY OF WEST RICHLAND, WASHINGTON,
AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF WEST
RICHLAND AND BENTON COUNTY TO SEAL COAT ROADS**

WHEREAS, Benton County will be will be seal coating County roads in the West Richland area as a part of the Bituminous Surface Treatment 2009 program; and

WHEREAS, the City of West Richland desiring to have certain streets within the City limits seal coated, has requested that Benton County undertake the seal coating of those certain streets as a part of Benton County's contract to seal coat; and

WHEREAS, an Interlocal Agreement defining the responsibilities of the County and the City has been prepared and has been Approved as to Form by the County's Prosecuting Attorney's Office and has been Approved as to Form by the City of West Richland's City Attorney; and

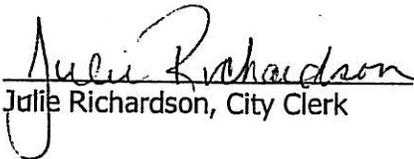
WHEREAS, the Director of Public Works has recommended approval of said Interlocal Agreement;

NOW, THEREFORE, the City Council of the City of West Richland, Washington, does hereby resolve that the Interlocal Agreement by and between the City of West Richland and Benton County for the Bituminous Surface Treatment 2009 is hereby approved and the Mayor is authorized to sign said agreement.

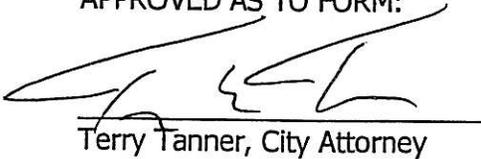
**PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND,
WASHINGTON,** this 5th day of January, 2009.


Dale E. Jackson, Mayor

ATTEST:


Julie Richardson, City Clerk

APPROVED AS TO FORM:


Terry Tanner, City Attorney



RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AN AGREEMENT BETWEEN THE CITY OF PROSSER AND BENTON COUNTY TO ALLOCATE SAFETEA-LU FUNDS

WHEREAS, the City of Prosser has \$42,500.00 in unspent STP funds from SAFETEA-LU programs from previous years and does not have any STP eligible projects to expend the money on, and

WHEREAS, Benton County having an STP eligible project, Webber Canyon Road, that the funds can be expended on, has offered to exchange dollars with the City of Prosser ,and

WHEREAS, the City of Prosser has signed an Interlocal Agreement with Benton County stating it is their desire to transfer the \$42,500.00 SAFETEA-LU funds to Benton County in exchange for funds that can be used for a non-STP eligible project, and

WHEREAS, the member agencies are authorized and empowered to enter into this agreement pursuant to RCW 39.34, and

WHEREAS, the attached Interlocal Agreement has been reviewed by Benton County Public Works and has Approved as to Form by the Benton County Prosecuting Attorney's Office and is recommended for approval, NOW, THEREFORE,

BE IT RESOLVED that the Interlocal Agreement by and between the City of Prosser and Benton County for the distribution of SAFETEA-LU rural funds is hereby approved, and the Chairman is authorized to sign said agreement.

Dated this 26th day January 2009.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

RBD:SWB

Return to: Benton County Engineer
P.O. Box 1001
Prosser, WA 99350

Interlocal Agreement for the Benton County Rural SAFETEA-LU Program

THIS AGREEMENT is made and entered into by and between the member agencies of the State of Washington, as defined below, to establish the Benton County Rural SAFETEA-LU Program, pursuant to the Interlocal Cooperation Act of 1967, Chapter 39.34 R.C.W. and the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, as amended.

Definitions

For the purpose of this interlocal agreement and all other agreements, contracts and documents executed, adopted or approved pursuant to this agreement, the following terms shall have meaning prescribed to them with this section unless the context of their use dictates otherwise:

- (1) Member agency shall mean any local government which is signatory or becomes signatory to this Interlocal Agreement and is a County and City within the region;
- (2) State shall mean the State of Washington;
- (3) Region shall mean the rural area of Benton County as designated by the Federal Highway Administration (FHWA);
- (4) STP funds shall mean the federal funds allocated by the State to the Regional Transportation Planning Organization (RTPO) for the Rural Benton County SAFETEA-LU Surface Transportation Program (STP);

- (5) RTPO shall mean the Benton-Franklin Council of Governments (BFCOG);
- (6) City shall mean the City of Prosser.

Recital

WHEREAS, the member agencies recognize the need and desirability to participate in cooperative decision making by elected officials of said agencies in order to comply with the requirements of the SAFETEA-LU of 2005, as amended, concerning the utilization of federally provided transportation revenues; and

WHEREAS, the City has \$42,500.00 in unspent STP funds from the SAFETEA-LU programs from previous years; and

WHEREAS, because the City does not have any STP eligible projects, Benton County has offered to trade dollars and use the City's unspent funds on the Webber Canyon Road project; and

WHEREAS, it is the belief of the member agencies that STP Transportation Revenue Policy receives direction from all local governments; and

WHEREAS, the member agencies are authorized and empowered to enter into this agreement pursuant to Chapter 39.34 R.C.W.;

THEREFORE, in consideration of mutual promises and covenants contained herein it is hereby agreed:

1. STP Region Administration: BFCOG shall allocate and disburse the unspent STP funds, amounting to \$42,500.00, to Benton County.
4. Benton County Funds: The City will receive from Benton County, \$42,500.00, which shall not be subject to federal expenditure rules or regulations but must be used for street, highway, or road purposes only.
5. Interlocal Cooperation Act Provisions: All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by the City shall remain the sole property of the City. All vehicles, equipment, inventory purchased by the County shall remain the sole property of the County. All personnel utilized by the City in the fulfillment of this Agreement shall be solely within the supervision, direction, and control of the City and shall not be construed as "loan servants" or employees of the County. All funding incident to the fulfillment of this Interlocal Agreement shall be the sole responsibility of the County. All funding incident to the City's vehicles, equipment, inventory and maintenance operation

expenses as provided in this Agreement, shall be the sole responsibility of the City. No special budget or funds are anticipated, nor shall be created. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement, anticipated. The Chairman of the Board of County Commissioners for Benton County shall be designated as the Administrator of this Interlocal Agreement.

6. Term of this Agreement: This agreement shall include the remaining term of SAFETEA-LU period to September 30, 2009. No member city shall have the right to withdraw from this agreement. Benton County, upon 180 day written notification to all members, may withdraw from this agreement if Benton County is unable to fund the redistribution amount because of a loss of revenue for county road purposes equal to or exceeding the funding obligation.
7. Effective Date: This agreement shall have full force and effect from and after the date Benton County and the City of Prosser become signatories.
8. Listing of Member Agencies: Benton County and the City of Prosser lying wholly within Benton County rural area are member agencies.

Y

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: SURFACE TRANSPORTATION PROGRAM FUNDS FOR THE CONSTRUCTION OF WEBBER CANYON ROAD - DENNIS ROAD TO KIONA CE 1620 CRP

WHEREAS, Local Agency Agreement (LAG) No. LA 4196 was approved and executed by the Board on August 18, 1999 to have Webber Canyon Road reconstructed from Dennis Road to Kiona; and

WHEREAS, Benton County is to receive additional Surface Transportation Program (STP) funding in the amount of \$942,117; and

WHEREAS, Local Agency Agreement Supplement Three to the LAG has been prepared for this project to obligate the additional funding for construction ; NOW THEREFORE,

BE IT RESOLVED that Supplement Three to LAG LA 4196 be and hereby is approved and the Chairman is hereby authorized to execute said Supplement on behalf of Benton County.

Dated this 26th day of January, 2009.

Chairman.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners
of Benton County, Washington.

RBD:BLT:hlm



Agency BENTON COUNTY		Supplement Number THREE
Federal Aid Project Number STPR-A031(001)	Agreement Number LA 4196	CFDA No. 20.205 (Catalog of Federal Domestic Assistance)

The Local Agency desires to supplement the agreement entered into and executed on August 18, 1999

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

Project Description

Name Webber Canyon Road CE 1620 CRP Length 3.35 miles

Termini Dennis Road to Kiona City Limits

Description of Work No Change

Reason for Supplement

Supplement will enable Benton County to obligate additional federal dollars to construction.

Does this change require additional Right of Way or Easements? Yes No

Type of Work	Estimate of Funding				
	(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
86.5 % Federal Aid Participation Ratio for PE	a. Agency	294,240.00	294,240.00	39,722.00	254,518.00
	b. Other				
	c. Other				
	d. State	3,000.00	3,000.00	405.00	2,595.00
	e. Total PE Cost Estimate (a+b+c+d)	297,240.00	297,240.00	40,127.00	257,113.00
Right of Way Federal Aid Participation Ratio for RW	f. Agency				
	g. Other				
	h. Other				
	i. State				
	j. Total R/W Cost Estimate (f+g+h+i)				
Construction Federal Aid Participation Ratio for CN	k. Contract	1,217,533.00	942,117.00	2,159,650.00	291,553.00
	l. Other Non Participating	4,125,361.00	-942,117.00	3,183,244.00	3,183,244.00
	m. Other				
	n. Other				
	o. Agency	100,000.00		100,000.00	100,000.00
	p. State	5,000.00		5,000.00	675.00
	q. Total CN Cost Estimate (k+l+m+n+o+p)	5,447,894.00		5,447,894.00	3,575,472.00
	r. Total Project Cost Estimate (e+j+q)	5,745,134.00		5,745,134.00	3,615,599.00

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

Agency Official

Washington State Department of Transportation

By _____

Title CHAIRMAN, BENTON COUNTY COMMISSIONERS

Director of Highways and Local Programs

Date Executed _____

Z

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: SURFACE TRANSPORTATION PROJECT FUNDS FOR THE PRELIMINARY ENGINEERING AND CONSTRUCTION OF BENTON COUNTY HORSE HEAVEN VISTA CE 1849 CRP

WHEREAS, it is the intention of Board of County Commissioners to have Benton County Horse Heaven Vista reconstructed; and

WHEREAS, Benton County has received additional Surface Transportation Program funds in the amount of \$368,000, with Benton County matching funds in the amount of \$100,000; and

WHEREAS, a revised Page 1 of the Project Prospectus has been prepared for this project; NOW THEREFORE,

BE IT RESOLVED that the Chairman is hereby authorized to execute said Page 1 of the Project Prospectus.

Dated this 26th day of January, 2009.

Chairman.

Chairman Pro-Tem.

Member
Constituting the Board of County Commissioners
of Benton County, Washington.

Attest: _____
Clerk of the Board

RBD:LSS:lss

Federal Aid Project Number	Prefix STPE	Route 2003	() 067	Date	01/26/2009
Local Agency Project Number	CE 1849 CRP		(WSDOT Use Only)	Federal Employer Tax ID Number	91-6001296

Agency BENTON COUNTY		Federal Program Title <input checked="" type="checkbox"/> 20.205 <input type="checkbox"/> Other			
Project Title BENTON COUNTY HORSE HEAVEN VISTA IMPROVEMENTS		Start Latitude N 46°12'00"		Start Longitude W 119°42'30"	
Project Termini From NA		To NA			
From: NA	To: NA	Length of Project NA	Award Type <input checked="" type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad		
Federal Agency <input checked="" type="checkbox"/> FHWA <input type="checkbox"/> Others		City Number NA	County Number 03	County Name BENTON	WSDOT Region South Central Region
Congressional District 4TH	Legislative Districts 8TH		Urban Area Number NA	TMA / MPO / RTPO BFCG	

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date	
				Month	Year
P.E.	\$51,000	\$50,000	\$1,000	08	2004
R/W					
Const.	\$417,000	\$50,000	\$367,000	03	2009
Total	\$468,000	\$100,000	\$368,000		

Description of Existing Facility (Existing Design and Present Condition)	
Roadway Width NA	Number of Lanes NA
<p>There is an existing simple shelter and interpretive sign, circa 1960's. The area entering into the park has a paved approach that tapers into a large, sparsely graveled parking area. There are several logs dividing the lot. There is no direction information for parking and the gravel is unmaintained with many large potholes and exposed rocks.</p>	

Description of Proposed Work
<p>Description of Proposed Work (Attach additional sheet(s) if necessary)</p> <p>This project will consist of regrading the entire gravel parking area and creating natural drainage. A new paved asphalt parking area and through loop driveway will eliminate the existing gravel parking area. Paving, curbs, installing signs, and paint will delineate parking areas and the through driveway. Natural vegetation will remain. New landscaping techniques will allow sever xeriscape (hardy, drought tolerant) varieties of trees to be planted. Interpretive signs will inform the visitors of local geology, plants, and animals. A map of the Prosser Valley will indicate visitor information. The existing shelter will be renovated. A vaulted rest room and some solar lights may be included.</p>

Local Agency Contact Person Adam J. Fyall	Title Community Development Coordinator	Phone 509-736-5053
Mailing Address 7122 W Okaogan Place	City Kennewick	State WA
		Zip Code 99336

By _____	Approving Authority _____
Project Prospectus Approval	Title Benton County Engineer
	Date 01/22/2009

aa

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: SURFACE TRANSPORTATION PROJECT FUNDS FOR THE PRELIMINARY ENGINEERING AND CONSTRUCTION OF BENTON COUNTY HORSE HEAVEN VISTA CE 1849 CRP

WHEREAS, it is the intention of Board of County Commissioners to have Benton County Horse Heaven Vista reconstructed; and

WHEREAS, Benton County has received additional Surface Transportation Program funds in the amount of \$368,000, with Benton County matching funds in the amount of \$100,000; and

WHEREAS, Supplement 1 of the Local Agency Agreement Supplement has been prepared for this project; NOW THEREFORE,

BE IT RESOLVED that the Chairman is hereby authorized to execute said Supplement 1 of the Local Agency Agreement Supplement.

Dated this 26th day of January, 2009.

Chairman.

Chairman Pro-Tem.

Member
Constituting the Board of County Commissioners
of Benton County, Washington.

Attest: _____
Clerk of the Board

RBD:LSS:lss



Agency BENTON COUNTY		Supplement Number 1
Federal Aid Project Number STPR-2003(067)	Agreement Number LA 6167	CFDA No. 20.205 <small>(Catalog of Federal Domestic Assistance)</small>

The Local Agency desires to supplement the agreement entered into and executed on August 18, 1999

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

Project Description

Name BENTON COUNTY HORSE HEAVEN VISTA CE 1849 CRP Length N/A

Termini N/A

Description of Work No Change

Reason for Supplement

Supplement will enable Benton County to obligate additional federal dollars to construction.

Does this change require additional Right of Way or Easements? Yes No

Type of Work		Estimate of Funding				
		(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE <u>100</u> % Federal Aid Participation Ratio for PE	a. Agency	0.00		0.00	0.00	0.00
	b. Other Non Participating	20,000.00	30,000.00	50,000.00	20,000.00	0.00
	c. Other					
	d. State	1,000.00		1,000.00	0.00	1,000.00
	e. Total PE Cost Estimate (a+b+c+d)	21,000.00	30,000.00	51,000.00	20,000.00	1,000.00
Right of Way <u> </u> % Federal Aid Participation Ratio for RW	f. Agency					
	g. Other					
	h. Other					
	i. State					
	j. Total RW Cost Estimate (f+g+h+i)					
Construction <u>100</u> % Federal Aid Participation Ratio for CN	k. Contract	0.00	362,000.00	362,000.00	0.00	362,000.00
	l. Other Non Participating		50,000.00	50,000.00		
	m. Other					
	n. Other					
	o. Agency					
	p. State	0.00	5,000.00	5,000.00	0.00	5,000.00
	q. Total CN Cost Estimate (k+l+m+n+o+p)		417,000.00	417,000.00		367,000.00
	r. Total Project Cost Estimate (e+l+q)	21,000.00	447,000.00	468,000.00	20,000.00	368,000.00

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

Agency Official

Washington State Department of Transportation

By _____

By _____

Title CHAIRMAN, BENTON COUNTY COMMISSIONERS

Director of Highways and Local Programs

Date Executed _____

bb

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: SURFACE TRANSPORTATION PROJECT FUNDS FOR THE PRELIMINARY ENGINEERING AND CONSTRUCTION OF BENTON COUNTY HORSE HEAVEN VISTA CE 1849 CRP

WHEREAS, it is the intention of Board of County Commissioners to have Benton County Horse Heaven Vista reconstructed; and

WHEREAS, Benton County was required to complete a Local Agency Environmental Classification Summary; and

WHEREAS, a Local Agency Environmental Classification Summary has been prepared for this project; NOW THEREFORE,

BE IT RESOLVED that the Chairman is hereby authorized to execute said Local Agency Environmental Classification Summary.

