March 24, 2008

THE BOARD OF BENTON COUNTY COMMISSIONERS AGENDA PACKET

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
March 17, 2008, 9:00 a.m.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

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

Benton County Employees Present: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Community Development Coordinator; Finance Manager Linda Ivey; Public Works Director Ross Dunfee; Lisa Small, Commissioners' Office; Personnel Manager Melina Wenner; Facilities Manager Roy Rogers; Safety Coordinator Bryan Perry; Central Services Manager Randy Reid; Planning Director Terry Marden; DPA Ryan Brown; Treasurer Duane Davidson; Mike Shuttleworth, Planning; Clerk Josie Delvin; Deputy Clerk Jackie Hill; Deputy Auditor Brenda Chilton; Auditor Bobbie Gagner; Steve Becken, Public Works; Assessor Barb Wagner.

Special Presentation

Terry Marden was presented with a plaque honoring his 30 years of service to Benton County.

Approval of Minutes

The Minutes of March 10, 2008 were approved. The Minutes of March 12, 2008 were approved as corrected.

Consent Agenda

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

Auditor

a. Interlocal for Document Preparation/Imaging Services and Statement of Work No.1

Central Services

b. Purchase of Semi-Rugged Notebook Computers

Commissioners

c. Workforce Development Council – One-Stop Partnership Memorandum of Understanding
d. Line Item Transfer, Fund No. 0000-101, Dept. 115

District Court

e. Establishing Nonbargaining Employment Classification for Judge Pro-Tempore
f. Interagency Agreement w/State of WA Administrative Office of the Courts

Facilities

g. Contract w/Apollo Sheet Metal
h. Notice of Completion – Kennewick Annex HVAC System
i. Notice of Completion – Benton County HVAC Compressor
j. Notice of Completion – Fiber Optic Cabling System for Health District Building

Fairgrounds

k. Personal Service Contract for Fairgrounds Infrastructure Study 2008
l. Lease Agreement w/Blue Mountain Horse Racing

Juvenile

m. Agreement w/Center for Children's Law & Policy, Center for Children & Youth Justice

Noxious Weed

n. Appointment of Director to the Benton County Noxious Weed Control Board

Planning/Building

o. Line Item Transfer, Fund No. 0000-101, Dept. 116
p. Line Item Transfer, Fund No. 0149-101, Dept. 000

Prosecuting Attorney

q. Grievance Arbitration Settlement Agreement

Road/Engineer

r. Certification of Road Fund Expenditures for Traffic Law Enforcement 2007
s. E.R. & R. Purchase of Traffic Sign Materials 2008

Superior Court

t. Interagency Agreement w/State of WA Administrative Office of the Courts

Other Business

Legislation – County Seat

Commissioner Bowman said that legislation was submitted proposing changes to the wording in the statute requiring certain elected officials or department directors to hold their office at the County seat to the wording "an office". He said it received no opposition, however, with timing it did not pass and it will be brought back next year.

Legislative Update

Commissioner Bowman said the Legislation was over and gave the Board information on highlights. Additionally, he stated he attended the retirement party in Olympia for Bill Vogler.

Commissioner Benitz requested Carrie Huie-Pascua bring back a recommendation to the Board on the Regional Support Network legislation. The Board agreed.

Other Business

Thurston County - Amicus Brief Update

Commissioner Bowman said it was the PA's opinion that Benton County assisting in the lawsuit after the brief was already complete would constitute "gifting" and so it was not advisable to join in the amicus brief.

Fairgrounds Insurance

Commissioner Bowman said he had been approached by someone who was very concerned about the insurance requirements for leasing a building at the Fairgrounds. He indicated the County had lost two, if not three organizations that typically come year after year and the County was requiring costs that were not competitive. He requested the risk management folks review the matter and see if there was something that could be changed and said the Board needed to be more involved.

Chairman Oliver said the completion of the infrastructure report would lend itself to looking at the master plan and agreed the insurance issues should be visited.

Commissioner Benitz said this was a management decision that Mr. Sparks should handle and if there was something that should be corrected, he wanted Mr. Sparks to review it.

Public Hearing – SHPA 08-02

Mike Shuttelworth said they received an appeal from James Andrews to the short plat administrator's requirement to provide 40 feet of access to serve,the plat. Mr. Andrews' letter of appeal stated there was actual access of 24 feet, although there were no legal recorded easements showing the 24 feet. Mr. Shutleworth said the Planning Department would recommend the appeal be approved, conditioned upon a legal recorded easement in the amount of 24 feet.

Testimony

James Andrews spoke in favor of the appeal and said he was just trying to get access and split the property into two lots. He said there were already two pieces of property and they would not actually be changing anything.

Tim Coleman, attorney for Mr. Andrews, said there was a roadway that had been handed down for 30 years. He said they were not looking at a situation that would be burdened any further since there could not be any further short plats less than 5 acres. He recommended the Board approve the short plat, without requiring legal access, as it stands right now.

Larry Corgatelli, neighbor, said he had no problem with the short plat, and believed the road was sufficient without taking any more easement.

Larry Hickman, Kennewick, said he was in support of the short plat application and wanted the road to stay the way it was.

Stewart Crutcher said he was in support of the short plat and not in support of increasing the size of the road.

As there was no one else present to testify, public testimony was closed.

In response to a question by Commissioner Bowman, Mr. Shuttleworth said the requirement for the road easement was 40 feet, but the Planning Department was willing to go with 24 feet of legal access. Without legal access, the property owners could move their fence and then there would not be a 24-foot access.

Commissioner Benitz said he was in favor of the recommendation and needed to approve it with legal access to preserve the roadway for future owners of the land.

MOTION: Commissioner Bowman moved to approve the appeal with the condition the applicant provide recorded documents showing the private road easements with the appropriate width. Commissioner Benitz seconded and upon vote, the motion carried.

Piert Road Status Report

Ross Dunfee and Steve Becken updated the Board on the status of Piert Road. Mr. Dunfee said from a cost standpoint, the blue line was done and the County just needed to get the property. From a land use and economic development standpoint, the black line had potential for a $110 million development. Mr. Dunfee said the cost to build was approximately $3 million, with $2 million from TIB, and a possible $500,000 from FMSIB.

Paul Brindle, Columbia Energy, said there were two components for development. They had received the commitment to fund on Friday and the investor possibilities also looked extremely promising. One condition of funding was for Columbia Energy to bring in substantial equity, which was currently being worked. Additionally, Columbia Energy was willing to make the commitment to pay $50,000, regardless of whether or not the project went through, but they just needed to work out the terms of payment. He also stated that had been some interest in doubling the investment in the project to $280 million.

Commissioner Bowman said the Freight Mobility Strategic Investment Board was disappointed the County was not ready to go, but have said they will make every attempt to get it approved once it was ready.

Commissioner Benitz said he wanted to move forward with blue line alignment, as previously submitted and agreed to.

Chairman Oliver asked that a complete analysis be brought back to the Board next Monday. He said the question was how much longer was the County willing to wait to make a decision.

The Board briefly recessed, reconvening at 10:05 a.m.

Facilities/Storage Needs Discussion

Chairman Oliver asked for comments from the elected officials that were present for the discussion.

Clerk Josie Delvin said her storage needs were brought before the Board, along with a proposal for off-site storage. She said the State currently only accepted microfilm and they were not currently in the position to take electronic documents from her for storage. She indicated the Health District storage area would be fine with her, as long as she could have shelving installed for accessibility. Ms. Delvin said some additional alternatives were brought forward, including storing some documents at the States Archives at no cost and storing some documents at a scanning facility if she used their services to electronically scan documents.

Commissioner Benitz said he was in favor of the storage committee so it could bring back recommendations like these.

Claude Oliver said he was also in favor of the committee looking at professional resources to help with the solution.

Auditor Bobbi Gagner said she agreed with forming a committee of elected officials and department heads. She confirmed that State Archives only took microfilm, however, information could be burned to a CD and microfilm could be completed by the State at a cost. She also said she supported the Administrative Building and believed it was a good move in the right direction. Additionally, she indicated that most of her storage needs were being addressed. In response to a question by Commissioner Bowman, Ms. Gagner,said the elected officials did not meet as a group and work on a solution for preserving the documents that did not need to be stored.

Treasurer Duane Davidson said he was also in support of the storage committee and the proposed administrative building. He indicated the bulk of his employees would remain in Prosser; he would keep the accounting staff in Prosser but would move customer service to Kennewick. He added that keeping the accounting staff in Prosser would require other departments to keep their accounting personnel in Prosser. Mr. Davidson said the retention manuals were way out of date and they currently have technology to keep pictures of documents that have short-term storage needs and do not need to keep the paper copy. He indicated the committee could put pressure on the Secretary of State to re-write the archive manual to put in efficiencies.

Assessor Barb Wagner said she was in support of the plan for the new administrative building and that she did plan on bringing more people down to Kennewick to help with customer service. Additionally, she said she needed just slightly more storage than what she presently had.

Jacki Lahtinen via/videoconference said her storage was fairly adequate for their need and they were not presently microfilming or scanning. She said down the road they would need room for personnel and were in favor of the Prosser remodel as presented.

Pat Austin via/videoconference said she had limited storage needs since the Clerk was required to keep most of her records.
Ross Dunfee, Public Works, said his storage needs were adequate. He indicated it would be beneficial to move a couple of employees from the shop to the Courthouse, but there was not presently room. He said his bigger issue was the ability to attract highly qualified and technical employees, and part of that reason was because of the location in Prosser. He said it was his opinion the Public Works Administration Department would be better served in Tri-Cities.

Chairman Oliver asked if it possible to add another floor at the administrative building for storage and Mr. Rogers said it was.

Commissioner Benitz said he was in support of moving forward with an administrative building in Kennewick to meet the demands and provide the services for the elected officials. He said he would support hiring an architectural firm to prepare the architectural design in Kennewick and Prosser. Also, he requested the records storage committee bring back a recommendation for immediate and long-term storage needs. Commissioner Benitz stated he was not in favor of moving Public Works Administration to Kennewick and wanted the WSU Cooperative Extension to be incorporated into the Administrative Building.

Commissioner Bowman expressed his disappointment in the storage study in that it did not include records retention along with records storage. He said he supported the proposal for the administrative building in Kennewick and the remodel in Prosser and supported WSU being in or near the Health District Building. Additionally, he was in support of the records storage committee. He said he understood Public Works' issue with recruiting staff, but also saw the need to have administrative staff near other administrative departments and was not ready to take a position on that issue.

Commissioner Benitz said the location of the WSU Cooperative Extension in the Health District Building should be a decision made by the Health District Board, however, believed it should be somewhere at the Justice Center campus.

David Sparks said they did cut back square footage that WSU had asked for to make it all fit within the building.