Dated this 26th day of January, 2009.

Chairman.

Chairman Pro-Tem.

Attest: _____
Clerk of the Board

Member
Constituting the Board of County Commissioners
of Benton County, Washington.

RBD:LSS:lss

Part 1 Project Description

Federal Aid Project Number STPE-2003-(067)	Route	Date	Intent of Submittal <input type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Final <input type="checkbox"/> Re-Evaluate
Agency BENTON COUNTY		Federal Program Title <input checked="" type="checkbox"/> 20.205 <input type="checkbox"/> Other	
Project Title BENTON COUNTY HORSE HEAVEN VISTA IMPROVEMENTS			
Beginning MP <u>NA</u>	Townships <u>05</u>		
Ending MP <u>NA</u>	Ranges <u>08 N</u>		
Miles <u>NA</u>	Sections <u>25 E</u>		
County BENTON			

Project Description - Describe the proposed project, including the purpose and need for the project.
 Existing park has an existing simple shelter, interpretive sign, large sparsely graveled parking area with no directional information and unmaintained with many large potholes. This project will consist of re-grading the entire gravel parking lot of the existing park, paving asphalt parking, installing sidewalks and curbs, new sign installation, improved landscaping, existing shelter renovated, restrooms, and possibly lighting.

Part 2 Environmental Classification

NEPA	SEPA
<input type="checkbox"/> Class I - Environmental Impact Statement (EIS) <input checked="" type="checkbox"/> Class II - Categorically Excluded (CE) CE Type (from 23 CFR 771.117) _____ <input checked="" type="checkbox"/> Projects Requiring Documentation (Documented CE) (LAG 24.22) <input type="checkbox"/> Programmatic CE MOU <input type="checkbox"/> Class III - Environmental Assessment (EA)	<input type="checkbox"/> Categorically exempt per WAC 197-11-800 <input checked="" type="checkbox"/> Determination of Non-Significance (DNS) <input type="checkbox"/> Environmental Impact Statement (EIS) <input type="checkbox"/> Adoption <input type="checkbox"/> Addendum <input type="checkbox"/> Supplemental (For informational purpose only)

NEPA Approval Signatures

Local Agency Approving Authority	Date
Regional Local Programs Engineer	Date
Highways and Local Programs Environmental Engineer	Date
Federal Highway Administration	Date

Completed By (Print Official's Name) Ross B. Dunfee	Telephone (include area code) 1-509-786-5611	Fax (include area code) 1-509-786-5627
		E-mail ross.dunfee@co.benton.wa.us

Part 3 Permits and Approvals Required

Yes	No	Permit or Approval	Yes	No	Permit or Approval
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Corps of Engineers <input type="checkbox"/> Sec. 10 <input type="checkbox"/> Sec. 404 <input type="checkbox"/> Nationwide Type _____ <input type="checkbox"/> Individual Permit No. _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Water Rights Permit
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Coast Guard Permit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Water Quality Certification - Sec. 401 Issued by _____
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Coastal Zone Management Certification	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Tribal Permit(s), (If any) _____ _____
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Critical Area Ordinance (CAO) Permit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other Permits (List): _____ _____
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Forest Practice Act Permit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROW Acquisition Required
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Hydraulic Project Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is relocation required?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Local Building or Site Development Permits	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is a detour required?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Local Clearing and Grading Permit			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	National Pollutant Discharge Elimination System (NPDES) Baseline General for Construction			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Shoreline Permit			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	State Waste Discharge Permit			
<input type="checkbox"/>	<input checked="" type="checkbox"/>	TESC Plans Completed			

Part 4 Environmental Considerations

Will the project involve work in or affect any of the following? Identify proposed mitigation. Attach additional pages or supplemental information if necessary.

1. Air Quality - Identify any anticipated air quality issues.

Is the project included in the Metropolitan Transportation Plan? Yes No

If Yes, date Metropolitan Transportation Plan was adopted. _____

Is the project located in an Air Quality Non-Attainment Area or Maintenance Area (for carbon monoxide, ozone, or PM10)? Yes No

Is the project exempt from Air Quality conformity requirements? Yes No

If yes, identify _____

2. Critical/Sensitive Areas - Identify any known Critical or Sensitive Areas/as designated by local Growth Management Act ordinances.

a. Is this project within an Aquifer Recharge Area, Wellhead Protection Area, or Sole Source Aquifer? Yes No

If located within a sole source aquifer, is the project exempt from EPA approval? Yes No

If yes, please list exemption _____

If no, date of EPA approval _____

b. Is this project located in a Geologically Hazardous Area? Yes No

If so, please describe _____

c. Will this project impact Species/Habitat other than ESA listed species? Yes No

Explain your answer.

State species of Concern from Washington Department of Fish and Wildlife

Is the project within Bald Eagle nesting territories, winter concentration areas or bald eagle communal roosts?

Yes No

Will blasting, pile driving, concrete saw cutting, rock drilling, or rock scaling activities occur within one-mile of a bald eagle nesting area? Yes No

d. Are wetlands present within the project area? Yes No If Yes, estimated area of impact in acre(s): _____
(Please attach a copy of the proposed mitigation plan)

Part 4 Environmental Considerations - Continued

3. Cultural Resources/Historic Structures - Identify any historic, archaeological, or cultural resources present with the project's area of potential effects.

Does the project fit into any of the exempt types of projects listed in LAG Sect. 24.8? Yes No
If Yes, note exemption below.

If No: Date of DAHP concurrence 1/12/09
Date of Tribal consultation(s) (if applicable) _____
Adverse affects on cultural/historic resources? Yes No
If Yes, date of approved Section 106 MOA _____

4. Flood Plains or Ways

Is the project located in a 100-year flood plain? Yes No
If yes, is the project located in a 100-year floodway? Yes No
Will the project impact a 100-year flood plain? Yes No (If Yes, describe impacts.)

5. Hazardous and Problem Waste - Identify potential sources and type.

Does this project require excavation below the existing ground surface? Yes No

Is this site located in an undeveloped area (i.e., no buildings, parking or storage areas, and agriculture (other than grazing), based on historical research? Yes No

Is this project located within a one-mile radius of a site of a Confirmed or Suspected Contaminated Sites List (CSCSL) maintained by Department of Ecology? Yes No

Is this project located within a 1/2-mile radius of a site or sites listed on any of the following Department of Ecology Databases?

- Voluntary Cleanup Program (VCP)
- Underground Storage Tank (UST)
- Leaking Underground Storage Tank (LUST)

Has site reconnaissance (windshield survey) been performed? Yes No

If so identify any properties not identified in the database search that may affect the project (name, address and property use).

None known

Based on the information above and project specific activities, is there a potential for the project to generate contaminated soils and/or groundwater? Yes No

If yes, explain:

If you answered yes to any of the questions in Section 5. Hazardous/Waste, contact your Region LPE for assistance before continuing with this form.

Part 4 Environmental Considerations - Continued

9. Rivers, Streams (Continuous, Intermittent), or Tidal Waters

a. Identify all waterbodies within 300 feet of the project limits or that will otherwise be impacted.

Fisheries WA Stream No. _____ Ecology 303d Report No. _____
(if known) Reason for 303d listing _____
Date of Report _____

Waterbody common name _____

b. Identify stream crossing structures by type.

c. Water Resource Inventory Area (WRIA) No. & Name _____

10. Tribal Lands - Identify whether the project will impact any Tribal lands. (This includes reservation, trust and fee lands.)

None

11. Visual Quality

Will the project impact roadside classification or visual aspects? Yes No (If Yes, identify the impacts.)
(Such as aesthetics, light, glare and night sky impacts.)

Excavation will expose park to existing state highway and invite use, as it is now virtually unknown and isolated. It will also increase safety as the earth berm to be removed, will eliminate seclusion. Possible lighting will help deter vandalism.

12. Water Quality/Storm Water

Has NPDES municipal general permit been issued for this WRIA? Yes No

Amount of existing impervious surface within project limits: 150 square feet

Net new impervious surface to be created as a result of project: 43560 square feet

Will this project's proposed stormwater treatment facility be consistent with the guidelines provided by either WSDOT's HRM, DOE's western or eastern Washington stormwater manuals, or a local agency equivalent manual? Yes No

If no, explain proposed water quality/quantity treatment for new and any existing impervious surface associated with proposed project.

Part 4 Environmental Considerations - Continued

13. Commitments

a. **Environmental** Describe existing environmental commitments that may affect or be impacted by the project:
(For example, previous mitigation that may have been constructed within the project limits.)

b. Long-Term Maintenance Commitments

Are long-term maintenance commitments necessary for this project above and beyond normal on-going maintenance? Yes No If so, please identify.

Long term maintenance will need to be implemented on the paved parking lot, the vaulted restrooms, the shelter, the interpretive signs, and the traffic signs and pavement markings.

14. Environmental Justice

Does the project meet any of the exemptions, as noted in LAG Section 24.10.101? Yes No (If Yes, Please note exemption and appropriate justification in the space below.)

If no, are minority and/or low income populations located within the limits of the project's potential impacts?

Yes No (If no, attach appropriate data to support finding.)

If yes, describe impacts and attach appropriate supporting documentation.

Part 5 Biological Assessment and EFH Evaluations

1. Are there any listed or proposed species and/or designated or proposed critical habitat located within the proposed project's action area? Yes No (Please attach species listings.)

Affected ESA Listed Species	2. Will any construction work occur within 0.5 miles of any of the following:	3. Does the project involve blasting, pile driving, concrete sawing, rock drilling, or rock scaling activities within 1 mile of any of the following?
Spotted owl management circles or designated critical habitat?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Marbled murrelet nest or occupied stand, or designated critical habitat?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Western snowy plover designated critical habitat?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Listed Marine Mammal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Canada lynx habitat?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Gray wolf habitat?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Grizzly bear habitat?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Brown pelican night roosts?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Woodland caribou habitat?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
A mature coniferous or mixed forest stand?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Part 5 Biological Assessment and EFH Evaluations - Continued

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| 4. Will the project involve any in-water work? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 5. Will any construction work occur within 300 feet of any permanent or intermittent waterbody, which either supports or drains into a listed fish supporting waterbody? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 6. Will any construction work occur within 300 feet of any wetland, pond, or lake that is connected to any permanent or intermittent waterbody? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 7. Does the action have the potential to directly or indirectly impact designated critical habitat for salmonids (including adjacent riparian zones)? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 8. Will the project affect the water regime of, or utilize any water from a waterbody, which supports or drains into a listed fish supporting waterbody; or any wetland, pond, or lake? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 9. Will construction work occur outside the existing pavement? If Yes, go to 9a. | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 9a. Will construction activities occurring outside the existing pavement involve clearing, grading, filling, or modifications of vegetation or tree cutting? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 10. Are there any Federal threatened, endangered, proposed or candidate plant species located within the project limits?
(If so, please attach a list of plant species within the action area) | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

Determination

If each of the questions in the preceding section resulted in a "no" response or if any of the questions were checked "yes", but adequate justification can be provided to support a "no effect" determination, then check "No effect" below. If this checklist cannot be used for ESA Section 7 compliance (i.e., adequate justification cannot be provided or a "may affect" determination is anticipated), a separate biological assessment document is required.

	NOAA Fisheries	USFWS
<input checked="" type="checkbox"/> No Effect	_____	_____
<input type="checkbox"/> NLTAA Date of Concurrence	_____	_____
<input type="checkbox"/> LTAA Date BO Issued	_____	_____
Date of First 6 Mo. Update	_____	_____
Essential Fish Habitat Determination:		
<input checked="" type="checkbox"/> No Adverse Effect		
<input type="checkbox"/> Adverse Effect. Date of NOAA Concurrence _____		

Analysis for No Effects Determination (Required if any item in Section 5 was checked Yes). (Please attach additional sheets if needed.)

The existing parking lot is already graded, but consist of only gravel. The existing gravel parking lot will be re-graded and paved.

Part 6 FHWA Comments

Use Supplement Sheet if additional space is required to complete this section.

CC

Return to: Benton County Commissioners
P.O. Box 190
Prosser, WA 99350-0954

RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON:**

IN THE MATTER OF COUNTY ROADS, RE: IN THE MATTER OF COUNTY ROADS, RE:
COUNTY ROAD IMPROVEMENT DISTRICT (C.R.I.D.) #16, SPIRIT LANE, PROPERTY
CONSOLIDATION

WHEREAS, the final assessment roll for C.R.I.D. #16, Spirit Lane was approved by Resolution
Number 05-461 on July 25, 2005, and

WHEREAS, a portion of Lot 2, Short Plat 2092, identified by Assessors Parcel Number 1-1688-
301-2092-002, had an original assessment of \$7,697.82 and now has an outstanding balance of
\$6,928.04; and the remaining portion of Lot 2, Short Plat 2092 identified by Assessors Parcel
Number 1-2188-201-2092-002, had an original assessment of \$6,695.56 and now has an
outstanding balance of \$6,026.00, and

WHEREAS, Lot 2 said Short Plat 2092 has been consolidated into one parcel number, 1-1688-
301-2092-006, NOW, THEREFORE

BE IT RESOLVED, that the final assessment roll be amended and consolidation of Parcel
Numbers 1-1688-301-2092-002 and 1-2188-301-2092-002 into one parcel number with its own
assessment be approved.

BE IT FURTHER RESOLVED that the parcel and assessment is defined as follows:

Parcel Number 1-1688-301-2092-006: Lot 2, Short Plat #2092, lying within Sections 16 and 21, Township 8, North Range 28 East, W.M. Except road right of way.

The C.R.I.D. #16 assessment of said parcel shall be \$12,954.04.

Dated this 26th day of January 2009.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

RBD:SWB

RESOLUTION

dd

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON.

IN THE MATTER OF COUNTY ROADS RE: WEBBER CANYON ROAD - CE 1861 CRP

WHEREAS, by resolution dated September 2, 2008, the County Engineer was authorized to schedule a bid call for Webber Canyon Road - CE 1861 CRP; and

WHEREAS, bids were received on January 13, 2009, as shown on the attached bid tabulation; and

WHEREAS, the lowest bid was received from Tapani Underground, Inc., Battle Ground, Washington; and

WHEREAS, the County Engineer hereby recommends that the contract be awarded to Tapani Underground, Inc.; NOW, THEREFORE,

BE IT RESOLVED that the contract for Webber Canyon Road - CE 1861 CRP be awarded to Tapani Underground, Inc., Battle Ground, Washington, in the amount of \$989,035.25.

Dated this 26th day of January, 2009.

Chairman.

Chairman Pro-Tem.

Member.

Constituting the Board of County
Commissioners of Benton County, Washington.