Chairman Oliver said he agreed with 95% of what was before the Board. However, he said he had been looking at WSU to be relocated out to the Fairgrounds so it would be able to co-exist with Fair groups and youth groups. He indicated the County was missing a golden opportunity for economic development at the Fairgrounds and the Coop was open to dialogue and he asked the Board to think ahead. He also stated that one of the biggest promoters of the Fairgrounds sent $3 million to a Colorado equine group since Benton County did not have anything going on. Chairman Oliver stated his support of the Courthouse remodel and administrative building in Kennewick.

Chairman Oliver said he was in favor of appointing Auditor Bobbie Gagner as Chair of the Records Storage Committee and appointing Randy Reid as the technical staff from the Commissioners' office.

David Sparks said that public service in every area had been addressed for the Justice Center, other than the County Engineer's office. Mr. Marden said with respect to Planning matters, it didn't matter where the Engineer's office was located. The planning staff would just send plans to the Engineer and the Engineer would send them back.

Bobbie Gagner said there might be instances for individuals to come to Prosser to have certain short plats and others documents recorded since the Engineer's office had to sign off.

Chairman Oliver also requested the Committee come back with a recommendation on who the County should hire to help with professional services.

Mr. Sparks was directed to work out the logistics of phasing out the projects and report back to the Board.

The Board briefly recessed, reconvening at 11:16 a.m.

Unscheduled Visitors

Walt Carmella, Benton City, discussed his concern about his application to short plat his property, the Health District requirements, and their inability to get final approval through the Planning Department. He said they wanted to subdivide their property into 2 ½ acre lots and were told by the Health Department the whole way through there would be a continuance of law.

Terry Marden said he personally informed Mr. Carmella of the requirement to have the complete application, survey, and vested permits done by September 1, 2007. Additionally, he informed him he could make application while he was waiting for the permit from the Health District, and that to be vested, the application had to be in the Planning office September 1, 2007.

The Board agreed that one commissioner could work with Mr. Carmella and Mr. Marden to try and bring resolution to the matter. Chairman Oliver said he would work with all parties and bring back a recommendation.

Other Business

Fairgrounds Insurance Requirements

Linda Ivey and Melina Wenner presented an insurance requirement comparison between counties. Melina said it was something new the County was requiring of promoters and each of the vendors as well.

Ms. Ivey said if the lessee did not have their own insurance, they could apply through Diversified for special event insurance at the rate of approximately $50.00 per vendor or $158 per vendor if the lessee went through its own insurance. She recommended categorizing lessees into three areas of risk (low, medium, and high) and requiring different amounts of insurance related to the risk.

Ms. Wenner said that Benton County and one other county were the only ones requiring vendor insurance and did not know if it was necessary for small vendors.

Commissioner Benitz requested they work with the prosecuting attorney's office to make sure county liability was kept to a minimum and bring back a recommendation.

Commissioner Bowman and Chairman Oliver both expressed their concern and displeasure about the insurance requirements and how it was driving business away from the County.

Ms. Wenner and Ms. Ivey said they would review the matter further and bring back recommendations to the Board.

Vouchers

Check Date: 03/17/2008
Taxes # 10108033-10108034
Total all funds: $36,429.95

Check Date: 03/17/2008
Warrant # 217295-217544
Total all funds: $219,797.82

Check Date: 03/12/2008
Warrant #: 892571-892711
Total all funds: $6,210.79

Check Date: 03/14/2008
Warrant #: 892863-893165
Total all funds: $1,250,486.55

Check Date: 03/14/2008
Warrant #: 893166-893471
Total all funds: $8,651.49

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

Resolutions

08-396 Interlocal for Document Preparation/Imaging Services and Statement of Work No.1

08-397	Purchase of Semi-Rugged Notebook Computers
08-398	Workforce Development Council/One-Stop Partnership Memo of Understanding
08-399	Line Item Transfer, Fund No. 0000-101, Dept. 115
08-400	Establishing Non-Bargaining Employment Classification for Judge Pro-Tempore
08-401	Interagency Agreement w/State of WA Administrative Office of the Courts
08-402	Contract w/Apollo Sheet Metal
08-403	Notice of Completion – Kennewick Annex HVAC System
08-404	Notice of Completion – Benton County HVAC Compressor
08-405	Notice of Completion – Fiber Optic Cabling System for Health District Building
08-406	Personal Service Contract for Fairgrounds Infrastructure Study 2008
08-407	Lease Agreement w/Blue Mountain Horse Racing
08-408	Agreement w/Center for Children's Law & Policy, Center for Children & Youth Justice
08-409	Appointment of Director to the Benton County Noxious Weed Control Board
08-410	Line Item Transfer, Fund No. 0000-101, Dept. 116
08-411	Line Item Transfer, Fund No. 0149-101, Dept. 000
08-412	Grievance Arbitration Settlement Agreement
08-413	Certification of Road Fund Expenditures for Traffic Law Enforcement 2007
08-414	E.R. & R. Purchase of Traffic Sign Materials 2008
08-415	Interagency Agreement w/State of WA Administrative Office of the Courts
08-416	Approval of Short Plat Appeal (SHPA 08-02 and SHP 07-109)

The meeting adjourned at approximately at approximately 11:45 a.m.

Clerk of the Board

Chairman

JOINT RESOLUTION

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, AND FRANKLIN COUNTY, WASHINGTON

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. 2008 099

IN THE MATTER OF APPOINTMENTS TO THE MENTAL HEALTH ADVISORY BOARD TO REPRESENT BENTON AND FRANKLIN COUNTIES

WHEREAS, a Joint Resolution was signed by Benton County on March 5, 1990, #90-77, and by Franklin County on March 12, 1990, #90-36, creating the Benton-Franklin Counties' Mental Health Advisory Board, and

WHEREAS, said Joint Resolution provided for Board composition of nine members appointed by the Boards of Commissioners of Benton and Franklin Counties, and

WHEREAS, a vacancy exists on the Board with the resignation of Jane Paulos; and

WHEREAS, Carol Latorre has demonstrated interest and indicated willingness to accept appointment to the Mental Health Advisory Board, NOW THEREFORE,

BE IT RESOLVED that Carol Latorre, residing at 301 Spengler Street, Richland, WA 99354, be hereby appointed to fill Ms. Paulos' position on the Benton-Franklin Counties' Mental Health Advisory Board for a term of appointment that will expire on December 31, 2008.

DATED: _____

_____
Claude Oliver, Chairman of the Board

_____
Max Bentiz, Chair Pro-tem

_____
Leo Bowman, Member
Constituting the Board of County
Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

DATED: March 12, 2008

_____
Robert Koch, Chairman of the Board

_____
Rick Miller, Chair Pro-tem

Neva J. Corkrum - Absent
Neva Corkrum, Member
Constituting the Board of County
Commissioners of Franklin County, Washington

Attest: _____
Clerk of the Board

Distribution: Benton County Commissioners
Franklin County Commissioners
Dept. of Human Services

cc: Carol Latorre

Carey

JOINT RESOLUTION

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, AND FRANKLIN COUNTY, WASHINGTON

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. 2008 100

IN THE MATTER OF APPOINTMENTS TO THE MENTAL HEALTH ADVISORY BOARD TO REPRESENT BENTON AND FRANKLIN COUNTIES

WHEREAS, a Joint Resolution was signed by Benton County on March 5, 1990, #90-77, and by Franklin County on March 12, 1990, #90-36, creating the Benton-Franklin Counties' Mental Health Advisory Board, and

WHEREAS, said Joint Resolution provided for Board composition of nine members appointed by the Boards of Commissioners of Benton and Franklin Counties, and

WHEREAS, a vacancy exists on the Board with the resignation of Linda Waite; and

WHEREAS, Patti Davis has demonstrated interest and indicated willingness to accept appointment to the Mental Health Advisory Board, NOW THEREFORE,

BE IT RESOLVED that Patti Davis, residing at 211 W. 53rd Avenue, Kennewick, WA 99337, be hereby appointed to fill Ms. Waite's position on the Benton-Franklin Counties' Mental Health Advisory Board for a term of appointment that will expire on December 31, 2010.

DATED: _____

Claude Oliver, Chairman of the Board

Max Bentiz, Chair Pro-tem

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

Attest: _____
Clerk of the Board

DATED: March 12, 2008

Robert Koch, Chairman of the Board

Rick Miller, Chair Pro-tem

Neva J. Corkrum - Absent

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

Attest: Mary Withers
Clerk of the Board

Distribution: Benton County Commissioners
Franklin County Commissioners
Dept. of Human Services

cc: Patti Davis

Carey

C

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH SCOTT NACCARATO, ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH MISDEMEANORS IN BENTON COUNTY DISTRICT COURT, RESCINDING PREVIOUS PERSONAL SERVICE AGREEMENT.

WHEREAS, the Board of County Commissioners previously entered into a Personal Service Agreement with Scott Naccarato for legal representation of indigent individuals charged with misdemeanors in District Court, Resolution 05-120; and

WHEREAS, the Board of County Commissioners and Scott Naccarato both desire to terminate that Personal Service Agreement and enter into a new agreement effective March 01, 2008;

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 Charged With Misdemeanors in District Court with Scott Naccarato for the period March 01, 2008 through December 31, 2010;

BE IT FURTHER RESOLVED, that the Personal Service Agreement, Resolution 05-120 between Benton County and Scott Naccarato, previously entered into be and hereby is terminated effective February 29, 2008.

Dated this ..... day of ....., 2008

Chairman of the Board

Chairman Pro-Tem

Member

Attest: .....
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Original: File
cc: Scott Naccarato; Jacki Lahtinen: Rosie Sparks; Rosemary Ozua

J.Paxton

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

THIS AGREEMENT is entered into by and between Scott Naccarato, attorney at law, Washington State Bar Association #20633 (Attorney), and **BENTON COUNTY**, a State of Washington political subdivision (the 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 **March 1, 2008**, and shall continue thereafter through and including the **31st day of December 2010**, 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 7502 W. Deschutes Place, Kennewick, WA, 99336. Attorney's current local office telephone and fax numbers are (509) 783-5551, ext. 309, and (509) 736-1151, respectively; and Attorney's current office/work e-mail address is snacc@3-cities.com

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 service 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 of 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 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.** On or about the date of this Agreement, the County contemplates entering 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.**

a. Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. In that regard, 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 for up to ninety (90) days following the effective date of termination. 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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a crime 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.

(ii) By way of further example, in the event that Attorney is required by this paragraph to continue representing a person charged with a crime or matter after the termination date of this Agreement, the only compensation that

Attorney would be entitled to receive as a result of such continued, post-termination representation is court-authorized cost reimbursements specified in paragraph 13.b below.

b. Notwithstanding anything in this paragraph 6 or elsewhere in this Agreement to the contrary, Attorney's post-termination duty and obligation to continue representing persons whom Attorney was appointed to represent in Benton County District Court for up to ninety (90) days shall be limited to a sixty (60) day period following the termination date for the following types of matters:

(i) Any civil-based matter;

(ii) Any matter involving a represented person for whom a warrant has been issued; and

(iii) Any case where personal service is not effected within thirty (30) days of the date of the notice of termination.

c. Attorney will be appointed to no new cases under this Agreement during the thirty (30) day period prior to its termination date specified in paragraph 1 above if Attorney provides written notice to the County at least sixty (60) days prior to such termination date of Attorney's desire and intent to not pursue contracting with the County again to provide indigent defense services in Benton County District Court after such termination date. Attorney may belatedly provide such written notice at any time within said sixty (60) day time period, but the appointment of new cases to Attorney will not stop until thirty (30) days after the date such notice is received by the County.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County District Court up to a maximum of **three hundred and eighty (380) total case equivalents per calendar year,** (proratable for any partial calendar year), for calendar year 2008 with downward adjustments in 2009 and 2010 as indicated below. 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. **MONTHLY COMPENSATION.**

a. During the balance of calendar year 2008, Attorney's monthly compensation hereunder shall be **$4591.67 per month** (proratable for any partial month), payable on the last business day of the month for handling **380 total case equivalents** during the calendar year.

b. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$4830.00 per month** (proratable for any partial month), payable on the last

business day of the month for handling **360 total case equivalents** during the calendar year.

c. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$5071.67 per month**, (proratable for any partial month), payable on the last business day of the month for handling **340 total case equivalents** during the calendar year.

d. In addition to the stated monthly compensation, commencing in calendar year 2008, 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. Commencing in calendar year 2010, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial.

e. 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. For example, if this Agreement is terminated effective October 31, 2008, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2008, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). 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 up to the above-stated annual maximum total case equivalents.

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 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 addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney shall

not be appointed any new cases during the last thirty (30) calendar days of said ninety (90) day notice period.

d. In any event, consistent with the provisions of paragraph 12.e 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.

e. 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 19a. and 19b. 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

Rafael A. Gonzales
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 2a. 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 employed an 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: _____

BENTON COUNTY

_____

Chairman

_____

Commissioner

_____

Commissioner

Date: 2/25/08

ATTORNEY

Approved as to Content:

Rafael A. Gonzales
Indigent Defense Coordinator

Approved as to Form:

Timothy G. Klashke
Attorney at Law

AGENDA ITEM	ACTION NEEDED	DISCUSSION TYPE
Meeting Date: 24 Mar 2008	Execute Contract X	Consent Agenda X
Subject: HHV groundwater	Pass Resolution	Public Hearing
Memo Date: 19 Mar 2008	Pass Ordinance	1st Discussion X
Prepared By: AJF & K Mercer	Pass Motion	2nd Discussion
Reviewed By: AJF	Other	Other

d

SUMMARY & BACKGROUND

Commissioners are aware of the project to make substantial improvements at the Horse Heaven Vista park site. Most of these improvements will be made via grant funding from the Washington Department of Transportation.

While it has taken longer than expected to get the improvements underway, some aspects of the delays have helped to actually make the project better by getting us more funding assistance, and making available the opportunities for lighting at the site, and possibly water for a restroom.

A decision on "watering" the park is contingent on the availability of water and the costs of actualizing that water. A "level one" feasibility study is needed to look at probable groundwater depths and costs. This sort of study is performed mostly be review of existing well records from the area, analysis of the local geology, and the known costs for well-drilling, et cetera.

If bringing water to the site is determined to be not feasible, the back-up plan is for a "dry" restroom to be used at the site (vaulted, unplumbed facility).

Vista Engineering Technologies has performed similar work for the County in the past. Staff has discussed the project with Vista, and Vista has quoted a price of $1000.00 to perform the type of groundwater potential evaluation we require at this time. Keith Mercer and Eric Hsu have developed a 'professional services agreement' for the work which is before the Board for consideration at this time.

FISCAL IMPACT

$1,000.00, to be paid from the portion of the Park Development Fund dedicated to completion of this project.

# # #

PROFESSIONAL SERVICES AGREEMENT
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision of the State of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and Vista Engineering Technologies LLC.,a limited liability company licensed to do business in the State of Washington, with it principal mailing address at 8203 W. Quinault Avenue Bldg C, Kennewick, Washington 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 this agreement and the following exhibits, which are incorporated herein by this reference

A. Exhibit A - Proposal/Scope of Work

2. **DURATION OF CONTRACT**

The Contractor shall commence work on a date to be specified in the written Notice to Proceed issued by Benton County and shall be completed upon approval of acceptance by the Board of Benton County Commissioners via resolution.

3. **SERVICES PROVIDED**

The CONTRACTOR shall perform the following services:

a. Groundwater survey and analysis at Benton County park property adjacent to SR-221 at the crest of Horse Heaven Hills south of Prosser, WA. The precise location of the park property shall be confirmed in writing prior to the start of work. If there is any confusion as to the relevant piece of property, CONTRACTOR shall request COUNTY's presence on-site and COUNTY shall send a representative to ensure that work will commence regarding the appropriate property. The work to be done is described in further detail in the proposal letter from CONTRACTOR attached hereto as Exhibit A.

b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the COUNTY.

c. The CONTRACTOR shall perform the work specified in the 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.

f. Deliverables include, at the very least, a report summarizing the data collected or reviewed, relevant findings, and a recommendation as to the suitability of the property for the drilling of a well to supply a public restroom with running water.

4. CONTRACT REPRESENTATIVES

The parties' representatives are as follows:

a. For CONTRACTOR:

Kenneth Moser
Vista Engineering Technologies
8203 W. Quinault Avenue Bldg C
Kennewick, Washington 99336
Phone 509-737-1377
Fax 509-737-1383

b. For COUNTY:

Adam J. Fyall
Benton County Facilities and Parks
7122 West Okanogan Place, Bldg A
Kennewick, Washington 99336
Phone 509-736-3053
Fax 509-736-2708

A party may change its representative by providing prompt written notice to the other party.

5. COMPENSATION

The CONTRACTOR shall be paid in accordance with the proposal provided in Exhibit A attached hereto. The total amount payable by the COUNTY to the CONTRACTOR under this agreement is one thousand dollars and zero cents ($1,000.00) including W.S.S.T. Total amount payable, including acceptable overages, incidentals and other unanticipated costs shall not exceed one thousand one hundred dollars and zero cents, ($1,100.00) including W.S.S.T.

6. INVOICING

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 of invoice, less amounts paid on previous invoices. Each invoice shall cover all work performed for the COUNTY during the billing period.

7. DEFECTS

In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract or where work is substandard, the CONTRACTOR shall make any and all necessary corrections without additional compensation. Compensation may be withheld until CONTRACTOR makes such corrections. All work done by the CONTRACTOR shall be in a workmanlike manner and shall meet or exceed applicable standards generally accepted in the construction industry. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

8. AMENDMENT AND CHANGES IN WORK

No amendment, modification or renewal of this contract shall be effective, unless set forth in a written Amendment signed by both parties.

9. 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, damage to property or business, or any other source of liability whatsoever, 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. 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, its employees, agents or subcontractors.

c. 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 of 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. 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.

10. **INSURANCE**

The CONTRACTOR shall obtain and maintain continuously, the following insurance:

a. **Professional Legal Liability:** The CONTRACTOR, if he, she or it is a licensed professional, shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the CONTRACTOR'S profession and shall be written subject to limits of not less than one million dollars ($1,000,000) per occurrence, loss or person. If the policy contains a general aggregate or policy limit it shall be at least two times the incident, loss or person limit.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the CONTRACTOR'S services defined in this Contract. Coverage shall not exclude bodily injury or property damage. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. CONTRACTOR is required to buy professional liability insurance for a period of 36 months after completion of this Contract, which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy.

b. Workers Compensation: CONTRACTOR shall comply with all Washington State Workers Compensation laws. 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.

c. Commercial General Liability Insurance: So long as CONTRACTOR is able to complete its obligations pursuant to this agreement without necessity to conduct any inspections or visits to Benton County property (except to any offices of Benton County for meetings or presentations), no commercial general liability insurance is required by this agreement. If CONTRACTOR determines that it will need to conduct site visits or inspections, then it shall notify COUNTY immediately in writing, and this portion of the agreement shall be amended prior to CONTRACTOR making any such site visit or inspection.

d. 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 CONTRACTORS'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured, and specifically shall not exclude coverage for any indemnification as set out in section 9 above.

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 insurance limits mandated for any insurance coverage required by this Contract are not intended to be indication of exposure nor are they limitations on indemnification.

6) 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. Any insurance coverage required of CONTRACTOR may not be written as a "claims made" policy, except for

any professional liability or professional errors and omissions policy required by this agreement. In such case, CONTRACTOR shall procure an extended reporting period policy that permits claims no less than three years following laps of such policy, or shall procure tail coverage for a period of three years following expiration of this agreement.

7) 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 in advance of commencement of work 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.

8) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered accord form certificate of insurance of a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this contract. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the COUNTY. Any certificate or endorsement limiting or negating the insurer's obligation to notify the COUNTY of cancellation or changes shall be altered so as not to negate the intent of this provision. The endorsement pages of the policy showing the COUNTY as an additional insured shall also be furnished to the COUNTY within ten (10) days after effective date of this agreement.

9) Certificates of insurance shall name "Benton County" as additional insured. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.

10) The 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.

11) All written notices and notice of cancellation or change

of required insurance coverage shall be mailed to the COUNTY at the following address:

Risk Manager
Benton County Prosecuting Attorney's Office
7320 W. Quinault Avenue
Kennewick, WA 99336

12) 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. 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.

11. 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 actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.

b. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines, in its sole discretion, that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) days written notice by certified mail to the COUNTY. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.

c. In the event of termination as contemplated above, CONTRACTOR and all of its sub-contractors or sub-sub-contractors shall remove all of their tools and equipment by the close of business on the effective date as set out above. PROVIDED that, no tools or equipment purchased specifically for this project, and paid for, or billed to the COUNTY, and no portion of any partially or fully

completed structure or curtilage may be damaged, defaced, disassembled or destroyed in the process of removing tools or equipment belonging to CONTRACTOR.

12. COMPLIANCE WITH LAWS AND PREVAILING WAGE

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

13. 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 race, color, creed, religion, national origin, age, sex, marital status, veteran status, or the presence of any disability.

14. DISPUTES

Disputes over the CONTRACTOR's performance will be promptly addressed in writing by the aggrieved party 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. Venue for any such judicial proceeding shall be in Benton County, Washington.

15. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

The CONTRACTOR may not assign or delegate its duties as general contractor for the work covered by this agreement without written consent from COUNTY. However, CONTRACTOR is permitted to, using all reasonable care and due diligence, select appropriately skilled sub-contractors and sub-sub-contractors to assist it in completing the work covered by this agreement. If CONTRACTOR chooses to use the services or sub-contractors or sub-sub-contractors, then prior to such sub-contractors or sub-sub-contractors commencing any work, CONTRACTOR shall provide COUNTY with the names of such sub-contractor or sub-sub-contractors. COUNTY, in its sole discretion, may reasonably object to the use of any given sub-contractor or sub-sub-contractor and, if notice is given in writing to CONTRACTOR of such objection within ten (10) days of receipt of CONTRACTOR's intent to utilize the sub-contractor or sub-sub-contractor's services, then CONTRACTOR shall promptly replace the sub-contractor or sub-sub-contractor with another appropriately skilled sub-contractor or sub-sub-

contractor.