Attest: _____
Clerk of the Board

RBD:LJM:dlh

PROJECT: CE 1861 CRP - WEBBER CANYON ROAD

LOCATION: FORTSON COUNTY
 LET BY:) OF COUNTY COMMISSIONERS
 DATE: July 13, 2009, 10:30 a.m., Local Time

KERR CONTRACTORS, INC.
 P O Box 1080
 Woodburn, OR 97071

JOHANSEN EXCAVATING, INC.
 P O Box 674
 Buckley, WJ

GROAT BROTHERS, INC.
 P O Box 1630
 Woodland, WA 98674

J & K EARTHWORKS, LLC
 3703 North Clemens
 East Wenatchee, WA 98802

ENGINEERS ESTIMAT

ITEM NO.	ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	BID AMOUNT	UNIT PRICE	BID AMOUNT	UNIT PRICE	BID AMOUNT	UNIT PRICE	BID AMOUNT
1	MOBILIZATION	L.S.	L.S.		133,000.00	Lump Sum	70,000.00			Lump Sum	65,000.00
2	CLEARING AND GRUBBING REMOVAL OF STRUCTURES AND OBSTRUCTIONS	L.S.	L.S.		13,000.00	Lump Sum	24,000.00			Lump Sum	5,000.00
3	ROADWAY EXCAVATION INCLUDING HAUL	L.S.	L.S.		750.00	Lump Sum	22,500.00			Lump Sum	15,000.00
4	EMBANKMENT COMPACTION	15,746	C.Y.	8.00	125,968.00		12.00	188,952.00			76,730.00
5	PAVEMENT PULVERIZATION	14,862	C.Y.	5.00	74,310.00		2.40	35,668.80			44,586.00
6	QUARRY SPALLS	28,744	S.Y.	0.75	21,558.00		0.40	11,497.60			35,930.00
7	PLAIN STEEL CULV. PIPE 0.064 IN THICK 18 INCH DIAMETER	22	C.Y.	57.00	1,254.00		35.00	770.00			660.00
8	PLAIN STEEL CULV. PIPE 0.064 IN THICK 24 INCH DIAMETER	192	L.F.	48.00	8,832.00		23.00	4,416.00			5,376.00
9	PLAIN STEEL CULV. PIPE ARCH 0.064 IN THICK 35 INCH SPAN	66	L.F.	48.00	3,168.00		45.75	3,019.50			2,508.00
10	PLAIN STEEL CULV. PIPE ARCH 0.064 IN THICK 42 INCH SPAN	15	L.F.	73.00	1,095.00		94.00	1,410.00			675.00
11	PLAIN STEEL CULV. PIPE ARCH 0.138 IN THICK 71 INCH SPAN	66	L.F.	72.00	4,752.00		92.00	6,072.00			4,620.00
12	COMMERCIAL CONCRETE FOR HEADWALL	130	L.F.	169.00	21,970.00		184.00	23,920.00			24,700.00
13	CRUSHED SURFACING BASE COURSE	8	C.Y.	832.00	6,656.00		500.00	4,000.00			8,000.00
14	CRUSHED SURFACING TOP COURSE	6,450	TON	12.25	79,012.50		15.00	96,750.00			41,925.00
15	HMA CL. 1/2 INCH PG 70-28	6,560	TON	18.50	121,360.00		15.45	101,352.00			42,840.00
16	ESC LEAD	7,630	TON	76.90	586,747.00		79.95	610,018.50			610,400.00
17	SEEDING, FERTILIZING, AND MULCHING	10	DAY	50.00	500.00		185.00	1,850.00			750.00
18	BEAM GUARDRAIL TYPE 1	2	ACRE	1,780.00	3,560.00		1,850.00	3,700.00			3,000.00
19	BEAM GUARDRAIL FLARED TERMINAL	5,975	L.F.	18.20	108,745.00		18.50	110,537.50			134,437.50
20	PAINT LINE	4	EACH	1,995.00	7,980.00		2,050.00	8,200.00			8,000.00
21	PERMANENT SIGNING	32,035	L.F.	0.17	5,445.95		0.18	5,766.30			5,445.95
22	PROJECT TEMPORARY TRAFFIC CONTROL	L.S.	L.S.		3,750.00	Lump Sum	Lump Sum	4,700.00			2,500.00
23	CONSTRUCTION SIGNS CLASS A	L.S.	L.S.		1.00	Lump Sum	Lump Sum	10,000.00			2,500.00
24	TRIMMING AND CLEANUP	L.S.	L.S.		1.00	Lump Sum	Lump Sum	5,800.00			1,500.00
25	MINOR CHANGE	1	Calc.	1.00	1.00	CALC.	1.00	1.00			5,000.00
26	SPCC PLAN	L.S.	L.S.		500.00	Lump Sum	Lump Sum	1,500.00			500.00
27	TOTAL BID				1,336,166.45		1,360,901.20				1,151,883.45

ITEM	DESCRIPTION	QTY	UNIT	BID PRICE	BID AMOUNT	BID PRICE	BID AMOUNT	BID PRICE	BID AMOUNT	BID PRICE	BID AMOUNT	BID PRICE	BID AMOUNT	BID PRICE	BID AMOUNT	BID PRICE	BID AMOUNT				
1	MOBILIZATION	L.S.	L.S.	Lump Sum	6,000.00	24,321.00	Lump Sum	55,000.00	82,000.00	Lump Sum	10,000.00	10,000.00	Lump Sum	10,000.00	110,000.00	Lump Sum	110,000.00				
2	CLEARING AND GRUBBING REMOVAL OF STRUCTURES AND OBSTRUCTIONS	L.S.	L.S.	Lump Sum	4,000.00	10,000.00	Lump Sum	5,000.00	10,000.00	Lump Sum	7,500.00	7,500.00	Lump Sum	7,500.00	5,000.00	Lump Sum	5,000.00				
3	ROADWAY EXCAVATION INCLUDING HAUL	L.S.	L.S.	Lump Sum	2,000.00	5,000.00	Lump Sum	1,500.00	20,000.00	Lump Sum	4,000.00	4,000.00	Lump Sum	4,000.00	5,000.00	Lump Sum	5,000.00				
4	EMBANKMENT COMPACTION	15,746	C.Y.	6.00	94,476.00	59,047.50	6.50	102,349.00	3.75	59,047.50	3.75	59,047.50	10.00	157,460.00	7.00	110,222.00	10.00	157,460.00			
5	PAVEMENT PULVERIZATION	14,862	C.Y.	3.00	44,586.00	29,575.38	1.99	29,575.38	3.00	44,586.00	3.00	44,586.00	3.50	52,017.00	1.25	18,577.50	3.50	52,017.00			
6	QUARRY SPALLS	28,744	S.Y.	0.50	14,372.00	9,772.98	0.34	9,772.98	0.70	20,120.80	0.27	7,760.88	0.27	7,760.88	0.60	17,246.40	0.27	7,760.88			
7	PLAIN STEEL CULV. PIPE 0.064 IN THICK 18 INCH DIAMETER	22	C.Y.	65.00	1,430.00	484.00	22.00	484.00	25.00	550.00	22.00	484.00	75.00	1,650.00	110.00	2,420.00	75.00	1,650.00			
8	PLAIN STEEL CULV. PIPE 0.064 IN THICK 24 INCH DIAMETER	192	L.F.	30.00	5,760.00	6,720.00	35.00	6,720.00	24.00	4,608.00	25.00	4,800.00	55.00	10,560.00	55.00	10,530.00	55.00	10,560.00			
9	PLAIN STEEL CULV. PIPE ARCH 0.064 IN THICK 35 INCH SPAN	66	L.F.	50.00	3,300.00	3,300.00	50.00	3,300.00	29.00	1,914.00	29.00	1,914.00	60.00	3,960.00	60.00	3,930.00	60.00	3,960.00			
10	PLAIN STEEL CULV. PIPE ARCH 0.064 IN THICK 42 INCH SPAN	15	L.F.	110.00	1,650.00	1,725.00	115.00	1,725.00	45.00	675.00	54.00	810.00	80.00	1,200.00	165.00	2,475.00	80.00	1,200.00			
11	PLAIN STEEL CULV. PIPE ARCH 0.138 IN THICK 71 INCH SPAN	66	L.F.	65.00	4,290.00	7,260.00	110.00	7,260.00	50.00	3,300.00	58.00	3,828.00	95.00	6,270.00	150.00	9,900.00	95.00	6,270.00			
12	COMMERCIAL CONCRETE FOR HEADWALL	130	L.F.	130.00	16,900.00	26,000.00	200.00	26,000.00	181.00	23,530.00	130.00	16,900.00	180.00	23,400.00	285.00	34,450.00	180.00	23,400.00			
13	CRUSHED SURFACING BASE COURSE	8	C.Y.	700.00	5,600.00	11,536.00	1,442.00	11,536.00	650.00	5,200.00	1,500.00	12,000.00	1,200.00	9,600.00	1,500.00	12,000.00	1,200.00	9,600.00			
14	CRUSHED SURFACING TOP COURSE	6,450	TON	4.75	30,637.50	74,175.00	11.50	74,175.00	9.25	59,662.50	13.50	87,075.00	9.50	61,275.00	12.00	77,400.00	9.50	61,275.00			
15	HMA CL. 1/2 INCH PG 70-28	6,560	TON	4.75	31,160.00	75,440.00	11.50	75,440.00	10.35	67,896.00	13.50	88,560.00	10.00	65,600.00	12.50	82,000.00	10.00	65,600.00			
16	ESC LEAD	7,630	TON	77.00	587,510.00	582,393.20	77.64	582,393.20	76.80	586,747.00	78.50	598,955.00	76.90	586,747.00	80.00	610,400.00	76.90	586,747.00			
17	SEEDING, FERTILIZING, AND MULCHING	10	DAY	70.00	700.00	2,183.70	218.37	2,183.70	125.00	1,250.00	60.00	600.00	100.00	1,000.00	115.00	1,150.00	100.00	1,000.00			
18	BEAM GUARDRAIL TYPE 1	2	ACRE	2,200.00	4,400.00	3,568.86	1,779.43	3,568.86	2,500.00	5,000.00	3,075.00	6,150.00	1,800.00	3,600.00	2,000.00	4,000.00	1,800.00	3,600.00			
19	BEAM GUARDRAIL FLARED TERMINAL	5,875	L.F.	18.50	108,537.50	108,745.00	18.20	108,745.00	19.00	113,525.00	18.75	112,031.25	18.35	109,641.25	19.00	113,525.00	18.35	109,641.25			
20	PAINT LINE	4	EACH	2,050.00	8,200.00	7,980.00	1,995.00	7,980.00	1,995.00	7,980.00	2,100.00	8,400.00	2,125.00	8,500.00	2,000.00	8,000.00	2,125.00	8,500.00			
21	PERMANENT SIGNING	32,035	L.F.	0.15	4,805.25	5,445.95	0.17	5,445.95	0.20	6,407.00	0.175	5,606.13	0.17	5,445.95	0.18	5,766.30	0.17	5,445.95			
22	PROJECT TEMPORARY TRAFFIC CONTROL	L.S.	L.S.	Lump Sum	3,200.00	4,750.00	Lump Sum	3,150.00	Lump Sum	3,150.00	Lump Sum	5,000.00	Lump Sum	3,150.00	Lump Sum	5,000.00	Lump Sum	3,150.00			
23	CONSTRUCTION SIGNS CLASS A	L.S.	L.S.	Lump Sum	870.00	500.00	Lump Sum	500.00	Lump Sum	3,770.00	Lump Sum	3,000.00	Lump Sum	500.00	Lump Sum	50,000.00	Lump Sum	50,000.00			
24	TRIMMING AND CLEANUP	L.S.	L.S.	Lump Sum	1,100.00	500.00	Lump Sum	500.00	Lump Sum	1,650.00	Lump Sum	2,500.00	Lump Sum	1,650.00	Lump Sum	2,000.00	Lump Sum	2,000.00			
25	MINOR CHANGE	1	Calc.	CALC.	1.00	10,000.00	CALC.	1.00	CALC.	1.00	1.00	CALC.	1.00	CALC.	2,500.00	CALC.	1.00				
26	SPCC PLAN	L.S.	L.S.	Lump Sum	550.00	500.00	Lump Sum	500.00	Lump Sum	500.00	Lump Sum	600.00	Lump Sum	500.00	Lump Sum	500.00	Lump Sum	500.00			
TOTAL BID																	1,080,914.55	1,118,662.00	1,205,430.68	1,243,188.08	1,304,053.20

BENTON COUNTY
 BOARD OF COMMISSIONERS
 January 13, 2009, 9:00 a.m., Local Time

P O Box 1800
 Battle Ground, WA 98604
 P O Box 5280
 Benton City, WA 98320

955 West Lacey
 Lacey, WA 99352
 1213 South Clodfelter Road
 Kennewick, WA 99338

CONSTRUCTION, INC.
 P O Box 480
 Clarksston, WA 99403
 P O Box 425
 Spokane, WA 99210-0425

ee

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF PURCHASING JAIL OPERATION SUPPLIES FOR THE SHERIFF'S OFFICE

WHEREAS, the Benton County Sheriff's Office purchases supplies in large quantities due to inmate population, and

WHEREAS, the Benton County Sheriff's Office purchases toilet paper based off of the storage capacity of the jail; and

WHEREAS, resolution 08-131 authorize contracts for the purchase of materials, equipment and supplies valued at between \$5,000 and \$25,000 without advertisement and formal sealed bidding; and

WHEREAS, the Sheriff's Office obtained three price quotes that excludes sales tax for the first quarter of 2009 toilet paper order: 1) Crown Paper and Janitorial Supply, Inc. of Walla Walla, WA @ \$.34 per roll, 2) West Coast Paper of Yakima, WA @ \$.37 per roll, and 3) Columbia Basin Paper & Supply of Pasco, WA @ \$.43 per roll; and

WHEREAS, the Trustee Officers from the Sheriff's Office reviewed the quotes comparing the price per roll and recommends Crown Paper and Janitorial Supply Inc. as the best reasonable quote, **NOW, THEREFORE**,

BE IT RESOLVED, by the Board of Benton County Commissioners, that the Sheriff's office proceed with the purchase of the first quarter of 2009 toilet paper order from Crown Paper and Janitorial Supply, Inc of Walla Walla, WA in the amount of \$19,800 (excluding wsst).

Dated this ____ day of _____ 2009.

Chairman of the Board

Member

Member
Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____

CC: BCSO, Auditor Office, Purchase File

J. Thompson

**Toilet paper comparison December 08
For 2009 Purchase**

This is a presentation of three bids for our quarterly toilet paper purchase.

Company	Number of cases	Number of sheets per roll	Number of rolls in case	size of sheet foot per roll	Price per case	Price per roll	Price per ft	Total	
Crown paper	600	500	96	4	166.67	\$33.00	\$0.34	\$0.00206	\$19,800.00
West coast paper	600	550	80	3.5	160.42	\$29.50	\$0.37	\$0.00230	\$17,700.00
Col basin paper	600	550	80	4	183.33	\$34.25	\$0.43	\$0.00234	\$20,550.00
	600	600	80	4	200.00	\$36.50	\$0.46	\$0.00228	\$21,900.00

The spread sheet above indicates that the best bid is from Crown Paper. All of the other bids are for 80 roll cases except for the Crown Bid. When you look at the bottom line price per liner foot crown is less expensive. The 96 Roll case will also give us almost 20000 extra rolls of toilet Paper.

Price Quote



WestCoastPaper

Quote # 200705230938

Description Benton County Sheriff

CARRIE GATES
BENTON COUNTY JAIL
7122 W OKANOGAN PLACE
KENNEWICK, WA 99336
509 222 3794

JOHN SOUSLEY CW
WEST COAST PAPER
5115 W BRINKLEY
KENNEWICK, WA 99336
509 952 1728

Item #	Description	Price	Prc UOM
SW007TT2	007TT2 STANDARD ROLL 2PLY BATH .TISSUE 4.4X3.5 80RL/550SH/CS	20.50 29.50	CS

Attn: Officer Gates

12-10-08

Here is our bid quotation for 1,100 cases of toilet tissue delivered to Kennewick, WA. The only additional charge would be applicable sales tax.

Please call me if you have any questions.

Thank you for the opportunity to quote this business -

John _____

*How many rolls
per case?*



COLUMBIA BASIN PAPER & SUPPLY

515 West Columbia Street
Pasco, Washington 99301

Phone: (509) 547-3141
Fax: (509) 547-2132

Quote for: Benton County Jail

Date: 12 December 2008

Address: 7122 W. Okanogan - Bldg. B

Attention: Dan Farrell

Phone #: 222-3794

Fax #: 736-3054

Description	Qty.	Price
#B640 2-ply Toilet Tissue 600 Sheets per Roll - 4.4"(W) x 4.0"	1200 cs	\$36.50 cs
#B8540 2-ply Toilet Tissue 550 Sheets per Roll - 4.4"(W) x 4.0"	1200 cs	\$34.25 cs

Dan - Here is pricing for your yearly supply of toilet tissue. These prices are good thru the 15th of January 2009. The order will be shipped directly to you.

If you have any questions, please call. Thanks!

Thanks!

Janis & Regan Hastings
Columbia Basin Paper & Supply

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 26 Jan 2009 Subject: Ecology Contract Memo Date: 20 Jan 2009 Prepared By: AJF Reviewed By: LSK	Execute Contract X Pass Resolution X Pass Ordinance Pass Motion Other	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other

ff

SUMMARY & BACKGROUND

This is the annual update of the County's contract with Washington Department of Ecology related to redevelopment of the Hanford Site, development of nuclear-related industries in the Tri-City area, and public awareness activities related to Hanford Site issues and developments. Each year the contract is amended because the dollars received by the County usually increases slightly.

The attached letter from Ecology explains the schedule and the payments. Note that I will be coming back to the Board in June for an amendment for the second half of the year. The Ecology representative has told me that now that we have amended the original contract over 30 times, after the 2009 calendar year they would like to create a new contract.

ATTACHMENTS

- 2009a resolution
- 2009a contract amendment
- 2009 cover letter from Ecology, for reference
- 2008 amendment, for reference
- 2008 resolution, for reference

FISCAL IMPACT

The County will *receive* \$39,970 from Ecology under this contract amendment.

#

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF WASHINGTON DEPARTMENT OF ECOLOGY
CONTRACT #C9300237 – AMENDMENT #21

WHEREAS, Benton County continues to pursue industrial redevelopment and diversification of the Hanford Site, and the development of nuclear-related industries in the region; and,

WHEREAS, the Washington Department of Ecology provides funding for such activities to Benton County through Contract #C9300237; and,

WHEREAS, the Washington Department of Ecology has provided Amendment #21 to the Contract to Benton County for approval; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the terms of Amendment #21 and authorizes the signature of said document.

Dated this _____ day of _____, 2009.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

cc: Washington Department of Ecology Contract File
Sustainable Development (LSK & AJF), Treasurer, Auditor, Prosecutor (Ozuna)

Prepared by: A.J. Fyall

AMENDMENT NO. 21 TO ECOLOGY CONTRACT NO. C9300237

PURPOSE: To amend that contract between the Department of Ecology, hereinafter referred to as "Department" and The Benton County Board of Commissioners, hereinafter referred to as "Contractor".

IT IS MUTUALLY AGREED that the contract is amended as follows:

The completion date of this contract shall be changed from December 31, 2008 to June 30, 2009.

The total amount of this agreement shall be increased by \$39,970 for the period of January 1, 2009 through June 30, 2009. Total compensation under the original agreement and all subsequent amendments, thereto, shall not exceed \$941,730.

The amendment shall be effective January 1, 2009.

All other terms and conditions of the original contract and any subsequent amendments, thereto, remain in full force and effect.

IN WITNESS WHEREOF: the parties have executed this amendment.

BENTON COUNTY BOARD OF
COMMISSIONERS

DEPARTMENT OF ECOLOGY

CHAIRPERSON

DEPUTY DIRECTOR

MEMBER

MEMBER

APPROVED AS TO FORM ONLY
ASSISTANT ATTORNEY GENERAL

DATE

916001296
Federal Tax ID Number

Approved as to form,
Benton County Prosecuting Attorney



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
TTY 711 or 800-833-6388 (For the Speech or Hearing Impaired)

December 29, 2008

Mr. Adam J. Fyall
Community Development Coordinator
Benton County
7122 West Okanogan Place
Kennewick, WA 99336

RE: Contract No. C9300237, Amendment No. 21

Dear Mr. Fyall:

Enclosed are two originals of Amendment No. 21 to the referenced contract. The purpose of this amendment is to increase the contract by \$39,970 for the period of January 1, 2009 through June 30, 2009. This includes \$34,180 for the first six calendar months of 2009 and \$5,790 for the increase in the sublease payment that took effect during 2008.

Please have both documents signed and then return both to me. As soon as the appropriate Ecology representative has signed the documents I will forward an original to you for your records. Once you receive the signed original you may submit an invoice for payment.

I will prepare the next amendment covering the last six calendar months of 2009 in June and send you the originals for signature. You should receive this during the last week of June 2009.

I also want to remind you that the final report of project activities that were accomplished during 2008, and recommendations for further public awareness and/or development of nuclear related industry in the Tri-City area is due on January 31, 2009.

If you have any questions, please call me at (360) 407-7102.

Sincerely,

Mike Garner
Environmental Specialist
Nuclear Waste Program

Enclosures



AMENDMENT NO. 20 TO ECOLOGY CONTRACT NO. C9300237

PURPOSE: To amend that contract between the Department of Ecology, hereinafter referred to as "Department" and The Benton County Board of Commissioners, hereinafter referred to as "Contractor".

IT IS MUTUALLY AGREED that the contract is amended as follows:

The completion date of this contract shall be changed from December 31, 2007 to December 31, 2008.

The total amount of this agreement shall be increased by \$62,570 for the period of January 1, 2008 through December 31, 2008. Total compensation under the original agreement and all subsequent amendments, thereto, shall not exceed \$901,760.

The amendment shall be effective January 1, 2008.

All other terms and conditions of the original contract and any subsequent amendments, thereto, remain in full force and effect.

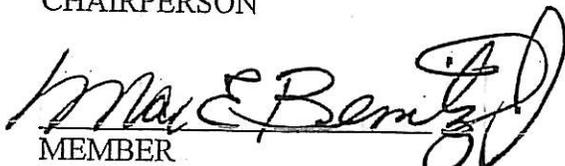
IN WITNESS WHEREOF: the parties have executed this amendment.

BENTON COUNTY BOARD OF
COMMISSIONERS

DEPARTMENT OF ECOLOGY


CHAIRPERSON


DEPUTY DIRECTOR

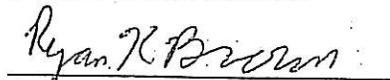

MEMBER


MEMBER

1-7-08 DATE

APPROVED AS TO FORM ONLY
ASSISTANT ATTORNEY GENERAL

916001296
Federal Tax ID Number


Approved as to form,
Benton County Prosecuting Attorney

RESOLUTION

08 027

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF WASHINGTON DEPARTMENT OF ECOLOGY
CONTRACT #C9300237 - AMENDMENT #20

WHEREAS, Benton County continues to pursue industrial redevelopment and diversification of the Hanford Site, and the development of nuclear-related industries in the region; and,

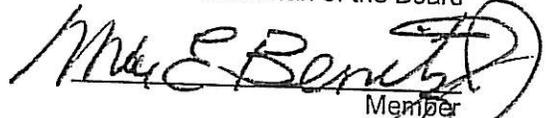
WHEREAS, the Washington Department of Ecology provides funding for such activities to Benton County through Contract #C9300237; and,

WHEREAS, the Washington Department of Ecology has provided Amendment #20 to the Contract to Benton County for approval; **NOW THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the terms of Amendment #20 and authorizes the signature of said document.

Dated this 7 day of Jan, 2008.


Chairman of the Board


Member


Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

cc: Department of Ecology Contract File
Sustainable Development (LSK & AJF), Treasurer, Auditor, Prosecutor (Ozuna)

Prepared by: A.J. Fyall

99

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF CANCELING TAXES ASSESSED UPON PERSONAL PROPERTY WITHIN BENTON COUNTY, WHICH THE BENTON COUNTY TREASURER HAS DETERMINED TO BE UNCOLLECTIBLE

WHEREAS, taxes have been duly assessed upon the personal property listed on the schedule of property attached hereto as Exhibit A, and duly extended on the tax rolls of Benton County; and,

WHEREAS, the Benton County Treasurer having made diligent search and inquiry for goods and chattels upon which to collect such taxes; and

WHEREAS, the Benton County Treasurer has filed an affidavit (Exhibit A) with the Board of Benton County Commissioners, asserting that no such goods and chattels could be found, and that said taxes are therefore uncollectible; **NOW THEREFORE**,

BE IT RESOLVED, that the taxes assessed upon the personal property as enumerated on Exhibit A, attached hereto, are determined to be uncollectible and pursuant to the provisions of RCW 84.56.240, such taxes are hereby canceled from the tax rolls of Benton County.

Dated this _____ day of _____, 20__.

Chairman of the Board

Member

Member

Constituting the Board of County
Commissioners of Benton County,
Washington

Attest: _____
Clerk of the Board

Prepared by D. Davidson

CC: Treasurer, Auditor, Assessor



**DUANE A. DAVIDSON, CPA
Benton County Treasurer**

PO Box 630, Prosser, WA 99350
Prosser 509-786-2255 Fax 786-5628
509-736-3087
Kennewick 509-735-8505 Fax 736-2705
www.co.benton.wa.us/html/treasurer

January 13, 2009

Board of Benton County Commissioners
PO Box 190
Prosser, WA 99350

RE: Cancellation of Uncollectible Personal Property Taxes. RCW 84.56.240

Dear Members of the Board:

Pursuant to RCW 84.56.240, the County Treasurer shall file with the County legislative authority, a list of uncollectible personal property taxes. The County Treasurer shall also file an Affidavit stating the Treasurer had made a diligent search and inquiry for goods and chattels wherewith to make such taxes, and was unable to collect the same.

****AFFIDAVIT OF UNCOLLECTIBLE PERSONAL PROPERTY TAX****

I, Duane A. Davidson, Benton County Treasurer, swear on behalf of my deputy treasurer assigned to the collection of personal property tax, that every effort has been made to diligently search and inquire for goods and chattels upon which to collect such taxes. Now therefore, I request the taxes be cancelled as uncollectible personal property taxes.

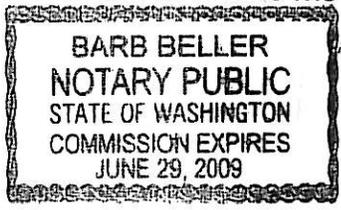
Sincerely,

DUANE A. DAVIDSON, CPA
Benton County Treasurer

DAD:blb

Attachments: Uncollectible Personal Property Listing, 2 pages.

Subscribed and sworn to before me this 13th day of January, 2009.



Barb Beller

Barbara Beller
Notary Public

Appointment Expires: 06/29/09

BENTON COUNTY TREASURER'S 2008 PERSONAL PROPERTY UNCOLLECTIBLES

PARCEL NAME	PARCEL NUMBER	TAX YR	TCA	REASON	AMOUNT
Figures, LLC	30PF184000000000	2006	K1	Business closed/Unable to collect	
Figures, LLC	30PF184000000000	2007	K1	Business closed/Unable to collect	\$301.25
Gallagher Door Co., Inc.	30PG057000000000	2007	1731	Business closed/Unable to collect	\$262.07
Gallagher Door Co., Inc.	30PG057000000000	2008	1731	Business closed/Unable to collect	\$9.57
Home Wiring Services, Inc.	30PH239000000000	2007	1731	Business closed/Unable to collect	\$8.99
Home Wiring Services, Inc.	30PH239000000000	2008	1731	Business closed/Unable to collect	\$27.23
Homes 4 Life, LLC	30PH339000000000	2007	R2	Business closed/Unable to collect	\$21.01
Homes 4 Life, LLC	30PH339000000000	2008	R2	Business closed/Unable to collect	\$9.77
Keller Insurance Networking	30PK162000000000	2007	R3	Business closed/Unable to collect	\$6.73
Keller Insurance Networking	30PK162000000000	2008	R3	Business closed/Unable to collect	\$67.00
Lighthouse Family Therapy	30PL215000000000	2007	P1	Business closed/Unable to collect	\$57.48
Life Changes	30PL419000000000	2007	K1	Business closed/Unable to collect	\$82.78
Life Changes	30PL419000000000	2008	K1	Business closed/Unable to collect	\$100.69
Majors	30PM526000000000	2007	K1	Business closed/Unable to collect	\$83.55
Majors	30PM526000000000	2008	K1	Business closed/Unable to collect	\$546.28
Shady Lane Trailer Park	30PS374000000000	2005	R2	Business closed/Unable to collect	\$446.12
Sole Outdoors	30PS519000000000	2006	K1	Business closed/Unable to collect	\$14.12
Stretch & Stitch Upholstery	30PS569000000000	2007	1731	Business closed/Unable to collect	\$9.22
Swim in, Inc.	30PS973000000000	2007	K1	Business closed/Unable to collect	\$15.82
Tri-City Oriental Rugs, LLC	30PT413000000000	2007	R2	Business closed/Unable to collect	\$12.87
Tri-City Home Loans	30PT417000000000	2007	K1	Business closed/Unable to collect	\$13.78
The Whole Ten Yards, LLC	30PT419000000000	2007	K1	Business closed/Unable to collect	\$244.73
Tri City Painting	30PT432000000000	2007	K1	Business closed/Unable to collect	\$1169.20
Cable & Wireless USA, Inc.	6067404000000001	2004	1716	Business closed/Unable to collect	\$36.97
Cable & Wireless USA, Inc.	6067404000000002	2004	P1	Business closed/Unable to collect	\$160.39
Cable & Wireless USA, Inc.	6067404000000003	2004	1615	Business closed/Unable to collect	\$21.28
Cable & Wireless USA, Inc.	6067404000000004	2004	1516	Business closed/Unable to collect	\$541.03
Cable & Wireless USA, Inc.	6067404000000005	2004	1613	Business closed/Unable to collect	\$250.53
					\$88.84

RESOLUTION

hh

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, DEPARTMENT NUMBER 124.

WHEREAS, Treasurer desires to use the previous Job Description of Chief Deputy, at a
Grade 19, for a Non-Bargaining position in his office; NOW THEREFORE

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds
shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

Constituting the Board of County Commissioners
of Benton County, Washington.

Attest: _____
Clerk of the Board

CC: Treasurer's Office; Rosie Sparks, Auditor's Office

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Treasurer

Dept Nbr: 124

Fund Name: Current Expense

Fund Nbr: 0000-101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
514.220	1501	Administrative Assistant	\$64,547	514.220	1501	Chief Deputy Treasurer	\$64,547
TOTAL			\$64,547	TOTAL			\$64,547

Explanation:

Line item transfer to obtain Board Approval of the Treasurer's desire to: (1) Re-establish the position as a Grade 19, (2) Re-establish the Title of this position to "Chief Deputy Treasurer" as opposed to "Administrative Assistant". The Treasurer feels the person selected for this position has the qualifications and experience that best matches the Job description of Chief Deputy.