16. ENTIRE AGREEMENT

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

17. 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 Article 4 above. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be effective 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.

18. 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 the 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.

20. 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.

b. All design work done by the CONTRACTOR shall be done on AutoCAD, release 12 or higher or other systems mutually agreed upon, an electronic copy of which shall be submitted to the COUNTY upon request and/or at the end of the job. Should a construction project result from the work of the CONTRACTOR, the record drawings from the CONTRACTOR shall be transposed onto the electronic design drawings and submitted to the COUNTY.

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.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and is effective on the last date signed.

The parties specifically certify that the provisions contained within paragraph 9(c) are mutually negotiated.

BENTON COUNTY	**VISTA ENGINEERING TECHNOLOGIES, LLC**
Claude Oliver, Chairman **Benton County Commissioner**	**Kenneth Moser**
Dated: _____	Dated: _____

Approved as to Form:

Deputy Prosecuting Attorney

Original: File - Lisa Small
cc: Auditor, Prosecutor (R. Ozuna), Parks (A.J. Fyall),

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: COMPREHENSIVE SIX-YEAR ROAD PROGRAM, 2009 -2014

WHEREAS, RCW 36.81.121 requires development of perpetual advanced six-year plans for coordinated transportation; and

WHEREAS, the updated six-year plan, describing the road maintenance and improvement program for the period of 2009 through 2014 shall be adopted prior to adoption of annual budget, after one or more public hearings; NOW, THEREFORE,

BE IT RESOLVED that the County Engineer is hereby directed to prepare a proposed Six-Year Road Program for the period of 2009 through 2014; and

BE IT FURTHER RESOLVED that a Public Hearing be held at 10:30 a.m., Monday, April 28, 2008 in the Meeting Room of the Board of County Commissioners, Benton County Courthouse, Prosser, Washington, to consider the proposed plan for adoption.

Dated this 24th day of March, 2008.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

RBD:dlh

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY ROADS RE: EXTENSION OF CONTRACT FOR CARD LOCK SERVICE FOR GASOLINE AND DIESEL FUEL

WHEREAS, by resolution dated March 15, 2004, the Contract for the Purchase of Card Lock Service for Gasoline and Diesel Fuel with Wondrack Distributing, Inc., Kennewick, Washington, was executed; and

WHEREAS, Appendix A of said contract allows for renewal of the contract for one-year periods; NOW, THEREFORE,

BE IT RESOLVED that the Contract for Card Lock Service for Gasoline and Diesel Fuel with Wondrack Distributing, Inc., be renewed for a one-year period, from April 1, 2008 through March 31, 2009; and

BE IT FURTHER RESOLVED that the Chairman is hereby authorized to sign a letter of agreement to renew said contract.

Dated this 24th day of March, 2008.

_____
Chairman of the Board.

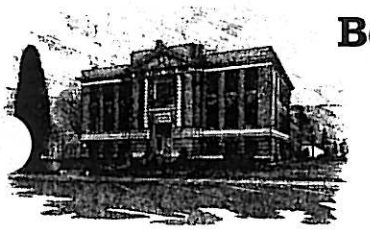
_____
Chairman Pro-Tem.

_____
Member.

Attest: _____
Clerk of the Board

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

RBD:LJM:dlh



Board of County Commissioners
BENTON COUNTY
P.O. Box 190 • Prosser, WA 99350-0190
Phone (509) 786-5600 or (509) 736-3080
Fax (509) 786-5625

Leo Bowman
District 1
Max Benitz, Jr.
District 2
Claude Oliver
District 3

March 24, 2007

Chuck Vannoy, Fuel Manager
WONDRACK DISTRIBUTING INC.
P O Box 2775
Kennewick, WA 99336

RE: Card Lock Service
Gasoline and Diesel Fuel

This letter is written to renew the contract with Wondrack Distributing, Inc., for Card Lock Service for Gasoline and Diesel Fuel.

Pursuant to Item 10 of Appendix A to the contract for card lock service for gasoline and diesel fuel, Benton County agrees that the contract be renewed for an additional one-year term, effective April 1, 2008 through March 31, 2009.

By signing below, Wondrack Distributing, Inc., agrees to the renewal of the agreement for one year. If this is acceptable to you, please sign and return this letter within one week.

Thank you for your consideration in this matter.

_____
Claude L. Oliver, Chairman
Board of County Commissioners

****

FOR WONDRACK DISTRIBUTING, INC.,

_____ _____
Signature Date

9

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FRANCHISES RE: GRANTING A FRANCHISE TO B.C. WATER COMPANY, LLC, TO CONTINUE A NON EXCLUSIVE FRANCHISE FOR AN DOMESTIC WATER AND IRRIGATION DISTRIBUTION FACILITY LOCATED IN BENTON COUNTY;

WHEREAS, a public hearing was held February 26, 2008 to consider the request of B. C. Water Company, LLC, who has applied to continue a franchise to establish a domestic water and irrigation distribution system, in a portion of unincorporated Benton County located within Benton County in Sections 10, 11, 14, 15, and 16, T. 8 N., R. 28 E. W.M., lying Southerly of I-82 and Northerly of the South line of the BNSF railroad right of way;

WHEREAS, after hearing the testimony regarding the request for a franchise, the Board finds as follows:

1. The term of the franchise shall be a five year (5) period, expiring March 31, 2013;

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, including noxious weed control;

4. Should Benton County require utility relocation work because of road construction or maintenance, said work shall be at the Grantee's expense;

5. The franchise is nonexclusive;

6. The Grantee is to sign the Order and Agreement for Nonexclusive Franchise;

WHEREAS, B. C. Water Company, LLC, has agreed to the terms and has signed the Order and Agreement for Nonexclusive Franchise, said Order having been approved as to form by the Prosecuting Attorney's Office, NOW, THEREFORE

Fairgrounds Insurance Suggested Risk Level Requirements and Estimated Insurance Costs

General Liability Insurance		Suggestions	Estimated Cost through Diversified
Low	(No Food or Alcohol)		$100-$325 per event
	per occurrence	$ 1,000,000	rates vary based on attendance
	general aggregate	$ 1,000,000	
Average	(Any event with Food or Alcohol)		$150-$800 per event
	per occurrence	$ 1,000,000	rates vary based on attendance
	general aggregate	$ 2,000,000	
	Liquor Liability Endorsement (if applicable)		$270 per day
	per occurrence	$ 1,000,000	
	general aggregate	$ 2,000,000	
Above Average	(Any event involving Vendors)		$150-$800 per event
	per occurrence	$ 1,000,000	need to submit a long application form
	general aggregate	$ 2,000,000	rates can vary based on attendance and other factors
Vendor/Exhibitor			
	No Food or Alcohol		$50 per event if Diversied insures entire Event (Lessee)
	per occurrence	$ 1,000,000	$158 per event if Diversified doesn't insure entire Event
	general aggregate	$ 1,000,000	
	With Alcohol		$50 per event if Diversied insures entire Event (Lessee)
	per occurrence	$ 1,000,000	$158 per event if Diversified doesn't insure entire Event
	general aggregate	$ 2,000,000	
	Liquor Liability Endorsement (if applicable)		$270 per day
	per occurrence	$ 1,000,000	
	general aggregate	$ 2,000,000	
	With Food		$50 per event if Diversied insures entire Event (Lessee)
	per occurrence	$ 1,000,000	$158 per event if Diversified doesn't insure entire Event
	general aggregate	$ 2,000,000	
High	check with Office Manager/ PA/ Risk Manager		quote on individual basis

Diversified premiums rates are based on Attendance and Risk Classification. Diversified rates change annually
The Diversified premium rates provided are estimates based on the 2008 premium Lessee's Rate Schedule

Ivey
3/20/2008

Fairgrounds Insurance
Suggested Risk Level Limits and Categories/Classifications

LOW	AVERAGE	ABOVE AVERAGE	HIGH
	Any Event with: **Food or Alcohol**	**Any Event with:** **Vendors or Concessionaires**	**Events excluded for coverage from Diversified** **Lessee provides Insurance through their own carrier**
Lessee	**Lessee**	**Lessee**	**Benton County limits to be provided by the Risk Manager in cooperation with the PA and Office Manager**
General Liability **Per Occurrence $1,000,000** **General Aggregate $1,000,000**	**General Liability** **Per Occurrence $1,000,000** **General Aggregate $2,000,000**	**General Liability** **Per Occurrence $1,000,000** **General Aggregate $2,000,000**	
	Liquor Liability Endorsement **Per Occurrence $1,000,000** **General Aggregate $2,000,000**	**Liquor Liability Endorsement** **Per Occurrence $1,000,000** **General Aggregate $2,000,000** (If applicable)	
Antique Shows Art Shows Banquets Boat Shows Business Meetings/Shows Craft Shows Civic Clubs/Group Meetings Conventions Quinceanera Reunions RV Shows Weddings/Receptions	Animal Shows/ Training Banquets Casino Concerts Dances & Parties Dog Shows Farmers Markets Parades Political Rallies Quinceanera Reunions Religious Assemblies Rummage Sales Sidewalk Sales Swap Meets/ Flea Market Trade Shows Weddings/Receptions	**Vendors:without Food or Alcohol** **General Liability** **Per Occurrence $1,000,000** **General Aggregate $1,000,000** **Vendors: with Food or Alcohol** **General Liability** **Per Occurrence $1,000,000** **General Aggregate $2,000,000** any Low or Average Event involving vendors or concessionaires	Boxing Carnival Rides Circuses Concerts- over 6 hours Contact Karate or Martial Arts Equestrian Events Football/Lacrosse/ Rugby Hockey Hosted Bar- over 5 hours Inflatable Activities Jousting Moon Bounce Mosh Pit Motorized sporting events Pyrotechnics Rock Climbing Rodeo Events Trampoline Wrestling

Listed above are General guidelines. Each Event is unique and additional insurance requirements may be required

Ivey
3/20/2008

Commissioner Oliver 9:20

AGENDA ITEM	TYPE OF ACTION NEEDED			
MTG. DATE: March 24, 2008	Execute Contract		Consent Agenda	
SUBJECT: Preliminary Plat of The Ridge at Reata West – SUB 07-04	Pass Resolution	X	Public Hearing	
MEMO DATE: March 12, 2008	Pass Ordinance		Public Meeting	X
Prepared By: Michael Shuttleworth	Pass Motion	X	1st Discussion	
	Other		2nd Discussion	
			Other	

BACKGROUND INFORMATION

On February 19, 2008, the Benton County Planning Commission conducted a public hearing on the proposed preliminary plat of The Ridge at Reata West – SUB 07-04. This subdivision consists of 428.33 acres to be divided into 171 single-family lots and 1 tract with an average lot size of 2.34 acres. After closing the Open Record Hearing and discussing the proposed plat, the Planning Commission made a recommendation to approve the preliminary plat of The Ridge at Reata West as presented with conditions. The Planning Commission's record and recommendation for SUB 07-04 is being submitted for your review and decision. The Board has set a public meeting for March 24, 2008 at 9:20 a.m. to review the record and recommendation of the Planning Commission.