Prepared by: Duane A. Davidson

Date: 26-Jan-2009

Approved

Denied

Date: _____

Chairman

Member

Member

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
MTG DATE: January 26, 2009	Execute Contract	Consent Agenda
SUBJECT: 2008 Comprehensive Plan Amendments	Pass Resolution X	Public Hearing X
MEMO DATE: January 20, 2008	Pass Ordinance	1st Discussion
Prepared By: Susan M. Walker	Pass Motion X	2nd Discussion
Reviewed By: Michael Shuttleworth	Other	Other

BACKGROUND INFORMATION

Washington State planning law requires continuing review and evaluation of comprehensive plans pursuant to RCW 36.70A.130(1) with revisions and amendments to the Comprehensive Plan considered by the county no more frequently than once every year (RCW 36.70A.130(2)(a)). The 2008 amendment process also included the five-year review of the cities Urban Growth Areas (UGA's). The Board of County Commissioners held a workshop to review the Planning Commission findings and information regarding these amendments on October 20, 2008. Board of County Commissioners held initial hearings on the proposals on November 10th, 2008, and continued the hearings to January 26, 2009.

The Amendment Proposals for 2008 are as follows:

CPA 07-02

SUMMARY

A proposal by John Sullins to change the land use designation from Rural Lands Five (5) to Rural Lands One (1) on approximately 1,120 acres southwest of the I-82 Interchange and Badger Road. These parcels are not within any UGA and are located in Township 8 North, Range 28 East, W.M., in Sections 11 & 14 lying northwest of the BNSF railroad right of way, and that portion of Section 15 north of the railroad right of way, the east half of Section 10 south of I-82, and the southwest quarter of Section 10.

RECOMMENDATION

The Planning Commission did not recommend approval of a one-acre density because it was unable to find the one-acre density was rural in character. The Planning Commission did vote to approve CPA 07-02 to the extent of modifying the land use designation from Rural Lands Five (5) to Rural Lands Two and a Half (RL-2.5) (an alternative to the one acre density requested) except for the federally owned property located North and West of the KID Canal within Section 10, Township 8 North, Range 28 East, W.M., see modified map Exhibit, G.

MOTION

You have three options regarding CPA 07-02.

#1 To Approve: I move that Comprehensive Plan Amendment Application File # CPA 07-02, the proposal to change the land use designation from Rural Lands Five (RL-5) to Rural Lands One (RL-1) be approved, and that the Chairman of the Board in conjunction with

Planning Department prepare written findings and conclusions reflecting the Board's decision to approve Comprehensive Plan Amendment Application CPA 07-02, that articulate and are consistent with the findings and conclusions made by the Board.

#2 To Deny: I move that Comprehensive Plan Amendment Application File # CPA 07-02, the proposal to change the land use designation from Rural Lands Five (RL-5) to Rural Lands One (RL-1) be denied, and that the Chairman of the Board in conjunction with Planning Department prepare written findings and conclusions reflecting the Board's decision to deny Comprehensive Plan Amendment Application CPA 07-02, that articulate and are consistent with the findings and conclusions made by the Board.

#3 If the Board agrees with the Planning Commission recommendation of re-inserting a RL 2.5 designation, it should direct Planning Staff to bring this item before the Planning Commission for their review and recommendation to the Board regarding including wording for Rural Lands 2.5 in the Comprehensive Plan during the next amendment cycle.

CPA 08-01

SUMMARY

A proposal by Wayne Penttila to change the existing land use designation of Heavy Industrial (HI) to the designation of Rural Lands 5 (RL-5) Acre, on seven parcels totaling approximately 200 acres located in Sections 5, 6, 7 & 8, Township 7 North, Range 31 East, W.M., in South Finley. Located in your documentation is Exhibit I, which is a new map showing only Mr. Penttila's property as KGH has withdrawn their property from the application.

RECOMMENDATION

The Planning Commission recommends that CPA 08-01 a proposal to change the land use designation from Heavy Industrial to Rural Lands Five (RL-) be denied. The recommendation and findings of fact, along with the minutes of those hearings are included in the Planning Commission record under Exhibit A. New information regarding the application is discussed in the Board's agenda sheet, Exhibit G, introduced into the record at the hearing on November 10, 2009.

MOTION

Move to approve or deny CPA 08-01.

#1 To Approve: I move that Comprehensive Plan Amendment Application File # CPA 08-01, the proposal to change the land use designation from Heavy Industrial to Rural Lands Five (RL-5) be approved, and that the Chairman of the Board in conjunction with Planning Department prepare written findings and conclusions reflecting the Board's decision to approve Comprehensive Plan Amendment Application CPA 08-01, that articulate and are consistent with the findings and conclusions made by the Board.

#2 To Deny: I move that Comprehensive Plan Amendment Application File # CPA 08-01, the proposal to change the land use designation from Heavy Industrial to Rural Lands Five

(RL-5) be denied and that the Board adopt the Planning Commission's Findings of Fact for CPA 08-01 as our own.

CPA 08-02

SUMMARY

The City of West Richland has submitted a proposal to include an additional 747 acres of land into its Urban Growth Area (UGA) boundary. The proposal includes a Capital Facilities Plan adopted by the West Richland City Council. The City states that the intended land use for the proposed UGA is Combined Commercial/Light Industrial (CLI). The general location of the proposal is immediately north and west of Candy Mountain and north of I-82. The purpose for the UGA expansion according to the City, is not to add land to the UGA in order to accommodate projected population growth, but rather to include within its UGA an additional 747 acres that surrounds the alignment of a proposed future I-82 interchange shown in the Transportation Element of the Benton County Comprehensive Plan.

RECOMMENDATION

The Planning Commission recommendation was to deny the inclusion of 747 acres into the urban growth area proposed by the City of West Richland. The findings of fact, conclusions, and minutes of those hearings are included following Exhibit A in the Planning Commission Record.

MOTION

You have two options regarding CPA 08-02.

#1 To Approve: I move that Comprehensive Plan Amendment Application File # CPA 08-02, the proposal to include 747 acres into the West Richland UGA, be approved and that the Chairman of the Board in conjunction with Planning Department prepare written findings and conclusions reflecting the Board's decision to approve Comprehensive Plan Amendment Application CPA 08-02, that articulate and are consistent with the findings and conclusions made by the Board.

#2 To Deny: I move that Comprehensive Plan Amendment Application File # CPA 08-02, the proposal to include of 747 acres into the West Richland UGA be denied, and that the Board adopt the Planning Commission's Findings of Fact for CPA 08-02 as our own.

CPA 08-4

SUMMARY

The amendments proposed in CPA 08-04 are additions and changes to Tables 9.0 and 9.1 of Chapter Nine, the Capital Facilities Element of the Benton County Comprehensive Plan. These tables list the County's capital facilities and their scheduled projects and funding adopted by the Board of Benton County Commissioners as shown in the 2008-2013 Capital Facilities Plan. The amended projects are shown in the tables in Exhibit 3 (please note a correction will be made in Table 9.1, on page 9-23, line 20, to read 2 million in the Estimated cost column).

RECOMMENDATION

The Planning Commission recommends that CPA 08-04, amending Tables 9.0 and 9.1 in the Capital Facilities Element be approved as corrected.

MOTION

You have two options regarding CPA 08-04.

#1 To Approve: I move that Comprehensive Plan Amendment Application File # CPA 08-04, the proposal for additions and changes to Tables 9.0 and 9.1 of Chapter Nine, the Capital Facilities Element of the Benton County Comprehensive Plan, be approved and that the Board adopt the Planning Commission's Findings of Fact for CPA 08-04 as our own.

#2 To Deny: I move that Comprehensive Plan Amendment Application File # CPA 08-04, the proposal for additions and changes to Tables 9.0 and 9.1 of Chapter Nine, the Capital Facilities Element of the Benton County Comprehensive Plan, be denied and that the Chairman of the Board in conjunction with Planning Department prepare written findings and conclusions reflecting the Board's decision to approve Comprehensive Plan Amendment Application CPA 08-04, that articulate and are consistent with the findings and conclusions made by the Board.

CPA 08-5

SUMMARY

The amendments proposed herein to the Comprehensive Plan are edits to text in the following chapters of the Benton County Comprehensive Plan: Chapter 1, Introduction, and Chapter Three; Goals, Policies and Actions to reflect recent legislative changes to the RCW; and in Chapter 9; Capital Facilities Element, to update text in regard to Parks and Recreational Facilities as shown in Exhibits 1, 2, 3, and 4.

RECOMMENDATION

The Planning Commission recommends that the Board of Commissioners approve CPA 08-05.

MOTION

You have two options regarding CPA 08-05.

#1 To Approve: I move that Comprehensive Plan Amendment Application File # CPA 08-05, the proposal for edits to text in the following chapters of the Benton County Comprehensive Plan: Chapter 1, Introduction, and Chapter Three; Goals, Policies and Actions to reflect recent legislative changes to the RCW; and in Chapter 9; Capital Facilities Element, to update text in regard to Parks and Recreational Facilities as shown in Exhibits 1, 2, 3, and 4, be approved and that the Board adopt the Planning Commission's Findings of Fact for CPA 08-04 as our own.

#2 To Deny: I move that Comprehensive Plan Amendment Application File # CPA 08-05, the proposal for edits to text in the following chapters of the Benton County Comprehensive Plan: Chapter 1, Introduction, and Chapter Three; Goals, Policies and Actions to reflect recent legislative changes to the RCW; and in Chapter 9; Capital Facilities Element, to update text in regard to Parks and Recreational Facilities as shown in Exhibits 1, 2, 3, and 4, be denied and that the Chairman of the Board in conjunction with Planning Department prepare written findings and conclusions reflecting the Board's decision to approve Comprehensive Plan Amendment Application CPA 08-05, that articulate and are consistent with the findings and conclusions made by the Board.

10:05

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 26 Jan 2009 Subject: Park Board Semi Annual Report Memo Date: 20 Jan 2009 Prepared By: AJF Reviewed By:	Execute Contract Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY & BACKGROUND

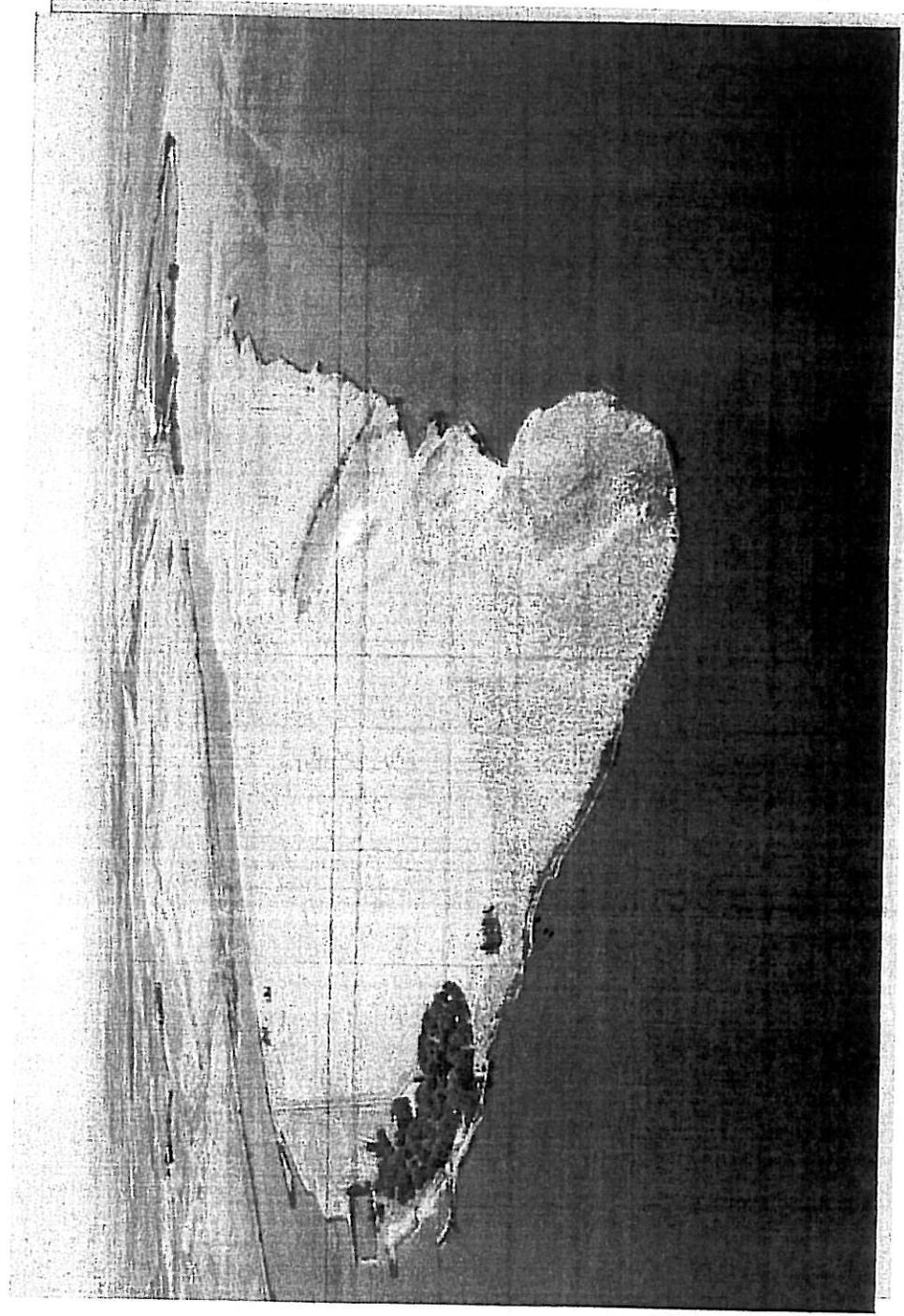
Bert Lake, Chair of the Benton County Park Board, will give a presentation to Commissioners regarding park activities and projects from the Park Board's point of view. There is no background material, and Commissioners will not be asked to make any decisions. Mr. Lake will give a short PowerPoint presentation, then look to have a conversational workshop with Commissioners. Major topics will include: major events, volunteerism and partnerships, major 2008 completed projects, and major 2009 projects.

#

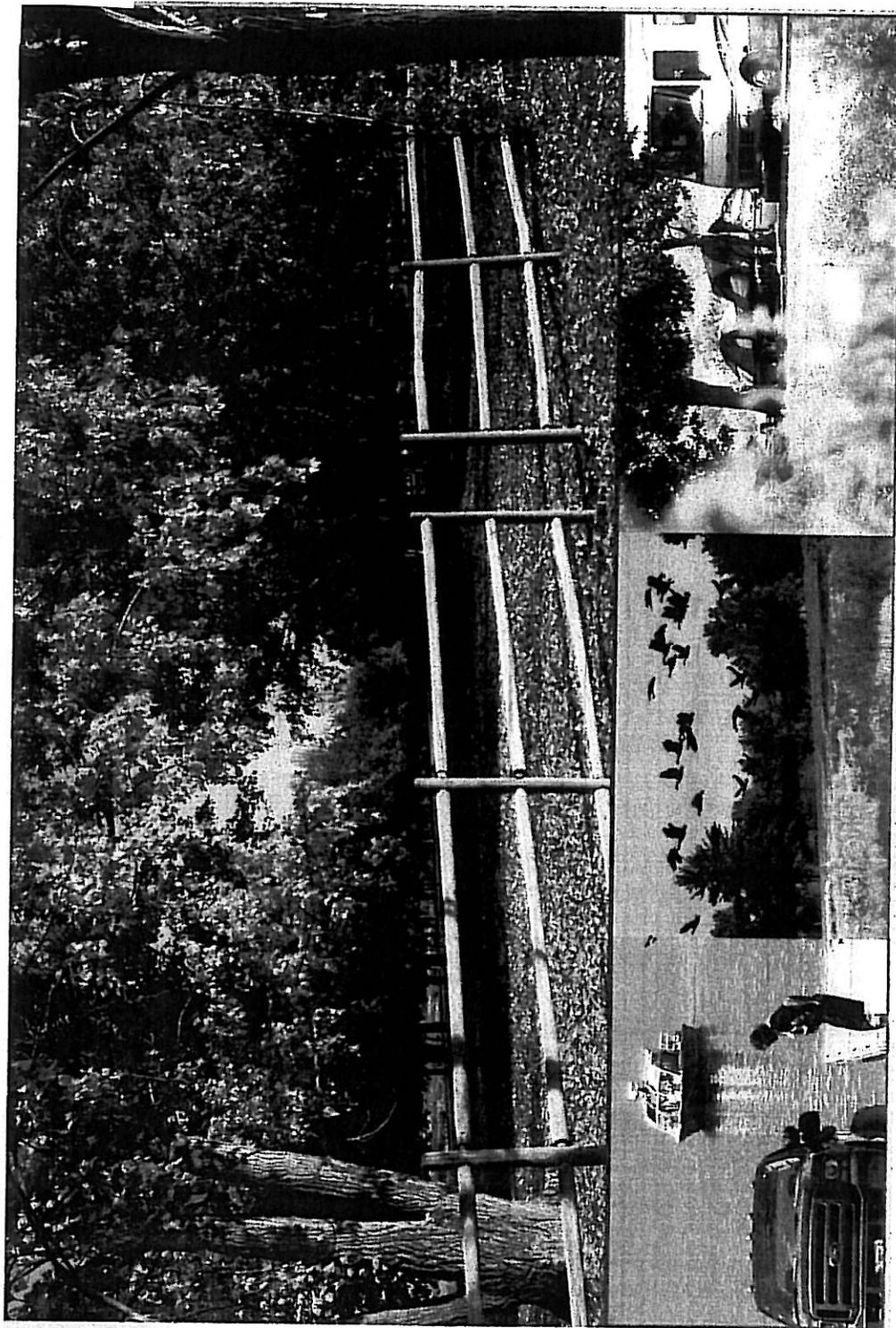
10:15

Crow Butte Park

2008 Improvements



Crow Butte Park





2008 Completed Projects

• Replace & Improve Electrical & R/V Pedestals	\$196,500
• Slurry Seal & Restripe Marina Parking Lots; Crack Seal Roads	47,000
• Replace & Upgrade Water Heaters; R/V & Day Use	33,000
• Upgrade Lighting in Marina & Dump Station	23,000
• Extend Concrete Patio @ Concession Area	22,200
• Replace Broken Windscreens	3,000
• Upgrade Landscaping at Dump Station	2,500
• Office Remodel	<u>2,000</u>
Total	\$329,200

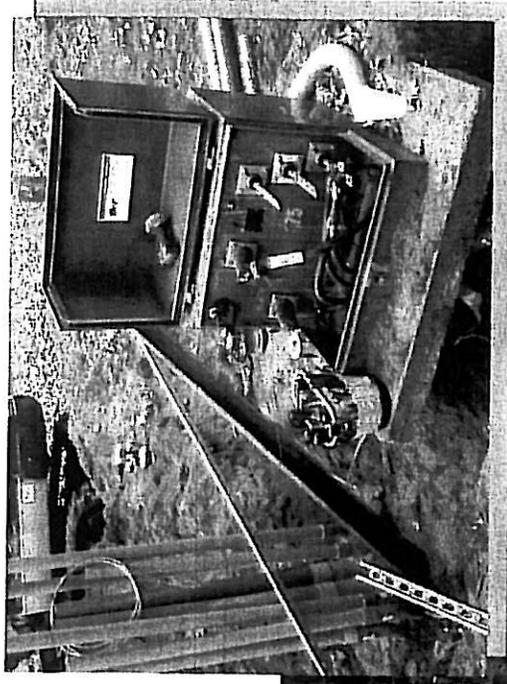


Electrical Upgrades

- Replace existing 30 amp service w/50 amp service
- New Transformers
- Replace Wire & R/V Pedestals
- Architectural Fees

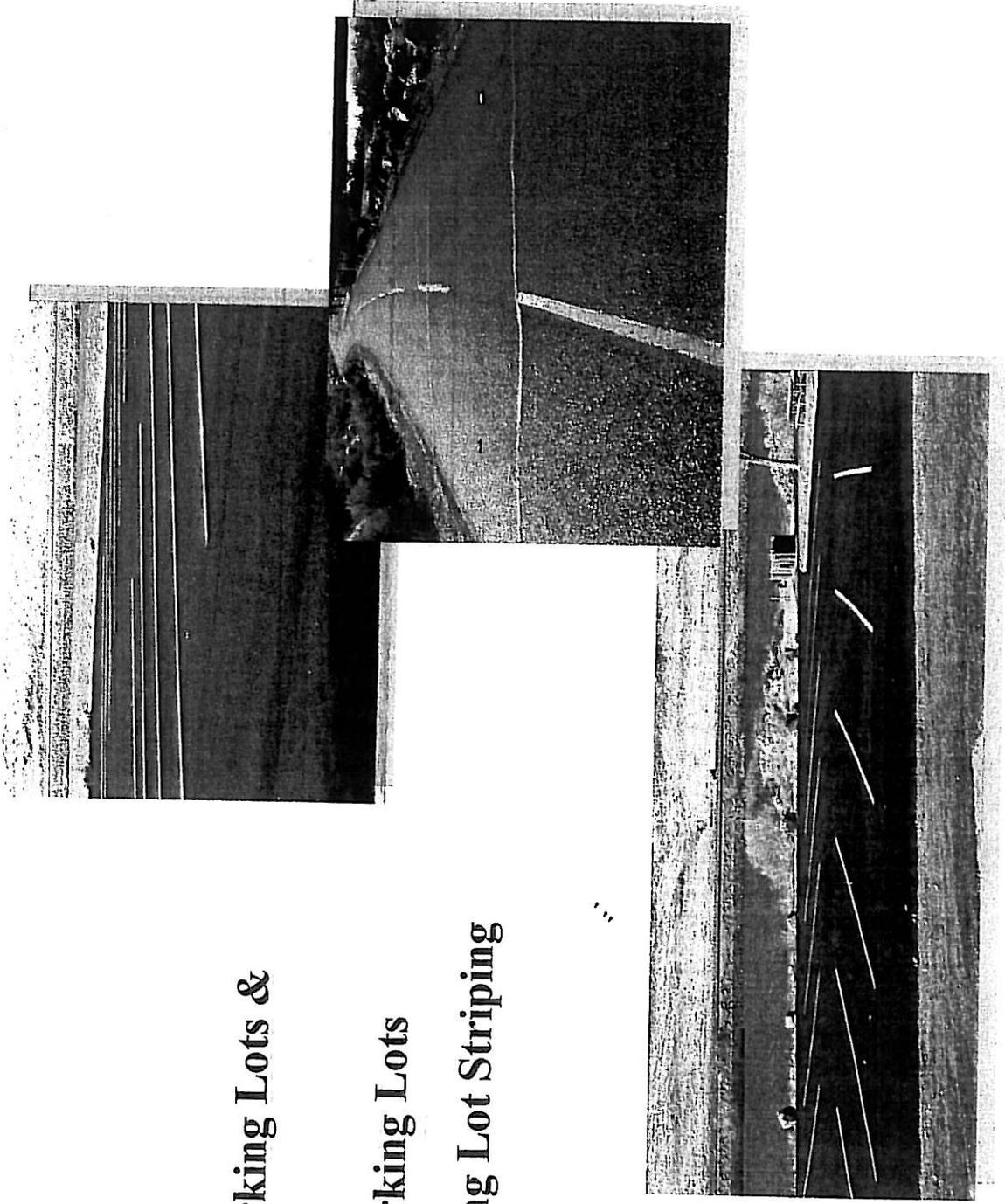
Total Cost:

\$196,500





Slurry/Crack Seal/Striping



- Crack Seal Parking Lots & Roads
- Slurry Seal Parking Lots
- Marina Parking Lot Striping

Total Cost:

\$47,000

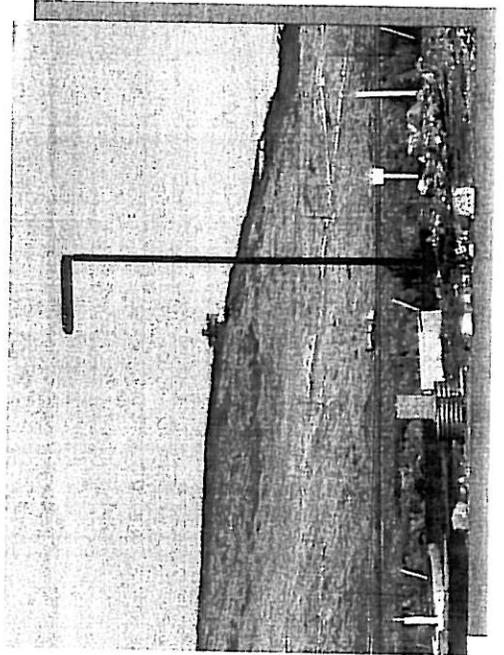
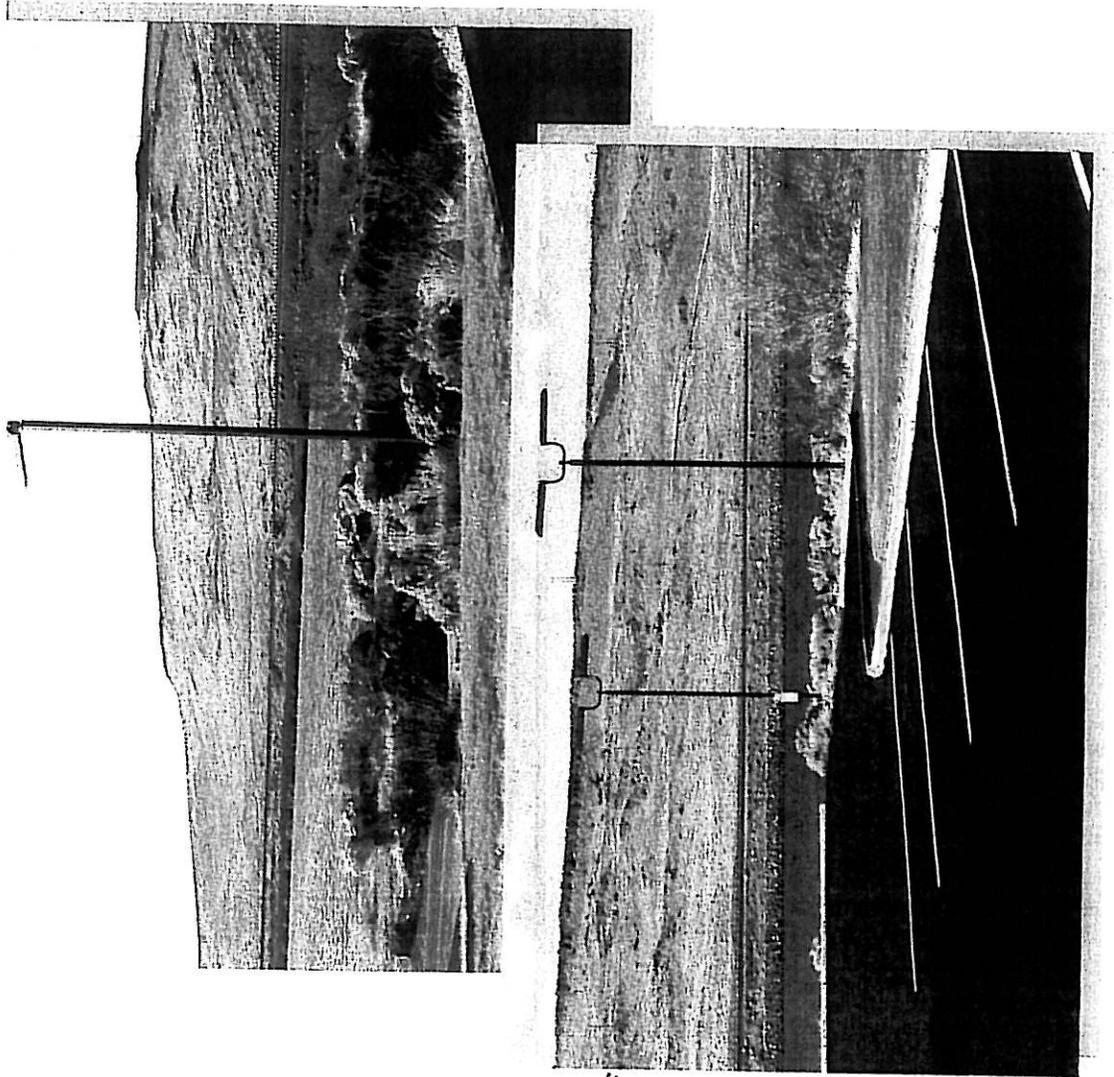


Lighting Improvements

- Replace Wiring
- Replace Light Poles
- Marina & Dump Station

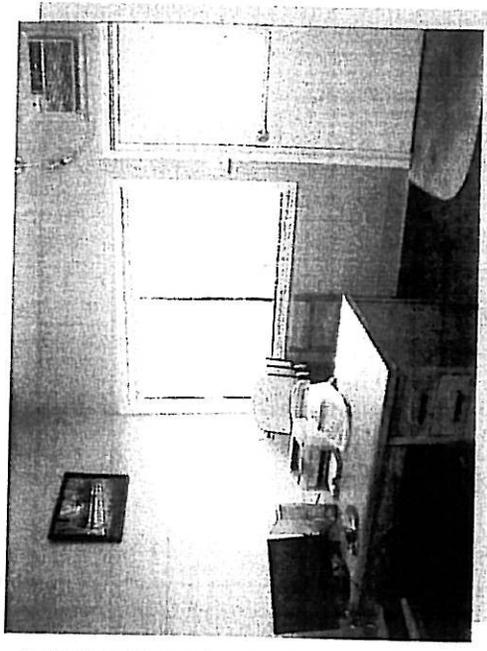
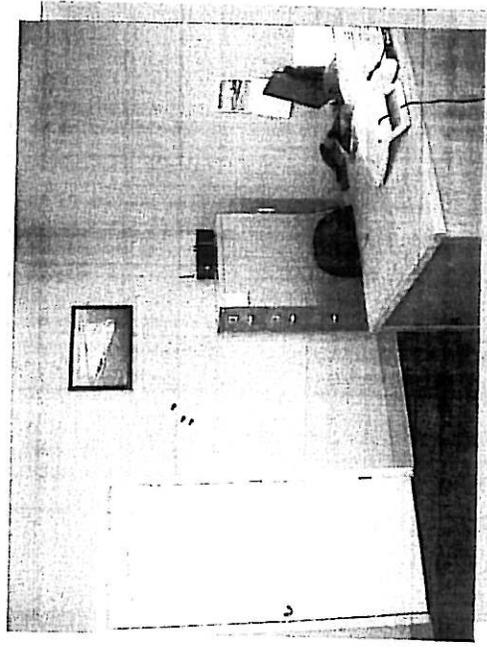
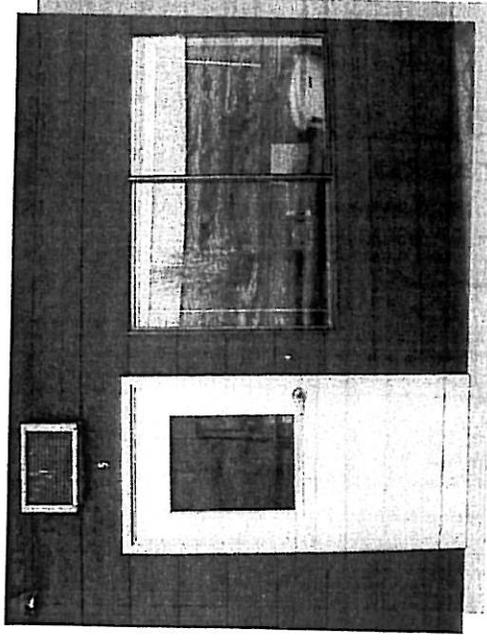
Total Cost:

\$23,000





Office Remodel



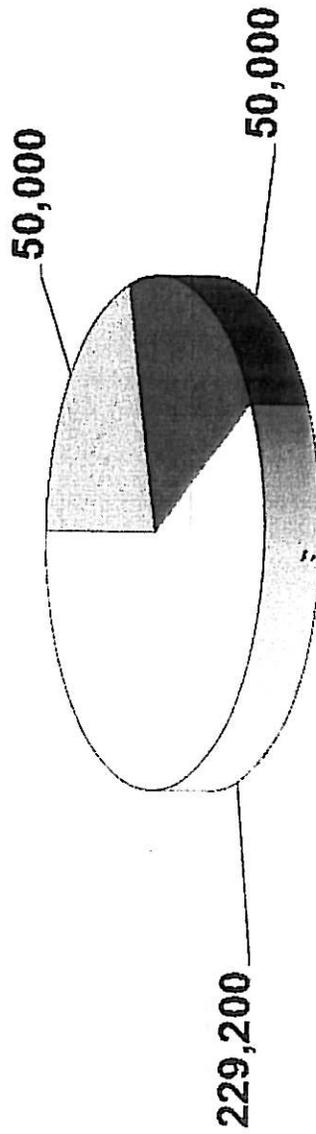
- New Carpet
- New Wall & Door
- Port Staff Labor

Total Cost:

\$2,000



2008 Capital Improvements



- Klickitat County
- Benton County
- Port of Benton



2009 Cost Estimates

- Restroom Remodel \$183,000
- Upgrade Contact Station 10,000
- Paint Buildings 7,500
- General Park Upgrades 5,000

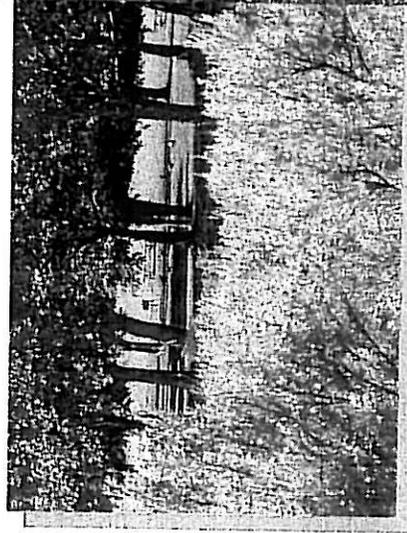
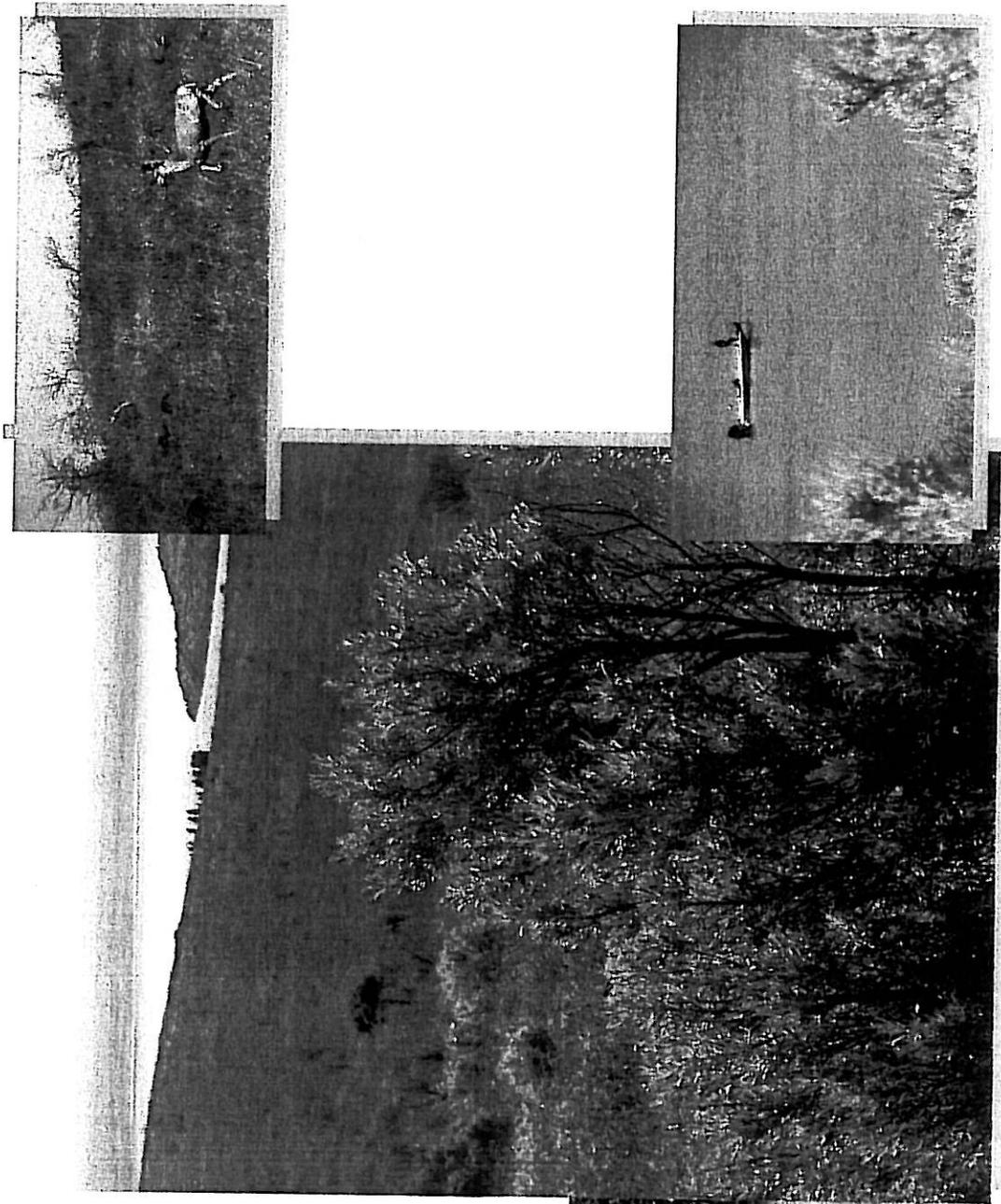
Total Cost:

\$205,500



Crow Butte Park

- 50 Camp Sites
- 2 Boat Launches
- Dock
- Concession





Web Site

www.crowbutte.com

- Electronic Reservations
- Maps
- Survey
- Fees



Crow Butte
Benton, Washington

home about us contact us

boat launch pads survey



Park Availability

Park Open: March 15th - October 15th
Hours: Dawn till Dusk
Check in: 2:30 p.m.
Check out: 1:00 p.m.

Current Events

The Port of Benton is in the process of upgrading the electrical service at the RV pads.
Please take a moment to fill out the survey above

We are not affiliated with the state or federal park systems and will not honor any of their discounts.

Crow Butte

Crow Butte Island is situated in the majestic Columbia River. The 275 acre park is on the island and accessible by motor and river traffic. There are 50 full service camping spots, two boat launches and a boat basin.



Benton County

Department of Public Works

Post Office Box 1001 - Courthouse
Prosser, Washington 99350-0954

January 21, 2009

BOARD OF COUNTY COMMISSIONERS
Benton County Courthouse
Prosser, WA 99350

RE: Application for Franchise: Applicant Roza Heights Water

Commissioners:

Roza Heights Water has filed a petition for a nonexclusive franchise to water lines within Benton County road right of way on in Sections 31-33, T 10 N, R. 25 E., W.M. and Sections 1-14, T 9N, R 25 E, WM

This office has reviewed the request and based upon our current franchise requirements recommends approval of the request subject to the following conditions:

1. The term of the franchise continue for a ten (10) year period.
2. The Grantee is to carry liability insurance with Benton County named as an insured with a minimum limit of \$500,000.00. A copy of the proof of insurance is to be provided to Benton County.
3. Placement of facilities within the right of way shall meet all requirements of Benton County as to location and repair of roads and right of way.
4. Should Benton County require utility relocation work because of road reconstruction or maintenance, said work shall be at the Grantee's expense.
5. The franchise is nonexclusive.
6. The Grantee sign the Order and Agreement for Nonexclusive Franchise, which will be prepared based upon the requirements set forth at the public hearing.

If you have any questions, please contact this office.

Sincerely,


Steven W Becken.
Assist. County Engineer/Assist. Director of Public Works


Sue Schuetze
Engineer II

10:35

AGENDA ITEM: MTG. DATE: January 26, 2009 MEMO. DATE: January 20, 2009 SUBJECT: Zone Change Request – ZC 08-01 "Ag" to "I-1", Badger Properties II LLC Prepared By: Michael Shuttleworth Reviewed By: Michael Shuttleworth	TYPE OF ACTION NEEDED Execute Contract Pass Resolution X Pass Ordinance Pass Motion X Other	Consent Agenda Public Meeting X 1st Discussion 2nd Discussion Other
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BACKGROUND INFORMATION

On January 8, 2009, the Benton County Planning Commission conducted an open record hearing on the request by Badger Properties II LLC to change the zoning classification for a 35-acre portion of the south half of the south half of the northwest quarter of Section 11, Township 8 North, Range 28 East, W.M. lying east of Cottonwood Drive and south of Wiser PR from Agricultural to Light Industrial I-1. After closing the Open Record Hearings and discussing the proposed change of zoning, the Planning Commission made a recommendation to approve Zone Change Request ZC 08-01. The Planning Commission's record and recommendation for ZC 08-01 is being submitted for your review and decision. The Board has set a public meeting for January 26, 2009 at 10:35 a.m. to review the record and recommendation of the Planning Commission.

The Board of County Commissioners must make a final decision on the zone change application based on the Planning Commission's Open Record Hearing. The Board may not hold its own Open Record Hearing if the Planning Commission held an Open Record Hearing. In this case, the Planning Commission held an Open Record Hearing on January 6, 2009 and therefore, the Board of County Commissioners cannot consider any testimony other than that testimony that was presented to the Planning Commission at their Open Record Hearings. The only information the Board can consider is the clarification of statements made at the Open Record Hearing with reference to testimony and information submitted to the Planning Commission in their record prepared for this application. Attached for the Board's review is a copy of the tapes and all information presented at the Planning Commission Open Record Hearings. Also attached is the signed Recommendation, Findings and Conclusion which includes the Draft minutes of the Planning Commission Open Record Hearings.

SUMMARY

The Benton County Planning Commission has completed the open record hearing for the Zone Change application ZC 08-01 to change the zoning classification for a 35-acre portion of the south half of the south half of the northwest quarter of Section 11, Township 8 North, Range 28 East, W.M. lying east of Cottonwood Drive and south of Wiser PR from Agricultural to Light Industrial I-1. The Board of County Commissioners will consider the application and recommendation of the Planning Commission at a public meeting on January 26, 2009.

RECOMMENDATION

After closing the Open Record Hearing and discussing the issue, the Planning Commission voted to recommend approval of the zone change application. After reviewing the information presented at the public meeting, the Planning staff recommends that the Board adopt the Planning Commission's recommendation, Findings and Conclusions (**See attached**) and approve the proposed zone change.

MOTION

If the Board agrees with the Planning Commission and Planning Department, the Board can adopt the Planning Commission recommendation, Findings and Conclusions as their own and approve the zone change application ZC 08-01. If however, the Board disagrees with the Planning Commission and Planning Department's recommendation then the Board will have to complete your own Findings and either approve or deny the rezone application. If based on the Planning Commission's record, you wish to complete your own findings, the Planning Department could draft the Boards findings and conclusions for the Board's approval.

10:45

AGENDA ITEM: MTG. DATE: January 26, 2009 MEMO. DATE: January 20, 2009 SUBJECT: Amendment to BCC chapter 11.54- Administration and Disposition of Infractions. Prepared By: Michael Shuttleworth Reviewed By: Michael Shuttleworth	TYPE OF ACTION NEEDED Execute Contract Pass Resolution X Pass Ordinance X Pass Motion Other	Consent Agenda Public Meeting X 1st Discussion 2nd Discussion Other
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BACKGROUND INFORMATION

On October 21, 2008 and January 6, 2009, the Benton County Planning Commission conducted an open record hearing on a proposed ordinance to amend BCC Sections 11.54.060, 11.54.070, 11.54.110 and 11.54.120 to make these Sections of the Benton County Code consistent with the rules for limited jurisdiction infractions adopted by the State Supreme Court. The Planning Commission's record and recommendation for this proposed amendment is being submitted for your review and decision. The Board has set a public meeting for January 26, 2009 at 10:45 a.m. to review the record and recommendation of the Planning Commission.

After receiving the recommendation of the Planning Commission, the Board of County Commissioners may at a public meeting may adopt or reject the proposed ordinance. If after considering the ordinance at a public meeting the Board deems a change in the recommendations of the Planning Commission is necessary, the change shall not be incorporated in the recommended ordinance until the Board conducts its own public hearing and adopts its own findings of fact setting forth the factors considered at the hearing. Attached for the Board's review is a copy of the recording and all information presented at the Planning Commission Open Record Hearings. Also attached is the signed Recommendation, Findings and Conclusion of the Planning Commission.

SUMMARY

The Benton County Planning Commission has completed the open record hearing on a proposed ordinance to amend BCC Sections 11.54.060, 11.54.070, 11.54.110 and 11.54.120 to make these sections of the Benton County Code consistent with the rules for limited jurisdiction infractions adopted by the State Supreme Court. The Board of County Commissioners will consider the application and recommendation of the Planning Commission at a public meeting on January 26, 2009.

RECOMMENDATION

After closing the Open Record Hearing and discussing the issue, the Planning Commission voted to recommend approval of the amendments. After reviewing the information presented, the Planning staff recommends that the Board adopt the Planning Commission's recommendation, Findings and Conclusions (**See attached**) and approve the proposed ordinance.

MOTION

If the Board agrees with the Planning Commission's recommendation, the Board needs to make a motion adopting the Planning Commission's Recommendation, Findings and Conclusions as their own and approve the ordinance amending BCC Sections 11.54.060, 11.54.070, 11.54.110 and 11.54.120. If however, the Board disagrees with the Planning Commission's Recommendation, Findings and Conclusions then the Board will have to conduct its own public hearing and it adopts its own findings of fact.

ORDINANCE NO. _____

AN ORDINANCE relating to zoning and to the administration and disposition of infractions; amending Ordinance 301, Section 2 and BCC 11.54.060; amending Ordinance 301, Section 3 and BCC 11.54.070; amending Ordinance 203, Section 13 and BCC 11.54.110; and amending Ordinance 203, Section 14 and BCC 11.54.120.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Ordinance 301, Section 2 and BCC 11.54.060 are hereby amended to read as follows:

NOTICE OF INFRACTION--SERVICE. If an authorized representative of the Planning Department ~~((and))~~ or the Building and Fire Prevention Department reasonably believes that any provision of this title has been violated, ~~((the))~~ that authorized representative or the Prosecuting Attorney may issue a notice of infraction for the first such violation. A notice of infraction issued under this title shall be personally served upon the person named in the notice or filed with the court for service.

SECTION 2. Ordinance 301, Section 3 and BCC 11.54.070 are hereby amended to read as follows:

-----FORM--CONTENTS. The notice of infraction shall include the following:

(a) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued, the date and place the infraction occurred and the date the notice was issued;

(d) A statement that the civil penalty shall not exceed five hundred dollars (\$500) for said violation and that the person ~~((shall))~~ may be ordered to pay court costs, if applicable, and restitution for any damages caused by said violation;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options, including the name, address, and phone number of the court where the notice of infraction is to be filed and that the defendant must respond within fifteen (15) days;

(f) A statement that a mailed response must be mailed not later than midnight on the day the response is due;

~~((+))~~ (g) A statement that at any hearing to contest the determination the county has the burden of proving, by a preponderance of the evidence, that the infraction was committed;

and that the person may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction;

~~((g+))~~ (h) A statement, which the person who has been served with the notice of infraction shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;

~~((h+))~~ (i) A statement that refusal to sign the infraction as directed in subsection (g) of this section is a misdemeanor and may be punished by a fine or imprisonment in jail; and (i) A statement that a person's failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail.

SECTION 3. Ordinance 203, Section 13 and BCC 11.54.110 are hereby amended to read as follows:

----- PERSON'S REFUSAL TO SIGN - MISDEMEANOR. It is a misdemeanor for any person who has been ~~((personally))~~ appropriately served with a notice of infraction to refuse to sign a written promise to respond to the notice.

SECTION 4. Ordinance 203, Section 14 and BCC 11.54.120 are hereby amended to read as follows:

----- PERSON'S FAILURE TO RESPOND - MISDEMEANOR. It is a misdemeanor for any person who has been ~~((personally))~~ appropriately served with a notice of infraction to willfully violate the written promise to respond to the notice.

SECTION 5. SEVERABILITY. If any provision of this ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 6. EFFECTIVE DATE. This ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this ____ day of _____, 2008.

Chairman of the Board.

NOTE: This ordinance is continued on the following page.

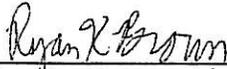
Ordinance No. _____
Continued
Page 3

Chairman Pro-Tem.

Member.

Approved as to Form:

Constituting the Board of
County Commissioners of
Benton County, Washington



Deputy Prosecuting Attorney

Attest: _____
Clerk of the Board

BENTON COUNTY PLANNING COMMISSION
Reasons for Action, Findings of Fact and Analysis
of Factors Considered Controlling

I. INTRODUCTION

In the Matter of: County Planning, amending BCC 11.54

Pursuant to Chapter 36.70 RCW, the Benton County Planning Commission has held a public hearing on October 21, 2008 for the purpose of hearing testimony for and against and considering adoption of an ordinance relating to zoning and to the administration and disposition of infractions; amending Ordinance 301, Section 2 and BCC 11.54.060; amending Ordinance 301, Section 3 and BCC 11.54.070; amending Ordinance 203, Section 13 and BCC 11.43.110; and amending Ordinance 203, Section 14 and BCC 11.54.120..

The members of the Planning Commission and their attendance for the afore-mentioned hearing are as follows: Martin Sheeran, Eugene Johnson, Lloyd Coughlin, James Wetzel, Rick Giberson, and James Willard.

All persons desiring to speak for or against, or in relation to the amendment were given full and complete opportunity to be heard. The Planning Commission is now satisfied that this matter has been sufficiently considered. Therefore, the Benton County Planning Commission hereby makes and enters the following:

II. FINDINGS OF FACT

- A. Legal notification was given on October 9, 2008. The public hearing was conducted on October 21, 2008 and continued until December 16, 2008 and January 6, 2009.
- B. The proposed amendment is found to be in conformance with the intent of the Benton County Comprehensive Plan. **Yes**
- C. Written and oral testimony have indicated the following concerning the proposed amendment:
Neither
- D. The Planning Commission finds the proposed amendment to be of the same character as and in general keeping with existing uses authorized in such zone. N/A
- E. A majority of the Planning Commission felt that the record and testimony **did** establish the need for the proposed amendment to maintain consistency with the Comprehensive Plan and state law.
- F. A majority of the Planning Commission indicated that the approval of the proposed amendment would be in the public interest. **YES**

III. ANALYSIS OF FACTORS CONSIDERED CONTROLLING

The Benton County Planning Commission considers all Findings of Fact heretofore entered to be controlling.
YES

IV. THEREFORE BE IT RESOLVED BY THE BENTON COUNTY PLANNING COMMISSION, through it's Vice Chairman as authorized by motion of the Planning Commission, adopts these findings and conclusions and that such ordinance amendment is hereby recommended for approval with such recommendation to be forwarded to the Board of County Commissioners.


Martin Sheeran, Chairman
BENTON COUNTY PLANNING COMMISSION

1/9/09
Date

Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

ORIGINAL

DATE: DECEMBER 29, 2008

TO: BENTON COUNTY PLANNING COMMISSION

FROM: BENTON COUNTY PLANNING DEPARTMENT

**RE: AMMENDMENT TO BCC CHAPTER 11.54 –
ADMINISTRATION AND DISPOSITION OF
INFRACTIONS.**

This draft ordinance is a revision to the ordinance reviewed by the Planning Commission at their meeting on October 21, 2008. The changes requested by the Planning Commission were reviewed with the Prosecuting Attorney's Office and a revised draft ordinance was forwarded to the Planning Commission for their continued hearing on January 6, 2009.

This item was continued from the December Planning Commission meeting due to the lack of a quorum. Please bring all materials sent to you last month to the January 6, 2009 meeting. If you need more materials sent to you please contact our office as soon as possible.

Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

BENTON COUNTY PLANNING COMMISSION PROPOSAL TO AMEND BCC 11.54

DATE: December 8, 2008

TO: BENTON COUNTY PLANNING COMMISSION

FROM: BENTON COUNTY PLANNING DEPARTMENT

RE: AMMENDMENT TO BCC CHAPTER 11.54 – ADMINISTRATION AND DISPOSITION OF INFRACTIONS.

BACKGROUND:

The attached draft ordinance is a revision to the ordinance reviewed by the Planning Commission at their meeting on October 21, 2008. The changes requested by the Planning Commission were reviewed with the Prosecuting Attorney's Office and a revised draft ordinance is being forwarded to the Planning Commission for their continued hearing on December 16, 2008.

These code revisions are being done in order to make county code (11.54) consistent with the rules for Limited Jurisdiction Court Infractions adopted by the State Supreme Court.

SUMMARY:

This action is to review and discuss the attached revised draft ordinance and conduct a public hearing on the proposed ordinance.

RECOMMENDATION:

The Benton County Planning Department recommends that the planning commission review the proposed ordinance, conduct the public hearing and recommend to the Board of County Commissioners adoption of the proposed ordinance.

ATTACHMENTS:

The following is attached to this report:
Exhibit 3: Revised Draft Ordinance.

ORDINANCE NO. _____

AN ORDINANCE relating to zoning and to the administration and disposition of infractions; amending Ordinance 301, Section 2 and BCC 11.54.060; amending Ordinance 301, Section 3 and BCC 11.54.070; amending Ordinance 203, Section 13 and BCC 11.54.110; and amending Ordinance 203, Section 14 and BCC 11.54.120.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Ordinance 301, Section 2 and BCC 11.54.060 are hereby amended to read as follows:

NOTICE OF INFRACTION--SERVICE. If an authorized representative of the Planning Department (~~and~~) or the Building and Fire Prevention Department reasonably believes that any provision of this title has been violated, (~~the~~) that authorized representative or the Prosecuting Attorney may issue a notice of infraction for the first such violation. A notice of infraction issued under this title shall be personally served upon the person named in the notice or filed with the court for service.

SECTION 2. Ordinance 301, Section 3 and BCC 11.54.070 are hereby amended to read as follows:

-----FORM--CONTENTS. The notice of infraction shall include the following:

- (a) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;
- (b) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;
- (c) A statement of the specific infraction for which the notice was issued, the date and place the infraction occurred and the date the notice was issued;
- (d) A statement that the civil penalty shall not exceed five hundred dollars (\$500) for said violation and that the person (~~shall~~) may be ordered to pay court costs, if applicable, and restitution for any damages caused by said violation;
- (e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options, including the name, address, and phone number of the court where the notice of infraction is to be filed and that the defendant must respond within fifteen (15) days;
- (f) A statement that a mailed response must be mailed not later than midnight on the day the response is due;
- (~~+~~) (g) A statement that at any hearing to contest the determination the county has the burden of proving, by a preponderance of the evidence, that the infraction was committed;

and that the person may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction;

~~((g+))~~ (h) A statement, which the person who has been served with the notice of infraction shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;

~~((h+))~~ (i) A statement that refusal to sign the infraction as directed in subsection (g) of this section is a misdemeanor and may be punished by a fine or imprisonment in jail; and (i) A statement that a person's failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail.

SECTION 3. Ordinance 203, Section 13 and BCC 11.54.110 are hereby amended to read as follows:

----- PERSON'S REFUSAL TO SIGN - MISDEMEANOR. It is a misdemeanor for any person who has been ~~((personally))~~ appropriately served with a notice of infraction to refuse to sign a written promise to respond to the notice.

SECTION 4. Ordinance 203, Section 14 and BCC 11.54.120 are hereby amended to read as follows:

----- PERSON'S FAILURE TO RESPOND - MISDEMEANOR. It is a misdemeanor for any person who has been ~~((personally))~~ appropriately served with a notice of infraction to willfully violate the written promise to respond to the notice.

SECTION 5. SEVERABILITY. If any provision of this ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 6. EFFECTIVE DATE. This ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this _____ day of _____, 2008.

Chairman of the Board.

NOTE: This ordinance is continued on the following page.

Ordinance No. _____
Continued
Page 3

Chairman Pro-Tem.

Member.

Constituting the Board of
County Commissioners of
Benton County, Washington

Approved as to Form:

Ryan K Brown
Deputy Prosecuting Attorney

Attest: _____
Clerk of the Board

10:50

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY BUDGETS RE: SUPPLEMENTAL APPROPRIATION TO THE 2009 CURRENT EXPENSE FUND NO. 0000-101, PROSECUTOR'S OFFICE, DEPT. 117, BUDGET IN THE AMOUNT OF \$74,054

WHEREAS, the Prosecutor's Office has requested a supplemental appropriation to the Current Expense Fund No. 0000-101, Dept. 117, in the amount of \$74,054 for professional services for a deputy prosecuting attorney, temporary staff and associated benefits and supplies in association with the City of W. Richland's request to Benton County to prosecute misdemeanors in District Court.

WHEREAS, a public hearing was held on Monday, January 26, 2009, at 10:50 AM at which time the public was given an opportunity to speak in favor or in opposition to the proposed supplement; and,

WHEREAS, the Board finds said supplement to be in the best interest of the citizens of Benton County; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of Benton County Commissioners that a supplemental appropriation to the 2009 Current Expense Fund No. 0000-101, Prosecutor's Office, Dept. 117, in the amount of \$74,054 be approved per the attached request.

Dated this day of, 2009

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County
Commissioners of Benton County,
Washington

Attest:
Clerk of the Board

Commissioners' Date Stamp:

**TRANSMITTAL
REQUEST FOR SUPPLEMENTAL APPROPRIATION**

Fund Name: **Current Expense**
Dept Name: **Prosecutor's Office**

Fund Number: **0000-101**
Dept Number: **117**

Request Summary

Expenditure		Supplement	Revised
BARS Number	Item Name	Amount	Budget
515.200.1563	DPA (at 15B)	49,872	49,872
515.200.2102	Social Security	3,815	116,662
515.200.2103	Medical	9,120	268,786
515.200.2104	Retirement	4,144	125,205
515.200.1175	Temporary Help	5,853	26,615
515.100.3101	Supplies	1,250	18,250
Total Supplement		\$74,054	

Revenue		
Fund Number	Item Name	Amount
338.15.0003	Legal Services to City of West Richland	46,502
288.00.000	Fund Balance	27,552
Total Revenue		\$74,054

Basis for Supplement:

The City of West Richland has asked our office to prosecute City of West Richland misdemeanors and gross misdemeanors in District Court. As you know, we have a statutory obligation to prosecute their Juvenile cases as well as their Felony cases but adult misdemeanor prosecution is their responsibility. That is why they would contract with us for the prosecution. I have met with the City of West Richland and we have agreed as to costs to our office which would be paid by the City of West Richland. We are asking for an increase in our temporary help budget for a support staff position in the amount that would be reimbursed by the contract. This will not cost the County any money as it would be reimbursed by the West Richland Contract. We are asking for an increase in supplies which would be fully reimbursed by the City of West Richland. We are asking for an extra Deputy Prosecutor position. Most of the cost would be covered by the West Richland Contract which pays for prosecution services as well as reimbursement for my time and our Office Administrator's time. The extra cost would be justified to the Board on the basis that we need extra help in the prosecution of mental health commitment proceedings, civil side an for an additional full-time prosecutor. We could use part of this prosecutor position to help with workload pressures without adding a full-time position.

Review Comments

Commissioners: _____

 Auditor's Office: _____

Commissioners

Mark Benitez
CHAIRMAN

Tom Bouemon
COMMISSIONER

James Beava
COMMISSIONER

Approved for Hearing
 Denied

11:00

AGENDA ITEM MTG. DATE: January 26, 2009 SUBJECT: Final Plat of Summit View Phase 6 Subdivision—SUB 08-02 MEMO DATE: January 20, 2009 Prepared by: Clark Posey Reviewed by: Michael Shuttleworth	TYPE OF ACTION NEEDED Execute Contract Pass Resolution X Pass Ordinance Pass Motion X Other	Consent Agenda Public Meeting X 1st Discussion 2nd Discussion Other
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BACKGROUND INFORMATION

On August 8, 1990, the Benton County Board of County Commissioners approved the preliminary plat of Summit View, to create 360 lots from 517-acres. The preliminary plat was approved subject to 21 conditions. Those conditions have been completed for the Final Plat of Summit View Phase 6 and the final plat is being submitted to the Board for their approval and signature.

SUMMARY

All the conditions of approval have been satisfied and all signatures have been obtained. The Final Plat of Summit View Phase 6 is ready for signature by the Chairman of the Board of County Commissioners.

RECOMMENDATION

It is the recommendation of the Benton County Planning Department that the Final Plat of Summit View Phase 6 – SUB 08-02 be approved and the Board sign the attached resolution authorizing the chairman to sign the final plat

FISCAL IMPACT

Maintenance of new county roads.

MOTION

The Board of County Commissioners should make a motion to approve the Final Plat of Summit View Phase 6, SUB 08-02 and the Chairman so indicate by signing the final plat.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING RE: THE FINAL PLAT OF SUMMIT VIEW PHASE 6 - SUB 08-02

WHEREAS, on August 8, 1990, the Board of County Commissioners approved the preliminary plat of Summit View Phase 6 - SUB 08-02; and

WHEREAS, On Monday, January 26, 2009, in the Commissioners Meeting Room, third floor, Courthouse, Prosser, Washington at a public meeting, the Board of County Commissioners considered the final plat of Summit View Phase 6 - SUB 08-02; and,

WHEREAS, the applicant for final plat approval has completed all the required conditions of approval for the proposed final plat of Summit View Phase 6 - SUB 08-02 and has obtained all required signatures; and

WHEREAS, it appears to be in the publics best interest to approve said final plat of Summit View Phase 6 - SUB 08-02, NOW THEREFORE,

BE IT RESOLVED that the Summit View Phase 6 - SUB 08-02 is approved and the Chairman so indicate by signing the plat.

Dated this _____ day of _____, 2009.

Chairman of the Board

Member

Member

Constituting the Board of County
Commissioners of Benton County
Washington.

Attest.....

Clerk of the Board
Pln-2/Pub Wrks

Michael Shuttleworth/djh