The Board of County Commissioners must make a final decision on the preliminary plat application based on the Planning Commission Record. The Board may not hold its own Open Record Hearing because the Planning Commission held an Open Record Hearing on February 19, 2008, 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 Hearing. Attached for the Board's review is an audio copy of the meeting, the Planning Commission Record and the signed Planning Commission Recommendation, Findings and Conclusions.

SUMMARY

The Benton County Planning Commission has completed the Open Record Hearing for the preliminary plat application of The Ridge at Reata West – SUB 07-04. The Board of County Commissioners will consider the preliminary plat and recommendation of the Planning Commission at a public meeting on March 24, 2008.

RECOMMENDATION

After closing the Open Record Hearing and discussing the issue, the Planning Commission voted to recommend approval of the preliminary plat as presented with conditions. 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 and approve the proposed preliminary plat.

FISCAL IMPACT

None.

MOTION

If the Board agrees with the Planning Commission and Planning Department, they can adopt the Planning Commission Recommendation, Findings and Conclusions as their own and approve the preliminary plat of The Ridge at Reata West – SUB 07-04 with conditions.

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 the plat with additional conditions or deny the plat. 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.

RECOMMENDATION OF THE
BENTON COUNTY PLANNING COMMISSION

RE: Preliminary Plat of approximately 428.33 acres into 171 lots and 1 tract in the Northwest Quarter of Section 14, Township 8 North, Range 28 East, W.M.

File No. SUB 07-04
RECOMMENDATION, FINDINGS OF FACT AND CONCLUSIONS

RECOMMENDATION

SUB 07-04: A proposal by Candy Mountain LLC to subdivide approximately 428.33 acres into 171 single-family residential lots and 1 tract with an average lot size of 2.34 acres is hereby recommended to be APPROVED WITH CONDITIONS. This action is based upon the following findings pursuant to RCW 58.17.110.

LEGAL DESCRIPTION

The area covered by the proposed preliminary plat is generally described as that portion of Section 5, Township 8 North, Range 28 East, W.M. except for Short Plats 3004 and 3007 and except for a 20 acre parcel to the east of those short plats and the right of way for Interstate 82.

RESOLUTION

WHEREAS, the Legal notification pursuant to the Benton County Code, Title 9, Chapter 9.08 was given Thursday, February 4, 2008; and,

WHEREAS, public notice procedures, pursuant to RCW 58.17.080 and 58.17.090, were carried out including: notice to affected jurisdictions, (August 20, 2007); publication of legal notices in the Tri-City Herald (February 4, 2008); adjacent landowners (January 31, 2008); and,

WHEREAS, the public hearing was held on February 19, 2008 at 7:00 p.m., in the Planning Annex, 1002 Dudley Avenue, Prosser, WA 99350; and,

WHEREAS, the following members were present: Eugene Johnson, Jon Lindeman, Lloyd Coughlin, and Faye Nelson; and,

WHEREAS, the Planning Commission considered all testimony and, after questions to those giving testimony, closed the public hearing; and,

WHEREAS, the Planning Commission at an open record public hearing held on February 19, 2008, considered the evidence submitted and voted four in favor with three absent to recommend **approval with conditions** of the proposal; and,

WHEREAS, the Planning Commission is entering it's written findings, conclusions and recommendations concerning this matter, and is forwarding the same to the Board of County Commissioners.

FINDINGS AND CONCLUSIONS

A. A majority of the Planning Commission members find that adequate provisions have been made for the Public Health and Safety based on the following facts:

1. The Benton Franklin District Health Dept. has indicated that septic tanks in this area would be feasible.
2. The conditions as outlined in the staff report provide adequate provisions for Public Health and Safety.

B. A majority of the Planning Commission members find that adequate provisions have been made for open spaces based on the following facts:

1. That the proposed Preliminary Plat of The Ridge at Reata West does not contain land to be designated for open space or park.
2. That the Benton County Code does not require open space dedications for this type of preliminary plat.

C. A majority of the Planning Commission members find that adequate provisions have been made for drainage ways based on the following facts:

1. Pursuant to the Planning Staff memo dated February 13, 2008, the Benton County Dept. of Public Works will review the proposed plat to ensure that it meets the requirements of the Benton County Hydrology Manual.
2. A Determination of Non Significance was issued on January 25, 2008.

D. A majority of the Planning Commission members find that adequate provisions have been made for streets or roads, alleys, and other public ways based on the following facts:

1. This proposal must meet fire code requirements and the requirements of the Public Works Department.
2. All roads must be constructed or bonded prior to the final plat hearing.
3. The proposed preliminary plat must meet the requirements of the Benton County Dept. of Public Works.
4. The Benton County Department of Public Works must approve proposed street names within the proposed plat
5. There is to be no direct access onto Interstate 82 from the lots within the preliminary plat.
6. All lots within the proposed development will front onto a dedicated street.
7. Reata Road will be widened to 80 feet as each phase is finalized.
8. Reata Road will be connected to Dallas Road at the time of the 51st lot being recorded or at the time Phase 3 is recorded which ever comes first.

E. A majority of the Planning Commission members find that adequate provisions have been made for transit stops based the following facts:

1. The proposed plat does not have a location for a public transit stop and no evidence was presented that a transit stop is required.
2. The proposed plat and surrounding area is not served by public transit.

F. A majority of the Planning Commission members find that adequate provisions have been made for potable water supplies based on the following facts:

1. Water will be provided by a private water system. A new well has been drilled providing 3000 gpm.
2. The potable water system must be approved by the Washington State Dept. of Health.
3. Proof of potable water must be provided before building permits will be issued for lots within the subdivision.

G. A majority of the Planning Commission members find that adequate provisions have been made for sanitary wastes based on the following facts :

1. The plat generally meets the requirements of the Benton Franklin District Health Department for plats utilizing on-site sewage disposal systems as stated in their letter received by the Planning Dept. on August 24,2007.
2. Health Department approval for septic systems is required before obtaining building permits.

H. A majority of the Planning Commission members find that appropriate provisions have been made for parks, recreation, and playgrounds based on the following facts:

1. The proposed plat does not provide for parks or recreation opportunities.
2. No evidence was presented that park; recreation or playground areas are needed or required.

I. A majority of the Planning Commission members find that appropriate provisions have been made for schools and school grounds and for sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school based on the following facts:

1. This proposed plat is within the Kennewick School District and all students will be bused to school.
2. Written approval by the Kennewick School District must be provided to the Planning Department prior to setting the meeting date for the final plat.

J. A majority of the Planning Commission members conclude that the requirements of the State Environmental Policy Act have been met based on the following:

1. An Environmental Checklist was submitted and the Planning Department issued a Determination of Non Significance on January 25, 2008.

K. A majority of the Planning Commission members find that the proposed use is in

conformance with the intent of the Comprehensive Plan based on the following facts:

1. The gross acreage was used in determining the number of lots and the density for this area at the time of submittal was one dwelling unit per 2.5 acres. The applicant meets the density requirements as he is clustering his development and leaving one large lot.

L. A majority of the Planning Commission members find that the proposed plat is consistent with the applicable zoning requirements of the Benton County Code, Title 11, based on the following facts:

1. The Planning Commission incorporates by reference and adopts the Planning Department's Findings of Fact as set forth in its February 13, 2008 staff memo, except to the extent any such findings are inconsistent with any of the Planning Commission findings stated above.
2. This proposal is allowed within the Agricultural Zoning District.

M. The Commission has considered the physical characteristics of the proposed subdivision site and finds that the proposed plat is not situated in a flood control zone.

A majority of the Planning Commission members conclude, based on the foregoing findings that the public interest will be served by the subdivision and dedication.

THEREFORE BE IT RESOLVED BY THE BENTON COUNTY PLANNING COMMISSION, through its Chairman as authorized by motion of the Board, adopts these findings and conclusions with respect to File No. SUB 07-04, the preliminary plat of The Ridge At Reata West, proposed by Candy Mountain LLC and such plat is hereby recommended to the Board of County Commissioners for APPROVAL WITH CONDITIONS (attached).

Jon Lindeman 3/3/08

JON LINDEMAN, Chairman Date
BENTON COUNTY PLANNING COMMISSION

CONDITIONS OF APPROVAL - SUB 07-09

1. That all lots in the final plat meet the design standards for final plat approval as specified in Benton County Code 9.08 as amended, and meet all of the zoning requirements as specified in BCC Title No. 11, as amended.

2. That the final plat be reviewed and approved in writing by the Benton Franklin Health District prior to sending the final plat to the Planning Commission for signature. If any specific statements or set aside areas are requested by the Benton Franklin Health District these must be shown on the final plat as per their requirements. Each lot must contain a minimum usable land area of 20,000 square feet after easements and encumbrances place on the plat are subtracted. The conditions as outline in the August 24, 2007 Benton Franklin Health District letter must be complied with.

3. The location and size of all irrigation and utility easements necessary for electric power, telephone service, water, sewer and cable T.V. be coordinated with the proper utilities and/or reviewing agencies and shown on the final plat. The developer will need to open the utility trenches, including road crossings, based on individual utility requirements and specifications.

4. That all requirements necessary for storm drainage are provided, including any easements necessary for compliance with the Benton County Hydrology Manual. All natural drains are to be kept open and protected by the dedication of a drainage easement or the Benton County Department of Public Works must approve a pipe drainage plan. The applicant provides to the Benton Franklin Health District the calculations for a 100-year storm event with copies to the Benton County Planning Department and Benton County Engineer.

5. Provisions shall be made to assure safe walking and/or waiting areas for students who will walk to and from school and for bus turn out areas. Written approval by the Kennewick School District must be provided to the planning department prior to setting the meeting date for the final plat.

6. Contour lines shall be shown on the final plat or on a separate sheet at a maximum of 5' intervals.

7. The Planning Department receives written verification from the Benton County Fire Marshal indicating that the required fire flow and adequate fire protection system have been installed and are functioning as per the requirements of BCC. If this is not accomplished a statement will need to be placed on the final plat indicating that: "No building permit shall be issued until the roads are constructed to at least subgrade standards." All roads must be constructed or bonded prior to the final plat being submitted for final plat approval.

8. Prior to setting the date for final approval for each phase, the applicant provides written verification from the Washington State Department of Health that the Summit View Water System plan is updated and that all water system improvements have been installed and approved for this plat, or each phase that is approved

9. That the following note be placed on the face of every final plat for this development:

   "No direct access from any lot to Interstate 82 will be permitted."

10. The applicant complies with the comments provided in the Department of Public Work's letter dated August 22, 2007 and February 12, 2007.

11. That the following statement shall be placed on the final plats for Lots 1 and 171:

    The residential densities for Lots 1 and 171 have been used for the remaining portions of The Ridge at Reata West development. With the exception of existing agricultural uses and a single dwelling, additional development on Lots 1 and 171 cannot occur prior to the adoption of revised or new density regulations in conformance with the Growth Management Act and the Benton County Comprehensive Plan Amendment procedure, which would allow additional density on the lots. The adoption of revised or new density regulations in conformance with the Growth Management Act and the Benton County Comprehensive Plan Amendment procedure must include the entire The Ridge at Reata West development before any additional density is allowed.

12. Reata Road shall be extended to the west to intersect with Dallas Road before the final plat for Phase 3 is recorded.

13. A dedicated County Road that is constructed to the standards provided by the Benton County Department of Public Works must serve Lot 1 and Lot 171.

14. Lots 41 and 170 must have at least 40 feet of frontage on the County road.

15. That the preliminary plat is modified in all necessary respects so that the final plats will reflect the requirements of approval. If the final plat will be in conflict with any of the conditions of approval as adopted by the Planning Commission as a result of the modifications, then the final plat must be reviewed by the Planning Commission at a public meeting for approval prior to sending the final plat to the Board of County Commissioners.

Benton County Planning/Building Department

Terry A. Marden, Director

PLANNING
Planning Annex
P.O. Box 910, 1002 Dudley Avenue
Prosser WA 99350
Prosser Office: (509) 786-5612
From Tri-Cities: (509) 736-3086
Fax: (509) 786-5629

BUILDING
Kennewick Annex
5600 W. Canal Drive, Suite C 105A
Kennewick WA 99336
Tri-Cities Office: (509) 735-3500
From Prosser: (509) 786-5622
Fax: (509) 736-2732

Planning Commission Exhibits for SUB 07-04

Exhibit 1:	Staff Memo dated February 13, 2008
Exhibit 2:	SUB 07-04 Preliminary Plat Application.
Exhibit 3:	Preliminary review of development drainage system designs.
Exhibit 4:	Notice of Application published August 23, 2007.
Exhibit 5:	Notice of Open Record Hearing, published February 8, 2008.
Exhibit 6:	Environmental checklist.
Exhibit 7:	Environmental Determination for SUB 07-04 dated January 25, 2008.
Exhibit 8:	Letter from Benton County Planning to the applicant requesting additional information.
Exhibit 9:	Geotechnical Engineering Study completed by Shannon & Wilson Inc. dated December 14, 2007.
Exhibit 10:	Traffic Impact Analysis completed by JUB Engineers, Inc. dated December 2007.
Exhibit 11:	Letter from Spencer Montgomery, JUB Engineering Inc. with additional information about the traffic analysis
Exhibit 12:	Comments from Benton County Department of Public Works dated August 22, 2007.
Exhibit 13:	Comments from Benton County Department of Public Works dated August 24, 2007.
Exhibit 14:	Comments from Benton County Department of Public Works dated February 12, 2008.
Exhibit 15:	Comments from Washington State Department of Health dated August 22, 2007.
Exhibit 16:	Comments from Benton-Franklin Health District dated August 24, 2007.
Exhibit 17:	Comments from Southeast Communications Center dated August 24, 2007.
Exhibit 18:	Comments from Verizon Telephone dated August 24, 2007.
Exhibit 19:	Comments from Summit View Water Association dated August 28, 2007.
Exhibit 20:	Comments form Benton County Fire District #1 dated August 31, 2007.
Exhibit 21:	Comments from Washington State Department of Transportation dated September 5, 2007.
Exhibit 22:	Comments from Washington State Department of Ecology dated September 5, 2007.

Exhibit 23:	Comments from Benton County Fire Marshal dated August 27, 2007
Exhibit 24:	Comments from Benton County Assessor's Office dated September 14, 2007.
Exhibit 25:	FEMA Flood Insurance Rate Map 530237 0600 B.
Exhibit 26:	Pages 4-41 through 4-42 of the Benton County Comprehensive Plan.
Exhibit 27:	Pages 5-22 through 5-29 of the Benton County Comprehensive Plan.
Exhibit 28:	Land Use Map 4.5, Page 4-54 of the Benton County Comprehensive Plan.
Exhibit 29:	Aerial Photo of the Site.
Exhibit 30:	Revised Preliminary Plat map for The Ridge at Reata West (11 x 17 size).
Exhibit 31:	Preliminary Plat map for The Ridge at Reata West.
Exhibit 32:	Letter from Peninsula Engineering Services Inc. dated February 15, 2008

9:50

Executive Session

CID Water Rights Issue

K. Fitzgerald

10:05

AGENDA ITEM MTG. DATE: March 24, 2008 SUBJECT: Final Plat of North River Estates Subdivision– SUB 07-01 MEMO DATE: March 19, 2008 Prepared 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

BACKGROUND INFORMATION

On September 24, 2007, the Benton County Board of County Commissioners approved the preliminary plat of North River Estates, to create 2lots from a 7.46-acre parcel. The preliminary plat was approved subject to 7 conditions. Those conditions have been completed for the Final Plat of North River Estates 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 North River Estates 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 North River Estates – SUB 07-01 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 North River Estates, SUB 07-01 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 NORTH RIVER ESTATES - SUB 07-01

WHEREAS, on September 24, 2007, the Board of County Commissioners approved the preliminary plat of North River Estates - SUB 07-01; and

WHEREAS, On Monday, March 24, 2008, in the Commissioners Meeting Room, third floor, Courthouse, Prosser, Washington at a public meeting, the Board of County Commissioners considered the final plat of North River Estates - SUB 07-01; and,

WHEREAS, the applicant for final plat approval has completed all the required conditions of approval for the proposed final plat of North River Estates - SUB 07-01 and has obtained all required signatures; and

WHEREAS, it appears to be in the publics best interest to approve said final plat of North River Estates - SUB 07-01, NOW THEREFORE,

BE IT RESOLVED that the North River Estates - SUB 07-01 is approved and the Chairman so indicate by signing the plat.

Dated this _____ day of _____, 2008.

_____
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

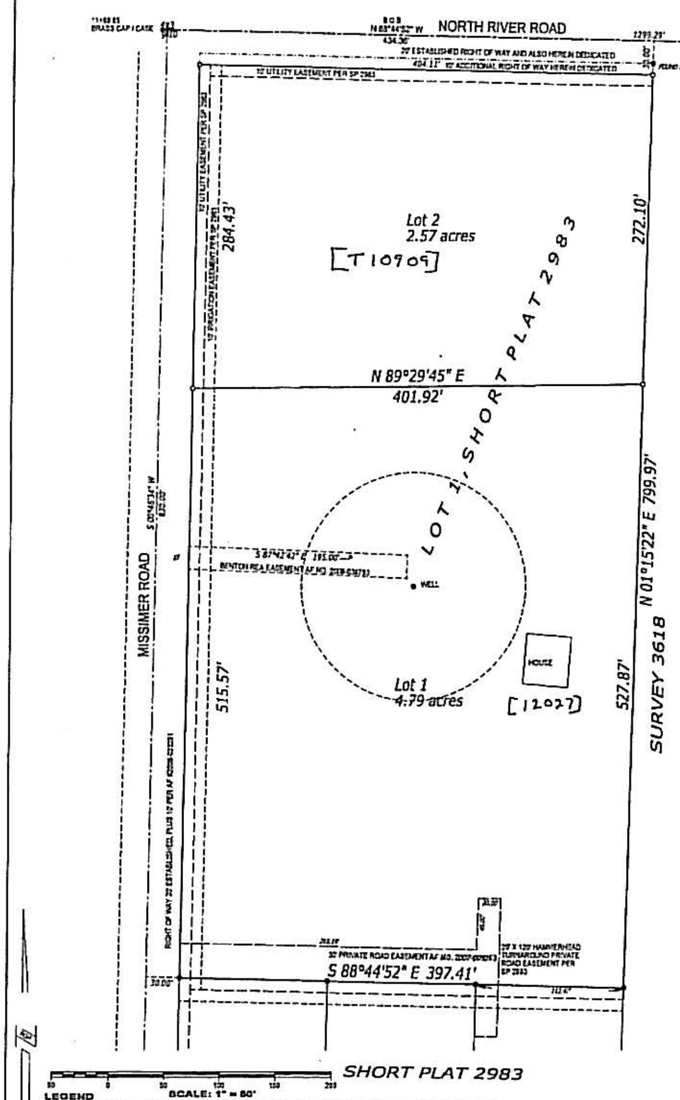
Terry A. Marden/djh

PLAT CLOSURE

BEARING	DISTANCE	COSINE	SINE	N	S	E	W
S00°46'34"W	830.00	0.99990826	0.01354528		829.924		11.243
S88°44'52"E	427.41	0.02185366	0.99976118		9.34	427.308	
N01°15'22"E	829.99	0.99975969	0.02192152	829.791		16.195	
1°44'52"W	434.36	0.02185366	0.99976118	9.492			434.256
				839.283	839.264	445.503	445.499

FINAL PLAT OF NORTH RIVER ESTATES

LOT ONE, SHORT PLAT NO. 2983, LOCATED IN GOVERNMENT LOT 4, SECTION 10, TOWNSHIP 8 NORTH, RANGE 24 EAST, W.M., BENTON COUNTY, WASHINGTON.



NOTES

1.) ADDRESS NUMBERS [NOTED IN BRACKETS] ARE SUBJECT TO CHANGE UNTIL THE EXACT LOCATION OF ACCESS ONTO THE PLAT IS DETERMINED.

2.) THE UTILITY EASEMENTS SHOWN HEREON ARE HEREBY GRANTED FOR THE USE, ACCESS AND MAINTENANCE OF THE PLATTED PROPERTY'S CURRENT UTILITY PROVIDER. SAID EASEMENTS ARE FOR THE USE, ACCESS AND MAINTENANCE OF ELECTRIC POWER, TELEPHONE, CABLE AND/OR OTHER DEFINED UTILITY, TO AND/OR THROUGH SAID TRACT.

3.) PRIOR TO THE GRANTING OF A BUILDING OR FACTORY ASSEMBLED STRUCTURE PERMIT FOR EACH LOT BY THE COUNTY, THE APPLICANT FOR A BUILDING OR FAS PERMIT MUST COMPLY WITH RCW 90.44.050 REGARDING PUBLIC GROUND WATER. THE APPLICANT FOR A BUILDING OR FAS PERMIT MUST DEMONSTRATE THAT POTABLE WATER IS LEGALLY AVAILABLE BY PRESENTING:
(A) EVIDENCE OF A VALID WATER RIGHT PERMIT FROM THE WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR THE PROPOSED WELLS FOR EACH LOT;
(B) A WATER WELL REPORT FILED AND RECEIVED BY WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR AN EXEMPTED WELL THAT COMPLIES WITH THE 5,000 GALLON PER DAY EXEMPTION DESCRIBED IN RCW 90.44.050;
OR (C) A WRITTEN APPROVAL OF THE WASHINGTON STATE DEPARTMENT OF HEALTH THAT A GROUP A OR GROUP B PUBLIC WATER SUPPLY SYSTEM HAS BEEN INSTALLED AND IS AVAILABLE FOR PROVIDING POTABLE WATER TO THE LOT.

4.) NO BUILDING OR FAS OCCUPANCY PERMIT SHALL BE ISSUED UNTIL THE ACCESS ONTO MISSIMER ROAD HAS BEEN CONSTRUCTED TO BENTON COUNTY DEPARTMENT OF PUBLIC WORKS STANDARDS.

5.) ALL STRUCTURES MUST BE AT LEAST 25' BACK FROM ALL ACCESS EASEMENTS.

~~6.) NO BUILDING PERMITS OR FAS OCCUPANCY PERMIT SHALL BE ISSUED UNTIL THE PRIVATE ROAD EASEMENT HAS BEEN IMPROVED FROM THE COUNTY, CITY OR STATE ROAD TO THE LOT FOR WHICH THE PERMIT IS REQUESTED TO THE STANDARD PROVIDED IN BCC 9.18.~~

7.) BENTON COUNTY IS NOT RESPONSIBLE FOR THE CONSTRUCTION AND/OR MAINTENANCE OF PRIVATE ROAD EASEMENTS.

8.) BE ADVISED THAT APPROVAL OF ANY LOT WITHIN THIS PLAT FOR THE USE OF ON-SITE SEWAGE DISPOSAL SYSTEMS MAY BE CONTINGENT UPON THAT LOT PASSING ADDITIONAL SOIL INSPECTIONS/PERCOLATION TESTS, AND/OR OTHER REQUIREMENTS AT A LATER DATE.

9.) LIMITED SOILS ON THE LOTS IN THIS PLAT REVEALED AREAS OF EXTREMELY GRAVELLY (TYPE 1A) SOILS. ANY SEWAGE DISPOSAL SYSTEM TO BE PERMITTED ON THESE LOTS, INCLUDING REPAIRS TO THE EXISTING SYSTEM, WILL BE REQUIRED TO MEET TREATMENT STANDARD 2. THE BENTON-FRANKLIN HEALTH DISTRICT SHOULD BE CONTACTED FOR FURTHER INFORMATION.

10.) THIS PLAT APPEARS TO HAVE SUITABLE CONDITIONS FOR THE USE OF ALTERNATIVE ON-SITE SEWAGE DISPOSAL SYSTEMS. HOWEVER, BECAUSE OF THE TESTING METHODS USED, WE HAVE NO WAY OF DETERMINING WHETHER EACH LOT CAN COMPLY WITH BENTON-FRANKLIN DISTRICT HEALTH RULES AND REGULATIONS AT THE TIME OF PERMIT ISSUANCE. FURTHER BE ADVISED THE BENTON-FRANKLIN HEALTH DISTRICT APPROVAL OF ANY LOT WITHIN THIS PLAT FOR THE USE OF ON-SITE SEWAGE DISPOSAL SYSTEMS MAY BE CONTINGENT UPON THAT LOT PASSING ADDITIONAL SOIL INSPECTIONS/PERCOLATION TESTS, AND/OR OTHER REQUIREMENTS AT A LATER DATE.

11.) ALL DRAINAGE EASEMENTS, CANALS, OR OTHER WATERWAYS THAT ARE CROSSED BY AN APPROVED ACCESS EASEMENT OR DRIVEWAY SHALL BE TRAVERSED BY A BRIDGE OR CULVERT THAT IS DESIGNED BY A LICENSED WASHINGTON STATE ENGINEER TO A MEET A TEN YEAR STORM WATER RUNOFF AND HAVING A MINIMUM DRIVING SURFACE OF TWENTY FEET. PLEASE CONTACT THE BENTON COUNTY PLANNING AND BUILDING DEPARTMENT FOR FURTHER INFORMATION.

IRRIGATION DISTRICT APPROVAL

THE PROPERTY DESCRIBED HEREON IS LOCATED WHOLLY OR IN PART WITHIN THE BOUNDARY OF THE SUNNYSIDE VALLEY IRRIGATION DISTRICT. I HEREBY CERTIFY THAT THE IRRIGATION EASEMENTS AND RIGHTS-OF-WAY SHOWN ON THIS PLAT ARE ADEQUATE TO SERVE ALL LOTS LOCATED WITHIN THIS PLAT WHICH ARE OTHERWISE ENTITLED TO IRRIGATION WATER UNDER THE OPERATING RULES AND REGULATIONS OF THE DISTRICT. I ALSO CERTIFY THAT THE IRRIGATION EASEMENTS AND RIGHTS-OF-WAY ARE ADEQUATE TO TRANSMIT IRRIGATION WATER THROUGH THIS SHORT PLAT TO OTHER ADJACENT LAND ENTITLED TO IRRIGATION WATER UNDER THE OPERATING RULES AND REGULATIONS OF THE DISTRICT. LOTS ______ ARE, IN WHOLE OR IN PART, NOT ENTITLED TO IRRIGATION WATER UNDER THE OPERATING RULES AND REGULATIONS OF THE DISTRICT.
I FURTHER CERTIFY THAT:
___ 1. THIS PLAT CONTAINS COMPLETED IRRIGATION DISTRIBUTION FACILITIES IN ACCORDANCE WITH THIS DISTRICT'S STANDARDS.
___ 2. PROVISIONS ACCEPTABLE TO THIS DISTRICT HAVE BEEN MADE FOR COMPLETED IRRIGATION DISTRIBUTION FACILITIES. A COVENANT HAS BEEN FILED WITH THIS PLAT.
✓ 3. THE EXISTING IRRIGATION DISTRIBUTION FACILITY IS ADEQUATE TO MEET THIS REQUIREMENT.
___ 4. LOTS ______ ARE NOT CLASSIFIED AS "IRRIGABLE LAND" BY THIS DISTRICT AND / OR ARE NOT ENTITLED TO IRRIGATION WATER UNDER THE OPERATING RULES AND REGULATIONS OF THIS DISTRICT.
SUNNYSIDE VALLEY IRRIGATION DISTRICT (S.V.I.D.) HEREBY CERTIFIES THAT ALL CHARGEABLE REGULAR AND SPECIAL ASSESSMENTS COLLECTIBLE BY THIS OFFICE THAT ARE DUE AND OWING ON THE PROPERTY DESCRIBED HEREON ON DATE OF THIS CERTIFICATE HAVE BEEN PAID.
DATED THIS 19 DAY OF February, 2008

S.V.I.D. [signature]

LEGAL DESCRIPTION

LOT ONE OF SHORT PLAT 2983, ACCORDING TO THE SURVEY THEREOF RECORDED ~~FEBRUARY 10,~~ JANUARY 30, 2007, UNDER AUDITOR'S FILE NO. 2007-003053, RECORDS OF BENTON COUNTY, WASHINGTON.

OWNER'S CERTIFICATE/DEDICATION

WE, DANNY L. GILES AND LINDA R. GILES, HUSBAND AND WIFE, HEREBY CERTIFY THAT WE ARE ALL PARTIES HAVING OWNERSHIP INTEREST IN THE TRACT OF LAND DESCRIBED HEREON; HAVE GIVEN OUR FREE CONSENT AND IN ACCORDANCE WITH OUR DESIRES CAUSED SAID LAND TO BE SURVEYED AND PLATTED INTO LOTS AND ROADS AS SHOWN HEREON; DO HEREBY GRANT ALL EASEMENTS SHOWN HEREON FOR THE USES SHOWN THEREON; DO HEREBY DEDICATE ALL ROAD RIGHT OF WAYS TO THE PUBLIC; AND DO HEREBY WAIVE ON BEHALF OF OURSELVES AND OUR SUCCESSORS IN INTEREST, ALL CLAIMS FOR DAMAGE AGAINST BENTON COUNTY OR ANY OTHER GOVERNMENTAL AUTHORITY WHICH MAY BE OCCASIONED TO THE ADJACENT LAND BY THE ESTABLISHED CONSTRUCTION, DRAINAGE, AND MAINTENANCE OF SAID DEDICATED ROADS AND/OR RIGHTS OF WAY.

[signature] DANNY L. GILES   [signature] LINDA R. GILES

ACKNOWLEDGMENT

STATE OF WASHINGTON)
)SS
COUNTY OF BENTON)

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT DANNY L. GILES AND LINDA R. GILES, HUSBAND AND WIFE, SIGNED THIS INSTRUMENT AND ACKNOWLEDGE IT TO BE THEIR FREE AND VOLUNTARY ACT FOR THE PURPOSES MENTIONED IN THE INSTRUMENT.

2-19-08 DATE   [signature] SIGNATURE OF NOTARY PUBLIC   6-30-2008 MY COMMISSION EXPIRES

COUNTY OF BENTON APPROVALS

THE ANNEXED PLAT IS HEREBY APPROVED BY AND FOR THE COUNTY OF BENTON, STATE OF WASHINGTON.

[signature] BENTON COUNTY ENGINEER   3/11/08 DATE

CHAIRMAN OF THE BOARD OF BENTON COUNTY COMMISSIONERS   DATE

[signature] ~~CHAIRMAN BENTON COUNTY PLANNING COMMISSION~~   3/18/08 DATE

Barbara Wagner by Pat Yahre BENTON COUNTY ASSESSOR   3/19/2008 DATE
1-1084-201-2983-001 (H11)

UTILITY APPROVALS

THE UTILITY EASEMENTS SHOWN HEREON ARE APPROVED BY THE UTILITIES.

[signature] ~~BENTON COUNTY PUD #1~~ R.E.A. - Benton Rural Electric Association   [signature] TITLE   2-8-08 DATE

[signature] TELEPHONE   Engineer II TITLE   2-12-08 DATE

SURVEYOR'S CERTIFICATE

I, ROBERT G. REYNOLDS, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF WASHINGTON (LICENSE NO. 29279), HEREBY CERTIFY THAT THE PLAT AS SHOWN IS BASED UPON ACTUAL FIELD SURVEY OF THE LAND DESCRIBED AND THAT ALL ANGLES, DISTANCES AND COURSES ARE HEREON CORRECTLY SHOWN AND THAT THE LOT CORNERS HAVE BEEN STAKED ON THE GROUND AS SHOWN ON THE PLAT.

ROBERT G. REYNOLDS, P.L.S. 29279

TREASURER'S CERTIFICATE

I HEREBY CERTIFY THAT THE TAXES AND ASSESSMENTS ON THE LAND DESCRIBED HEREON HAVE BEEN PAID TO AND INCLUDING THE YEAR 2008. PARCEL # 1-1084-201-2983-001

Duane A. Davidson by [signature] BENTON COUNTY TREASURER'S OFFICE   3/19/08 DATE

AUDITOR'S CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF ROBERT G. REYNOLDS. RECORDED IN VOLUME ______ OF PLATS AT PAGE ______,

RECORDS OF BENTON COUNTY, WASHINGTON, AT ______ M., THIS ______ DAY OF ______, 200__ A.D.

BENTON COUNTY AUDITOR   FEE NUMBER

ROBERT G. REYNOLDS, P.L.S.
607 COURT ST. PROSSER, WASHINGTON
PHONE (509) 786-7713

FINAL PLAT OF NORTH RIVER ESTATES FOR
Danny Giles
155002 W. Atwood Rd
PROSSER, WA 99350

T 8 N R 24 E

SHEET 1 of 1

10:10

Columbia Energy
& Environmental Services, Inc.

Tomorrow's Project Solutions *Today*

March 19, 2008

Benton County Board of Commissioners
620 Market St.
P.O. Box 1001
Prosser, WA 99350

Reference: Piert Road Extension – Commitment of Funding

Dear Board of Commissioners:

In adopting the action to route the Piert Road extension to accommodate the planned Finley Ethanol Plant at 231610 East Game Farm Road, Kennewick Washington 99337, Columbia Energy & Environmental Services, Inc. is pleased to announce its commitment to the board of Commissioners to fund a portion of the costs associated with the Piert Road redesign effort.

Columbia Energy & Environmental Services, Inc. hereby commits to fund $50,000 (Fifty Thousand Dollars) of the required costs associated with the Piert Road redesign. This commitment will be made in monthly installments of $5,000 (Five Thousand Dollars) per month, due the 1st of each month, with any outstanding balance due to be honored by the end of 2008. In the event that Columbia Energy & Environmental Services, Inc. is successful in securing the Ethanol project funding prior to the end of 2008, Columbia Energy & Environmental Services, Inc. will pay any outstanding balance owed to Benton County at the time of the Ethanol Project financial closing.

In addition to the above and in recognition of the County's support of the Ethanol Project to date, Columbia Energy & Environmental Services, Inc. offers the board its commitment to support the County's efforts in reapplying for funding to the Washington State Freight Mobility Strategic Investment Board (FMSIB). Columbia Energy & Environmental Services, Inc. also commits to support the County Engineers in providing solutions to resolving the Piert Road interfaces with the ethanol plant, existing rail service, roads and property boundaries.

The commitments detailed above are made on the understanding that the Benton County Board of Commissioners adopts the routing of the planned Piert Road extension such as to accommodate the Finley Ethanol Plant and associated infrastructure at the proposed site on East game Farm Road (North of Agrium Finley Plant Offices). In the event that Benton County elects to route the Piert Road extension, without the written consent of Columbia Energy & Environmental Services, Inc., such that it would preclude the development of the Ethanol Plant

at its planned East game Farm Road location, Columbia Energy & Environmental Services, Inc. reserves the right to withdraw this offer of funding.

Columbia Energy & Environmental Services, Inc. would like to thank the board for its continued support in the development of the Finley Ethanol Plant. The Ethanol Plant not only represents a major injection of capital into the area during its development phase but also a source for replacing recently lost jobs in Finley for up to 65 direct hires and 200 indirect hires during its operational phase.

Sincerely;

Brian E. Brendel
President
Columbia Energy & Environmental Services, Inc.

10:20

AGENDA SUMMARY SHEET

MEETING DATE: March 24, 2008

AGENDA ITEM: Claim CC08-06, CC08-07, and CC08-10

SUBJECT:

☐ Consent Agenda ☐ Public Hearing ✓ Discussion

☐ 1st Discussion ☐ 2nd Discussion ☐ Other

TYPE OF ACTION NEEDED:

☐ Execute Contract ☐ Pass Resolution ☐ Pass Ordinance

☐ Pass Motion √ Other

BACKGROUND INFORMATION:

The Risk Manager and Civil Prosecutor request an executive session to discuss claim CC08-06, CC08-07, and CC08-10.

SUMMARY:

See above.

10:30 AM

BID OPENING

ER & R Purchase of Bulk Diesel

L Moser

10:40

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WA

IN THE MATTER OF AWARDING THE CONSTRUCTION OF THE BOAT DOCK REPAIRS LOCATED AT TWO RIVERS PARK

WHEREAS, CWH Architects solicited proposals from three general contractors on the Benton County Small Works Roster to construct the improvements needed for the Boat Dock located at Two Rivers Park, and;

WHEREAS, Benton County Facilities Manager received proposals from Siefken & Sons Construction, Inc, Richland, WA in the amount of $74,187.67 including WSST; Fowler General Construction Inc., Richland, WA in the amount of $79,669.17 including WSST; and Allstar, Inc. in the amount of $112,766.85; and

WHEREAS, CWH Architects and Benton County Facilities Manager reviewed the proposals and recommends awarding the contract to Siefken & Sons Construction, Inc. as the lowest responsible bidder; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, that Benton County awards the contract of the boat dock repairs located at Two Rivers Park to Siefken & Sons Construction, Inc., Richland, WA in the amount of $74,187.67.

BE IT FURTHER RESOLVED, that the Board authorizes personnel to prepare a contract between Benton County and Siefken & Sons Construction, Inc. to be placed on the consent agenda for the Chairman of the Board's signature.

Dated this _____ day of _____, 2008

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County,

Attest:_____
Clerk of the board

Orig: Contract File – Lisa Small
cc: Auditor, R. Ozuna, Siefken & Sons Const., Inc.

small

CWH ARCHITECTS PS
architecture ■ planning ■ design

March 14, 2008

Benton County Facilities & Parks Dept.
Mr. Roy Rogers
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336

Dear Roy:

RE: Benton County Two Rivers Park Boat Dock Repairs

Siefken & Sons Construction, Inc. is the apparent low bidder for the above referenced project. Jeff Siefken, Co-President, is comfortable with the low bid, and everything has been covered in their bid package. Projected construction schedule is as follows: eight (8) weeks to order, manufacture and deliver gangways, and one (1) week to install after Notice to Proceed is issued. I recommend that Siefken & Sons Construction, Inc. be awarded the contract for their bid amount of $74,187.67.

At the time we were instructed to proceed with construction documents the cost estimate for construction was $81,900.00. Following are the bid results received for this project:

Siefken & Sons Construction, Inc.	$ 74,187.67
Fowler General Construction, Inc.	$ 79,669.17
Allstar, Inc.	$112,766.85

The figure by Siefken & Sons is well within our budget.

Sincerely,

C. Wayne Hunsucker, AIA

Enclosure: Bid Results

CWH/pam

6320 W. Clearwater Avenue, Suite C
Kennewick, Washington
99336
phone:509.736.0581
C. Wayne Hunsucker, A.I.A.
fax:509.735.1420
www.cwharchitects.com

CWH ARCHITECTS, PS

BID FORM

BENTON COUNTY TWO RIVERS PARK BOAT DOCK REPAIRS

Project #06612

Bid Date: Wednesday, March 12, 2008 @ 4:00 PM

Location: Benton County Justice Center, 2nd Floor Hearing Room, Kennewick, WA

Bidder	P.W. Lic.	Addenda No.'s	Bid Bond	Base Bid
Siefken & Sons Construction, Inc.	Yes		X	$74,187.67
Fowler General Construction, Inc.	Yes		X	$79,669.17
Allstar, Inc.	Yes		X	$112,766.85

SIEFKEN & SONS CONSTRUCTION, INC.
GENERAL CONTRACTOR: SIEFKSC198MZ

1305 MANSFIELD, SUITE 1
RICHLAND, WA 99352
PHONE: (509) 946-6500
FAX: (509) 946-6506

March 12, 2008

Benton County Facilities and Parks Dept.
ATTN: Roy Rogers
7122 W. Okanogan Place, Building A
Kennewick, WA 99336

BID PROPOSAL
Benton County Two Rivers Park Dock Repair Project

Benton County Two Rivers Park Dock Repair Project, as per plans and specs, dated January 22, 2008:

Bid Amount	$68,502.00
WA State Sales Tax @ 8.3%	5,685.67
TOTAL	**$74,187.67**

We acknowledge 0 Addendums.
We acknowledge "Supplementary General Conditions", dated March 4, 2008.

Jeffrey G. Siefken
Co-President

RECEIVED
MAR 12 2008
BY:

FOWLER
GENERAL CONSTRUCTION, INC.

Mr. Roy Rogers
Benton Country
7122 W. Okanogan Pl, Bldg A
Kennewick Wa, 99336

March 12, 2008

RE: Bid – Two Rivers Park Dock Repair

Dear Mr. Rogers,

Fowler General Construction proposes to perform the work identified in the January 20, 2008 invitation to bid CWH Proj. No. 06612. No allowance has been made for the purchase of a County Building Permit. Fowler General Construction acknowledges receipt of the revised supplemental conditions.

The lump sum price for this work including Washington State Sales Tax is $79,669.17.

The schedule for this work would consist of: approximately 2 weeks for submittals and engineering for the gang ways, 4-5 weeks for fabrication and delivery of the gangways, and approximately one week for removal of the existing dock sections and the installation of the gangways. It is anticipated that the ramp could be closed during the removal and reinstallation to allow full access to the site by contractor personnel.

Should you have any questions or require any further information regarding this information do not hesitate to call me at (509) 531-3977.

Kirk Heaton

Project Manager
Fowler General Construction

RECEIVED
MAR 1 2 2008
BY:

Fowler General Construction
1804 Terminal Dr.
Richland, WA 99352

(509) 946-1600
(509) 943-8875

Allstar inc.
2546 Van Giesen Richland, WA 99354 ALLSTI*054JJ
PH: 509-943-9625 Fax: 509-946-8046

March 12, 2008

Benton County Facilities Department
7122 Okanogan Place Building A
Benton County WA 99336

RE: Benton County Two Rivers Park Dock Repairs Project

Proposal:

Dear Mr. Rogers;

Allstar Provides the following Proposed Cost to construct the improvements to the boat docks in accord with the plans and specifications prepared by CWH Architects P.S. including addendum 1 dated 3-4-08 for the following sum:

1. Labor, Equipment, Materials.	Lump Sum	$ 104,124.51
2. WA State Sales Tax@ 8.3%		$ 8,642.34
3. Total Bid		$ 112,766.85

Proposed Construction Sequence from notice to Proceed;

A. 0-60 days Design & Submittal, Gangway and added Flotation
B. 60-90 Construct Gangways, Flotation Racks, Assemble Hardware.
C. 90-100 Days Install improvements.

We Thank the County for invitation and consideration of our proposal

Sincerely

Bruce Emory
President
Allstar Inc.

RECEIVED
MAR 1 2 2008
BY: