

**July 13, 2009**

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

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting  
July 6, 2009, 9:00 a.m.  
Commissioners' Conference Room  
Benton County Courthouse, Prosser, WA

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

**Benton County Employees Present During All or a Portion of the Meeting:** Deputy Administrator Loretta Smith Kelty; Adam Fyall, Community Development Coordinator; Finance Manager Linda Ivey; Personnel Manager Melina Wenner; Facilities Manager Roy Rogers; Steve Becken, Mike Shuttleworth; Ehriza Rivera and Nick Kooiker, Treasurer's Office; Pat Powell, Auditor's Office; and DPA Ryan Brown.

Approval of Minutes

The Minutes of June 29, 2009 were approved.

Consent Agenda

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

Human Services

- a. Appointment of County-Designated Mental Health Professionals

Juvenile Justice

- b. Contract w/Pasco School District to Provide Probation Counselor at Chiawana High School
- c. Contract w/Pasco School District for Probation Counselor at Pasco High School

Office of Public Defense

- d. Line Item Transfer, Fund No. 0000-101, Dept. 136
- e. District Court Personal Service Agreement w/B Anderson
- f. District Court Personal Service Agreement w/J Celski
- g. District Court Personal Service Agreement w/D Hickman
- h. District Court Personal Service Agreement w/R Hui
- i. District Court Personal Service Agreement w/D Kathren
- j. District Court Personal Service Agreement w/J Lilly
- k. District Court Personal Service Agreement w/S McKinley

- l. District Court Personal Service Agreement w/S Naccarato
- m. District Court Personal Service Agreement w/M Poland
- n. District Court Personal Service Agreement w/E Riley
- o. District Court Personal Service Agreement w/P Younesi
- p. Personal Service Agreement w/T Orosco & D Kathren

Roads/Engineer

- q. Plat Roads for River Edge Estates
- r. Line Item Transfer, Fund No. 0101-101, Dept. 500
- s. Rental of Vactor Unit from Owen Equipment Company
- t. Consultant Agreement w/ HDR Engineering, Inc.

Sheriff

- u. Purchase of Vancell from Bob Barker Company, Inc.
- v. Line Item Transfer, Fund No. 0000-101, Dept. 120
- w. Line Item Transfer, Fund No. 0000-101, Dept. 120
- x. Interlocal Agreement w/City of Kennewick and City of Richland for JAG Application

Sustainable Development

- y. Amendment to County-Ecology Contract for Nuclear Related Industries

The Board briefly recessed, reconvening at 9:05 a.m.

**Special Funds Presentation**

Linda Ivey gave a Powerpoint presentation update on the following special funds:

- Trial Court Improvement Fund
- State Housing Fund
- Rural County Capital Fund
- Noxious Weed Control Fund
- Capital Projects Fund

**Animal Control Facility Update**

Adam Fyall presented a comparison of two animal control facilities, one operated by the County on County-owned property and one operated by the City on City-owned property.

Commissioner Beaver said the County should be cautious about spending money. He said he believed the County needed an animal control facility, but he wanted to be cautious about how it was paid for and recommended the Board wait six months to make a decision.

Commissioner Bowman said he knew where the County could find the money to pay for construction, but not where it could find the money to fund operating costs. He said he also believed that using caution was very appropriate and recommended the Board send the issue to a vote of the people to see if it wanted to fund the operation of the facility.

Commissioner Beaver said would support a ballot measure so the citizens could vote on the issue.

Chairman Benitz said he would also support a ballot measure for operating and capital costs. Additionally, he suggested a citizens advisory group to assist and oversee the operation of the facility. He also suggested the Board look at the Badger Road property in addition to the Quinault property for building a new county-owned facility.

Commissioner Bowman stated he was still interested in contracting with W. Richland to operate a joint facility because it would reduce the operating costs in half.

**MOTION:** Commissioner Beaver moved to direct staff to put together a ballot measure for unincorporated Benton County with respect to animal control services, construction and operations. Commissioner Bowman seconded and upon vote, the motion carried.

### **Public Hearing – SPV 09-02**

Mike Shuttleworth said he received an email from the applicant requesting an additional 30 days to work on the easement issues with neighbors.

The public hearing was continued to Monday, August 10, 2009 at 9:05 a.m.

The Board briefly recessed, reconvening at 9:50 a.m.

### **The Crest Subdivision**

Steve Becken informed the Board of an issue with the City of Richland and The Crest Subdivision. He recommended the County inform the City that use of Rachel Road as the sole access from The Crest Subdivision will not be permitted, that the City either allow the developer to use Morency Road at this time or require the third connection and use of Morency Drive now rather than waiting until 50 lots have been developed.

The Board agreed.

### **Policy – Use of County Facilities**

Melina Wenner and DPA Ryan Brown presented a draft resolution limiting the use of county property as a public forum.

**MOTION:** Commissioner Beaver moved to approve the resolution limiting the use of county property to preserve such property for the purpose for which it is owned or leased by Benton County. Commissioner Bowman seconded and upon vote, the motion carried.

The Board briefly recessed, reconvening at 10:20 a.m.

### **Claim for Damages**

CC 09-16: Received on June 29, 2009 from Jason Bliss.

CC 09-17: Received on July 2, 2009 from Judith Eller.

**Vouchers**

Check Date: 07/02/2009  
Warrant #: 928133-928294  
Total all funds: \$2,277,035.69

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

**Resolutions**

- 09-436 Interlocal Agreement w/City of Kennewick and City of Richland for JAG Application
- 09-437 Appointment of County-Designated Mental Health Professionals
- 09-438 Contract w/Pasco School District to Provide Probation Counselor at Chiawana High School
- 09-439 Contract w/Pasco School District for Probation Counselor at Pasco High School
- 09-440 Line Item Transfer, Fund No. 0000-101, Dept. 136
- 09-441 District Court Personal Service Agreement w/B Anderson
- 09-442 District Court Personal Service Agreement w/J Celski
- 09-443 District Court Personal Service Agreement w/D Hickman
- 09-444 District Court Personal Service Agreement w/R Hui
- 09-445 District Court Personal Service Agreement w/D Kathren
- 09-446 District Court Personal Service Agreement w/J Lilly
- 09-447 District Court Personal Service Agreement w/S McKinley
- 09-448 District Court Personal Service Agreement w/S Naccarato
- 09-449 District Court Personal Service Agreement w/M Poland
- 09-450 District Court Personal Service Agreement w/E Riley
- 09-451 District Court Personal Service Agreement w/P Younesi
- 09-452 Personal Service Agreement w/D Kathren
- 09-453 Personal Service Agreement w/T. Orosco
- 09-454 Plat Roads for River Edge Estates
- 09-455 Line Item Transfer, Fund No. 0101-101, Dept. 500
- 09-456 Rental of Vactor Unit from Owen Equipment Company
- 09-457 Consultant Agreement w/ HDR Engineering, Inc.
- 09-458 Purchase of Vancell from Bob Barker Company, Inc.
- 09-459 Line Item Transfer, Fund No. 0000-101, Dept. 120
- 09-460 Line Item Transfer, Fund No. 0000-101, Dept. 120
- 09-461 Amendment to County-Ecology Contract for Nuclear Related Industries
- 09-462 Limiting Use of County Property to Preserve Such Property for the Purpose for Which it is Owned or Leased by Benton County

There being no further business before the Board, the meeting adjourned at approximately 10:20 a.m.

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Chairman

AGENDA/WORKSHOP ITEM		TYPE OF ACTION NEEDED	
Meeting Date:	13-July-2009	Execute Contract	_____
Subject:	Voice System Expansion Agreement	Pass Resolution	<u>  x  </u>
		Pass Ordinance	_____
Prepared By:	J. Randall Reid	Pass Motion	_____
Reviewed By:	Loretta Smith-Kelty	Other	_____
		Consent Agenda	<u>  x  </u>
		Public Hearing	_____
		1 <sup>st</sup> Discussion	_____
		2 <sup>nd</sup> Discussion	_____
		Other	_____

**BACKGROUND INFORMATION**

Last year, the county selected Embarq as the vendor through whom the voice system would be upgraded. (See Resolution 08-764.) The attached agreement is for expanding the system to the Richland Auditor's office. The lease for that space has been renewed for another five years and the office has been connected to the county network via the Benton PUD since 2007. The expansion of the voice system involves installation of equipment similar to that installed at the Kennewick Shop. It will provide full voice system capabilities for the Richland office. The equipment will be added to the lease for the main voice system and will add about \$200 to the monthly lease payments. The Auditor's staff at the Richland office currently struggles with inability to transfer calls to other offices, tying up their two single lines with faxing, and the difficulty of not having ready access to voice mail. Should the Auditor change locations for her Richland office, the equipment can be moved and can continue to function in the same manner so long as the office can be connected to the county wide are network.

**SUMMARY**

The accompanying resolution authorizes the Chairman of the Board of County Commissioners to sign an agreement with Embarq for upgrading the county telephone system to be leased through TAMCO Capital. It also authorizes the Central Services Manager to sign the lease agreements with TAMCO and any follow-up documents associated with completing the installation (Scope of Work, Certificate of Acknowledgment & Acceptance, etc.).

**RECOMMENDATION**

1<sup>ST</sup> Pass resolution.

2<sup>nd</sup>

**FISCAL IMPACT**

None. The monthly equipment lease and maintenance payments can be accommodated within the existing 2009 budget.

**MOTION**

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AN AGREEMENT WITH EMBARQ AND TAMCO CAPITAL FOR THE EXPANSION OF THE BENTON COUNTY TELEPHONE SYSTEM TO THE RICHLAND AUDITOR'S OFFICE.

WHEREAS, Benton County recently upgraded its telephone system through an agreement with Embarq approved by Resolution 08-764 wherein the system was acquired from Embarq and leased through TAMCO Capital; and

WHEREAS, Embarq has provided a proposal for expanding the system to the Richland Auditor's office located at 101 Wellsian Way, Suite E, Richland WA; and

WHEREAS, specifications for the expansion were finalized by Embarq and Benton County Central Services in the amount of \$7,173 plus tax to be leased through TAMCO Capital over a period of 60 months; and

WHEREAS, the expansion equipment is to be under Embarq "Centurion Maintenance" for the duration of the lease in the amount of \$204 plus tax per year; NOW THEREFORE,

BE IT RESOLVED, by the Board of Benton County Commissioners, that the Chairman of Board of Benton County Commissioners be authorized to sign the agreement with Embarq and TAMCO Capital for acquiring and financing the telephone system expansion; and

BE IT FURTHER RESOLVED, by the Board of Benton County Commissioners, that the Central Services Manager is authorized to sign the specific lease agreements with TAMCO Capital and any documents relating to the final scope of work and verification that the work has been completed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

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

Attest: \_\_\_\_\_  
Clerk of the Board

REID

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>July 13, 2009</u> Subject: <u>Archive Grant</u> Prepared by: <u>J. Delvin</u> Reviewed by:	Execute Contract Pass Resolution <u>XX</u> Pass Ordinance Pass Motion Other	Consent Agenda <u>XX</u> Public Hearing 1st Discussion 2nd Discussion Other

b

**BACKGROUND INFORMATION**

Pass the resolution allowing temporary transfer of funds to cover costs related to the state document imaging grant.

**SUMMARY**

**RECOMMENDATION**

1st

d

**FISCAL IMPACT**

**MOTION**

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN  
CLERKS BUDGET, CURRENT EXPENSE FUND, FUND NUMBER 0000101  
DEPARTMENT 106

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A" attached hereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

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

Attest: \_\_\_\_\_  
Clerk of the Board

cc: Clerk, Auditor, file

**EXHIBIT A**

BENTON COUNTY  
LINE ITEM TRANSFERS

**RESOLUTION No.** \_\_\_\_\_

DEPARTMENT: SUPERIOR COURT CLERK  
FUND NAME: CURRENT EXPENSE

DEPARTMENT NO.: 106  
FUND NO.: 0000-101

TRANSFER FROM:

TRANSFER TO:

Base Sub (6 digit)	Line Item (4 digit)	LINE ITEM NAME	AMOUNT	Base Sub (6 digit)	Line Item (4 digit)	LINE ITEM NAME	AMOUNT
512.309	4108	Jury Fees & Mileage	\$27,958.27	512.300	5124	Micro Filming - WA State	\$27,958.27

EXPLANATION: We are requesting this line item transfer to temporarily cover costs associated with the state document imaging grant received by this office. All of the funds have been received from the state and the work has been completed.

Prepared by: Josie Delvin Date: July 8, 2009

Approved   
Denied

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Chairman Pro Tem

\_\_\_\_\_  
Member

C

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN  
CAPITAL PROJECTS FUND NUMBER 0305-101, DEPARTMENT NUMBER 000.

BE IT RESOLVED, by the Board of Benton County Commissioners, that  
funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

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

Attest: \_\_\_\_\_  
Clerk of the Board

cc: Comm; Auditor; File

L. Ivey

# BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Capital Projects

Dept Nbr: 000

Fund Name: Capital Projects

Fund Nbr: 0305-101

TRANSFER FR

TRANSFER TO

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
594.620	6202	Capital Outlay- Health Building	\$4,000	594.200	4103	Professional Services	\$4,000
TOTAL			\$4,000	TOTAL			\$4,000

Explanation:

Transfer to appropriate funds from Capital Outlay- Health Building to Professional Services for the Appraisal of the Health District Building on Canal Drive.

Prepared by: Linda Ivey

Date: 07-Jul-2009

Approved

Denied

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

Chairman

Member

Member

# RESOLUTION

d

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN VIT  
IMPACT FUND NUMBER 0153-101

BE IT RESOLVED, by the Board of Benton County Commissioners, that  
funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

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

Attest: \_\_\_\_\_  
Clerk of the Board

cc: Commissioners; Auditor; File

IVEY

# BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Vit Impact

Dept Nbr: 000

Fund Name: Vit Impact

Fund Nbr: 0153-101

TRANSFER FROM: Dept 000

TRANSFER TO: Dept 000

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
594.110.	9105	Contingency	\$100,000	597.100.	9923	Protective Inspection Services	\$100,000
<b>TOTAL</b>			<b>\$100,000</b>	<b>TOTAL</b>			<b>\$100,000</b>

Explanation:

Transfer appropriated funds from Contingency to Protective Inspection Services.

Prepared by: Linda Ivey

Date: 08-Jul-2009

Approved

Denied

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

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

Leo Bowman  
District 1  
Max Benitz, Jr.  
District 2  
James Beaver  
District 3

**Board of County Commissioners  
BENTON COUNTY**

David Sparks  
County Administrator

Loretta Smith Kely  
Deputy County Administrator

**CANVASSING BOARD APPOINTMENT**

I, Max Benitz, Chair of the Benton County Commissioners, hereby designate myself to serve on the Benton County Canvassing Board for the Primary Election to be held on August 18, 2009. I will serve for the timeframe of July 29, 2009 through September 2, 2009.

DATED this \_\_\_\_\_ day of July 2009.

\_\_\_\_\_  
MAX BENITZ  
Chair, Board of County Commissioners

f

# RESOLUTION

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

**IN THE MATTER OF A SERVICE AGREEMENT BETWEEN BENTON COUNTY CORONER AND JEFFREY REYNOLDS, MD FOR FORENSIC PATHOLOGIST SERVICES**

**WHEREAS**, the Benton County Coroner's office has utilized Dr, Jeffrey Reynolds forensic pathologist service over the past couple of years when an autopsy was needed in Benton County; and

**WHEREAS**, Dr. Jeffrey Reynolds provided the Benton County Coroner with his 2009 rates, which is \$1000.00 per autopsy plus \$50.00 per hour travel time, and agrees to continue to serve Benton County as an independent contractor forensic pathologist as availability and schedule permit; and

**WHEREAS**, the Benton County Coroner is very pleased with the services Dr. Jeffrey Reynolds provides and recommends Benton County Commissioners to enter into a contract for said services;  
**NOW THEREFORE**,

**BE IT RESOLVED** the Board of Benton County Commissioner, Benton County, Washington hereby agrees to enter a service agreement with Dr. Jeffrey Reynolds for forensic pathology services for Benton County Coroner's office for a service fee of \$1000 per autopsy, plus \$50.00 per hour travel time as a independent contractor forensic pathologist; and

**BE IT FURTHER RESOLVED** the board of Benton County Commissioners is hereby authorized to sign the attached Service Agreement; and

**BE IT FURTHER RESOLVED** said contract may be extended for an additional one (1) year if mutually agreed upon by both parties.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2009

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
Member

Attest: \_\_\_\_\_  
Clerk of the Board

Constituting the Board of County  
Commissioners of Benton County,  
Washington

Orig: File Lisa Smith Coroner  
Cc: Auditor, Coroner, Dr. Reynolds

**PERSONAL SERVICES CONTRACT  
TERMS AND CONDITIONS**

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **JEFF REYNOLDS, MD**, with its principal offices at 4606 Avalanche, Yakima, WA (hereinafter "CONTRACTOR").

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

**1. CONTRACT DOCUMENTS**

This Contract consists of these terms and conditions and no additional documents.

**2. DURATION OF CONTRACT**

The term of this Contract shall begin immediately upon execution by both parties, and shall expire on December 31, 2009. This contract may be extended for an additional two years if agreed upon by both parties. Price rates are subject to change for calendar year 2009, and possibly again 2010, and will only be approved with an amendment to this contract.

**3. SERVICES PROVIDED**

The CONTRACTOR shall perform the following services:

- a. Complete autopsy and forensic pathologist services as needed by the Benton County Coroner.
- b. The CONTRACTOR shall perform the work specified in the Contract according to standard practices in the medical profession.

**4. CONTRACT REPRESENTATIVES**

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

- a. For CONTRACTOR: **Jeffrey Reynolds, MD**

4606 Avalanche  
Yakima WA  
Phone: 509-945-6738  
Fax: 509-966-5459

- b. For COUNTY: **Rick Corson, Benton County Coroner**  
7110 W Okanogan Place, Bldg A  
Kennewick, WA 99336  
Phone: 509-222-3720  
Fax: 509-222-3711

5. COMPENSATION

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

- a. Subject to price amendment for 2009 & 2010.
- b. the amount payable by the COUNTY to the CONTRACTOR under this Contract shall be \$1000.00 per autopsy plus transportation costs of \$50.00 per hour travel time. Contract amount is subject to price amendment for calendar years 2009 and 2010.
- c. The CONTRACTOR may, submit invoices to the COUNTY for services per occurrence. Invoices shall include the date of said service and a copy of the airfare & lodging fees if applicable. The County shall pay the CONTRACTOR for services rendered within thirty (30) days from the date of receipt.
- d. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services after its termination.

6. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional

compensation. All work done by the CONTRACTOR, and all reports submitted in conjunction thereof shall be certified by the CONTRACTOR and checked for errors and omissions. The Contractor shall be responsible for the accuracy of the work and submitted reports, even if the work is accepted by the COUNTY.

- b. No amendment, modification or renewal shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. **HOLD HARMLESS AND INDEMNIFICATION**

- a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, or any other tort liability whatsoever including infliction of emotional distress caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.
- b. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the

CONTRACTOR might have had under such laws. 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.

- c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, the CONTRACTOR'S employees, agents or subcontractors.

## 8. INSURANCE

- a. **Professional Legal Liability:** The CONTRACTOR shall maintain Professional Malpractice or Professional Errors and Omissions coverage appropriate to the CONTRACTOR'S profession which shall be written subject to limits of not less than one million dollars (\$1,000,000) per occurrence, with a general aggregate of no less than two million dollars (\$2,000,000).

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 (this section applies only if CONTRACTOR utilizes the services of any employees or volunteers in discharging his obligations pursuant to~~

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

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

- c. ~~Commercial General Liability and Employers Liability Insurance: CONTRACTOR shall maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).~~

~~The CONTRACTOR shall procure commercial general liability coverage, which does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability~~

~~policy and will include contractual liability coverage.~~

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 COUNTY, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required automobile liability policy.
- (3) The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
- (4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
- (5) 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.
- (6) The CONTRACTOR shall include all subcontractors, if any, as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
- (7) The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.

- (8) 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. If the CONTRACTOR'S liability coverage is written as a claims made policy, then the CONTRACTOR must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

**e. 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 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.

- (1) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered accord form certificates of insurance, or 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.
- (2) The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.

- (3) Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.
- (4) ~~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.~~
- (5) All written notices under this Section 8 and notice of cancellation or change of required insurance coverage's shall be mailed to the COUNTY at the following address:

**Lisa Small, Contract Administration**  
PO Box 190  
Prosser, WA 99350  
Phone: 509-786-5600  
Fax: 509-786-5625

- (6) The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Contracts Administrator listed above.
- (7) ~~If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, CONTRACTOR must describe its financial condition and the self-insured funding mechanism.~~

## 9. TERMINATION

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate

this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
  
- c. 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.
  
- d. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may terminate this Contract, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- a. The CONTRACTOR shall perform the terms of the Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY.
- b. The CONTRACTOR warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

12. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section **[Five]** of this Contract, and the CONTRACTOR is not entitled to any COUNTY benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to COUNTY employees.

- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.
- d. CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state or local law, which are now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S contract representative or designee.

**13. COMPLIANCE WITH LAWS**

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

**14. INSPECTION OF BOOKS AND RECORDS**

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

**15. NONDISCRIMINATION**

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

**16. DISPUTES**

Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the

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

**17. CONFIDENTIALITY**

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

**18. CHOICE OF LAW, JURISDICTION AND VENUE**

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

**19. SUCCESSORS AND ASSIGNS**

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

**20. 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.

**21. ENTIRE AGREEMENT**

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

**22. NOTICES**

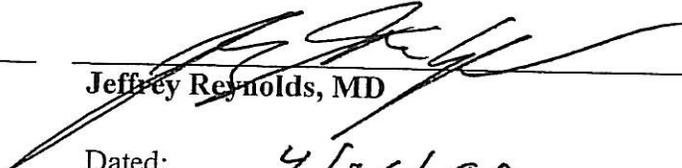
Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the Contract Representatives Section of this Contract. Notice may also be given by facsimile with the original to follow by regular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

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

BENTON COUNTY COMMISSIONERS

JEFFREY REYNOLDS, MD

\_\_\_\_\_  
Max Benitz, Jr., Chairman

  
\_\_\_\_\_  
Jeffrey Reynolds, MD

Dated: \_\_\_\_\_

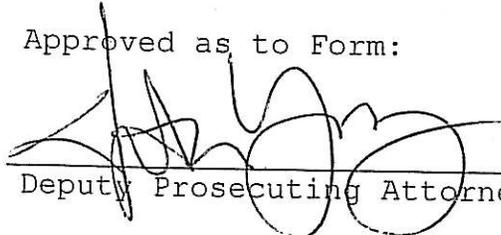
4/26/09

\_\_\_\_\_  
Leo Bowman, Member

\_\_\_\_\_  
James Beaver, Member

Dated: \_\_\_\_\_

Approved as to Form:

  
\_\_\_\_\_  
Deputy Prosecuting Attorney



9

# RESOLUTION

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

**IN THE MATTER OF THE THIRD SERVICE AGREEMENT AMENDMENT BETWEEN BENTON COUNTY AND VARSITY CONTRACTORS, INC.; AMENDING RESOLUTION 09-120**

**WHEREAS**, per resolution 08-205 dated February 11, 2008 the Board of Benton County Commissioners entered into a service agreement with Varsity Contractors, Inc, Boise, ID in the amount \$161,568.00 excluding WSST for the janitorial services located at the Benton County Justice Center, Benton County Coroner's Office & Benton County Health District Bldg, Kennewick, WA with said agreement expiring February 28, 2009; and

**WHEREAS**, per resolution 08-886, dated November 3, 2008 the Board of Commissioners approved the first amendment to said agreement and added the new District Courtrooms and Assessor's office located at the Benton County Justice Center to the current contract for an additional \$1,417.30 per month increasing the original contract amount to \$167,237.20 excluding WSST and the base rate of \$20.00 per hour for unexpected services; and

**WHEREAS**, per resolution 09-120, dated February 23, 2009 the Board of Commissioners approved the second amendment to said agreement extending the service agreement an additional one (1) twelve-month period expiring on February 28, 2010; and

**WHEREAS**, though the agreement was extending an additional twelve-month period, the contract amount was not amended to cover the janitorial services for a twelve-month period; and

**WHEREAS**, the Facilities Manger recommends the Board to approve the third amendment increasing the current agreement amount to \$178,575.60 excluding WSST with a base rate of \$20.00 per hour for unexpected services; **NOW, THEREFORE**

**BE IT RESOLVED**, by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby approves the third amendment to the service agreement with Varsity Contractors, Inc., increasing the service agreement amount to \$178,575.60 excluding WSST with a base rate of \$20.00 per hour for unexpected services; and

**BE IT FURTHER RESOLVED**, the Board hereby authorizes the Chairman of the Board to sign said amendment attached hereto.

Dated this . . . . . day of . . . . . , 20 . . . .

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
Member

Constituting the Board of County  
Commissioners of Benton County,  
Washington

Attest: . . . . .  
Clerk of the Board

### THIRD SERVICE AGREEMENT AMENDMENT

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2009 by and between **BENTON COUNTY, WASHINGTON** hereinafter called "COUNTY" and **VARSITY CONTRACTORS, INC**, 2100 S. Cole Road, Boise, ID 83709 a firm licensed to do business in the State of Washington, hereinafter called "CONTRACTOR".

The parties entered into a Service Agreement dated February 11, 2008 (the "AGREEMENT") to provide janitorial services as more fully defined in Exhibit A for designated portions of the Benton County Justice Center; Benton County Coroners Office; and Benton County Health District Building in Kennewick, WA for a contract amount of \$161,568.00 excluding W.S.S.T.

The parties executed the First Amendment on November 10, 2008 amending the original AGREEMENT by adding additional cleaning services and increasing the contract amount an additional \$1,417.30 per month for a total contract amount of \$167,237.20.

The parties executed the Second Amendment on February 23, 2009 extending the AGREEMENT for an additional one (1) twelve-month period commencing March 1, 2009 and concluding February 28, 2010 for a contract amount of \$167,237.20, which was an incorrect contract amount for a twelve-month period.

The parties agree that all provisions of their amended AGREEMENT remain in effect except for the following amendments:

1. **COMPENSATION** the existing paragraph in this section is replaced in its entirety with the following:

The CONTRACTOR shall be paid in accordance with the proposal provided in Exhibit C attached to the original agreement and Exhibit E attached hereto. The total amount payable by the COUNTY to the CONTRACTOR under this agreement is one hundred seventy eight thousand five hundred seventy-five dollars and sixty cents (\$178,575.60) not including W.S.S.T. Total acceptable overages, incidentals and other unanticipated costs shall be charged at twenty dollars (\$20.00) per man hour plus W.S.S.T. **Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages in a form approved and certified by the Washington State Department of Labor and Industries directly to COUNTY's contract representative.** At the completion of the work contemplated herein, CONTRACTOR shall submit an affidavit of wages paid in compliance with prevailing wage requirements, pre-certified by the Department of Labor and Industries, directly to COUNTY's contract representative. Such affidavit shall be in a form approved by the Washington State Department of Labor and Industries. No final payment and no release of retainage will be made until such affidavit is provided.

IN WITNESS WHEREOF the Chairman of the Board of the Benton County Commissioners has executed this Contract Amendment on behalf of the County, and the Contractor has executed this Contract, on the day and year first above written.

**BENTON COUNTY**

**VARSITY CONTRACTORS, INC.**

\_\_\_\_\_  
**Max E. Benitz, Jr., Chairman**

\_\_\_\_\_  
**Don Sorensen, District Manager**

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

Date: 7-6-2009

Approved as to Form:

\_\_\_\_\_  
**Deputy Prosecuting Attorney**

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

h

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF AWARDING A CONTRACT TO FOWLER GENERAL CONSTRUCTION, INC. FOR THE CONSTRUCTION OF THE ASSESSOR'S OFFICE REMODEL LOCATED AT THE BENTON COUNTY ANNEX BUILDING, KENNEWICK, WA**

**WHEREAS**, the Benton County Facilities solicited quotes per Resolution 08-133, from three general contractors on the Benton County Small Works Roster; and

**WHEREAS**, Benton County Facilities received the following quotes from Fowler General Construction, Inc., Richland, WA – Contractors License No. FOWLEGC9610W in the amount of \$29,960 including WSST; Siefken & Sons Construction, Inc., Richland, WA – Contractors License No. SIEFKSC198MZ in the amount of \$33,919.00 excluding WSST; and Murphey's Construction, Prosser, WA – Contractors License No. MURPHC1956JE did not respond; and

**WHEREAS**, Benton County Facilities Manager reviewed the quotes and recommends Fowler General Construction, Inc. as the lowest responsive bidder; **NOW, THEREFORE**

**BE IT RESOLVED** by the Board of Benton County Commissioners, the Board hereby awards the construction of the Assessor's Office Remodel to Fowler General Construction, Inc., Richland, WA in the amount of \$29,960 including WSST; and

**BE IT FURTHER RESOLVED** the Board hereby authorizes the preparation of a contract between Benton County and Fowler General Construction, Inc. to be placed on the consent agenda for signature.

Dated this . . . . . day of . . . . ., 20 . . . . .

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
Member

Attest: . . . . .  
Clerk of the Board

Constituting the Board of County  
Commissioners of Benton County,  
Washington



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

July 2, 2009

RE: Remodel of Assessor's Office

Dear Mr. Rogers,

Fowler General Construction proposes to perform the work identified in the RFP for the Remodel of Assessor's Office.

The lump sum price for this work including Washington State Sales Tax is \$29,960.

The scope of work is to include:

- Demolition of casework, partition walls and carpet
- Relocation of electrical and computer network wiring
- Misc. Framing
- Drywall patch
- Painting
- Ceiling tile replacement and grid patch
- Flooring Demo
- Furnish and install new carpet (Shaw style Neyland II 26 oz. - Color Manhattan Sky)
- Furnish and install Mannington VCT 12x12
- Furnish and install (1) - Sargent 6500 Line Lockset
- Purchase building permit

Should you have any questions or require any further information regarding this information do not hesitate to call me at (509) 430-7311.

Jasen Banta

Project Manager  
Fowler General Construction



<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>			
Meeting Date:	<u>7/7/09</u>	Execute Contract	_____	Consent Agenda	<u>X</u>
Subject:	<u>Amendment</u>	Pass Resolution	_____	Public Hearing	_____
Prepared by:	<u>LMS</u>	Pass Ordinance	_____	1st Discussion	_____
Reviewed by:	<u>LSK</u>	Pass Motion	_____	2nd Discussion	_____
				Other Business	_____

**BACKGROUND INFORMATION**

Per resolution 09-357 dated June 8, 2009 the Board awarded the procurement and installation of Haworth Office furniture for the Office of Public Defense Remodel Project to Brutzman's Office Solutions for a total contract amount not to exceed \$8,580.22, including WSST.

Brutzman's had provided the County with two different proposals as additional furniture was added to the order increasing the proposal from \$8,580.22 including WSST to \$9,106.38 including WSST. However, the wrong proposal was inadvertently used when preparing the original contract.

Attached is a resolution amendment and the first service agreement amendment increasing the original contract to an amount not to exceed \$9,106.38 including WSST.

**SUMMARY**

**MOTION**

Approve the attached resolution amending resolution 09-357, increasing the contract between Benton County and Brutzman's Office Solutions to a contract amount not to exceed \$9,106.38 including WSST, and authorize the Chairman of the Board to sign the first service agreement amendment.

# RESOLUTION

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

**IN THE MATTER OF THE FIRST SERVICE AGREEMENT AMENDMENT FOR THE  
PROCUREMENT AND INSTALLATION OF HAWORTH OFFICE FURNITURE FOR THE OFFICE  
OF PUBLIC DEFENSE REMODEL PROJECT LOCATED AT THE BENTON COUNTY JUSTICE  
CENTER, KENNEWICK, WA; AMENDING RESOLUTION 09-357**

**WHEREAS**, per Resolution 09-357 dated June 8, 2009 the Board of Benton County Commissioners awarded the procurement and installation of Haworth Office furniture – U.S. Communities Contract #N051016 for the Office of Public Defense Remodel Project to Brutzman's Office Solutions for a total contract amount not to exceed \$8,580.22, including WSST; and

**WHEREAS**, there were two different quotes provided by Brutzman's Office Solutions, as additional furniture was added to the order, and the wrong proposal was inadvertently used to prepare the contract; **NOW, THEREFORE**

**BE IT RESOLVED**, by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby concurs to amend the contract between Benton County and Brutzman's Office Solutions for the procurement and installation of Haworth office furniture for the Office of Public Defense Remodel Project increasing the contract amount not to exceed \$9,106.38, including WSST; and

**BE IT FURTHER RESOLVED**, the Board authorizes the Chairman of the Board to sign the first service agreement amendment attached hereto; and

**BE IT FURTHER RESOLVED**, resolution 09-357 is hereby amended.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

Attest: \_\_\_\_\_  
Clerk of the Board

## FIRST SERVICE AGREEMENT AMENDMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2009 by and between BENTON COUNTY, WASHINGTON hereinafter called "COUNTY" and BRUTZMAN'S OFFICE SOLUTIONS, PO Box 6044, Kennewick, WA 99336 a firm licensed to do business in the State of Washington, hereinafter called "CONTRACTOR".

The parties entered into a Service Agreement dated June 8, 2009 (the "AGREEMENT") for the procurement and installation of Haworth office furniture for the Office of Public Defense based on the U.S. Communities Contract #N051016 in the amount of \$8,580.22 including Washington State Sales Tax.

Whereas, there were two different quotes provided by Brutzman's Office Solutions as additional furniture was added to the order and the wrong proposal was inadvertently used to prepare the contract.

The parties agree that all provisions of their amended agreement remain in effect except for the following amendments:

1. CONTRACT DOCUMENTS the existing paragraph shall be amended by replacing the existing Exhibit A with the following.

Exhibit "A" – Contractor's Proposal dated 5/15/09, Order No. 0000721288

2. COMPENSATION the existing paragraph shall be amended and replaced in its entirety with the following:

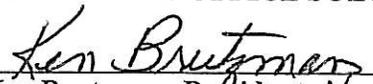
The CONTRACTOR shall be paid in accordance with the bid proposal provided in Exhibit "A" attached hereto. The total amount payable by the COUNTY to the CONTRACTOR under this agreement for the purchase and installation of said furniture is nine thousand one hundred six dollars and thirty-eight cents (\$9,106.38) including Washington State Sales Tax.

IN WITNESS WHEREOF the Chairman of the Board of the Benton County Commissioners has executed this Contract Amendment on behalf of the County, and the Contractor has executed this Contract, on the day and year first above written.

BENTON COUNTY

BRUTZMAN'S OFFICE SOLUTIONS

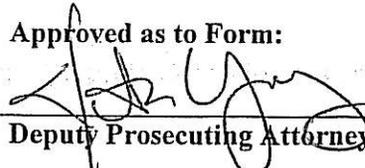
\_\_\_\_\_  
Max E. Benitz, Jr., Chairman

  
\_\_\_\_\_  
Ken Brutzman, President

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

Date: 7/2/09

Approved as to Form:

  
\_\_\_\_\_  
Deputy Prosecuting Attorney

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

# JOINT RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,  
WASHINGTON:

IN THE MATTER OF APROVING A PROFESSIONAL SERVICES AGREEMENT  
WITH SALVADOR MENDOZA, JR. TO PROVIDE LEGAL REPRESENTATION IN  
THE CASE OF STATE OF WASHINGTON V. DONALD SCHALCHLIN IN BENTON  
COUNTY SUPERIOR COURT

WHEREAS, Benton County and Salvador Mendoza, Jr., Attorney at Law, desire to enter into a professional services agreement to provide legal defense services to defendant Donald Schalchlin in the case presently pending in Benton County Superior Court and entitled State of Washington v. Donald Schalchlin;

NOW THEREFORE, BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached Professional Services Agreement to Provide Legal Representation in State of Washington v. Donald Schalchlin, Contract # BCSC0800SM001H1.

Dated this \_\_\_\_ day of July, 2009

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro Tem

\_\_\_\_\_  
Member

Constituting the Board of County  
Commissioners of Benton County

Attest: \_\_\_\_\_  
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION  
in STATE OF WASHINGTON V. DONALD SCHALCHLIN  
CONTRACT# BCSC0800SM001H1**

**THIS AGREEMENT** is entered into by and between **SALVADOR MENDOZA, JR.** attorney at law, Washington State Bar Association #27182 ("Attorney"), and **BENTON COUNTY** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior 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 felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries and specifically has the legal responsibility to provide legal defense service to defendant Donald Schalchlin ("Defendant") in the case presently pending in Benton County Superior Court and entitled "State of Washington v. Donald Schalchlin ("Case") with the assigned case number of 08-1-00857-0.
- B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with felony criminal offenses, and desires to contract with the County to provide legal services to Defendant in the case referenced above.

**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 the filing date of Case in Superior Court and shall continue thereafter, through and including the date when Case is affirmatively concluded either with a dismissal of the case or the entering of a final Judgment and Sentencing unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Provided that if restitution is not agreed to and a restitution hearing is required, then the date of such hearing shall comprise the date when this matter is affirmatively concluded.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 7135 W. Hood Place, Kennewick, WA 99336. Attorney's current local office telephone and fax numbers are (509) 374-1554 and (509) 374-8124, respectively; and Attorney's current office/work e-mail address is [sal@mendozalawyers.com](mailto:sal@mendozalawyers.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 County Indigent Defense Coordinator ("IDC") or designee, the Benton County Prosecuting Attorney, and the Benton County Superior Court Administrator ("Superior 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 Superior 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 felony 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 felony criminal defense or criminal prosecution matters; has not been subject to a termination proceeding involving a previous Benton County 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. These requirements may be reviewed with the IDC or designee by written request.

(i) This Agreement may be subject to review pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) 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. 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.

4. **FILE RETENTION.** Attorney agrees to and shall represent Defendant 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 Superior 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. Attorney shall compile and maintain appropriate case records for this Case. 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.

b. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the IDC or designee 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.

5. **COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder for the duration of the Case, Attorney shall be compensated at the rate of one hundred dollars (\$100) per hour. The total compensation paid to Attorney shall not exceed the cumulative sum of thirty thousand dollars (\$30,000) absent an amendment to this agreement or an appropriate order of the Court. Once the billings reach the cumulative sum of thirty thousand dollars (\$30,000), the parties shall confer about the financial status of the case and an amendment shall be executed if appropriate

b. Payment of any such compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned compensation, Attorney shall be required to submit a vendor warrant payment voucher to the IDC or designee that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10<sup>th</sup>) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (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). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which compensation is sought under this paragraph, 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.

6. **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 the 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 the then existing system for approving such expenses as set out by the IDC or designee. 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 Superior 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) or other such form utilized by the IDC or designee, 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 IDC's or designee's review and final approval for payment. Attorney shall submit such payment vouchers to the IDC or designee 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.

7. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents 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.

8. **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 8(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 Superior 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 8(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 8(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.

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 8, 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).

## 9. **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 Superior Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder.

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

c. In any event, 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.

10. **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 Superior 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 or designee, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

11. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** 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.

12. **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.

13. **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.

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

15. **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.

16. **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.

17. **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.

18. **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.

19. **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 Street  
Prosser, WA 99350

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

Patricia J. Austin  
Benton-Franklin Counties Superior Court Administrator  
7122 West Okanogan Place, Building A  
Kennewick, WA 99336

Loretta Smith Kelty  
Deputy County Administrator  
Benton-Franklin Counties Office of Public Defense  
7122 West Okanogan Place, Building A  
Kennewick, WA 99336

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2 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.

20. **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.

21. **INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has employed an IDC or designee to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the IDC or designee to assume and fulfill various roles and functions under this Agreement. Though the IDC or designee 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 or designee to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

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

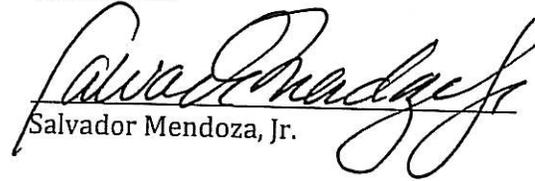
Date: \_\_\_\_\_

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

BENTON COUNTY

ATTORNEY

\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Salvador Mendoza, Jr.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

K

# RESOLUTION

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

**IN THE MATTER OF CONTRACTING WITH FOWLER GENERAL CONSTRUCTION, INC FOR CONSTRUCTION OF A GARAGE AND STORAGE FACILITY LOCATED AT HORN RAPIDS PARK**

**WHEREAS**, per Resolution 09-364 dated June 8, 2009, the Board of Benton County Commissioners awarded the construction of a garage and storage facility located at the Horn Rapids Park to Fowler General Construction, Inc, Richland, WA – Contractors License No. FOWLEGC9610W in the amount of \$44,113.00 including WSST, and authorized personnel to prepare a contract for execution; **NOW, THEREFORE**

**BE IT RESOLVED**, the Board of Benton County Commissioners, Benton County, Washington hereby authorizes the Chairman to sign the agreement between Benton County and Fowler General Construction, Inc for the construction of the garage and storage facility located at Horn Rapids Park for a contract amount not to exceed \$44,113.00 including WSST attached hereto.

Dated this ..... day of ....., 20 .....

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
Member

Constituting the Board of County  
Commissioners of Benton County,  
Washington

Attest: .....  
Clerk of the Board

**STANDARD SERVICE 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 FOWLER GENERAL CONSTRUCTION, INC. with its principal address at 1820 Terminal Drive, Richland, WA 99354 (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 is incorporated herein by this reference

- A. Exhibit A - Bid Proposal dated March 13, 2009
- B. Exhibit B - Contractor Bid Proposal Form

2. DURATION OF CONTRACT

The term of this Contract shall begin when executed by both parties, and shall be complete upon approval via resolution executed by the Board of Commissioners.

3. SERVICES PROVIDED

The COUNTY requires and the CONTRACTOR agrees to supply and install all material for the construction of a 24' X 36' wood frame shop as per plans and in accordance with the proposal dated March 13, 2009 attached hereto as Exhibit A.

4. CONTRACT REPRESENTATIVES

The parties' representatives are as follows:

- a. For CONTRACTOR: Jasen Banta, Project Manager  
Fowler General Construction, Inc.  
1820 Terminal Drive  
Richland, WA 99354  
(509) 943-2643  
(509) 943-8875

b. For COUNTY: Ms. Loretta Smith Kelty, Deputy Co Administrator  
Benton County  
PO Box 190  
Prosser, WA 99350  
(509) 786-5600 Phone  
(509) 786-5625 Fax

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 quotes provided in Exhibit A. The maximum total amount payable by the COUNTY to the CONTRACTOR under this agreement shall not exceed forty four thousand one hundred thirteen dollars and zero cents (\$44,113.00) including Washington State Sales Tax. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages in a form approved and certified by the Washington State Department of Labor and Industries directly to COUNTY's contract representative. At the completion of all work contemplated by this agreement or at the end of the contract term, whichever comes first, the work contemplated herein, CONTRACTOR shall submit an affidavit of wages paid in compliance with prevailing wage requirements, pre-certified by the Department of Labor and Industries, directly to COUNTY's contract representative. Such affidavit shall be in a form approved by the Washington State Department of Labor and Industries. No final payment will be made until such affidavit is provided.

6. 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. The CONTRACTOR shall not be paid for services rendered under this Contract until they have been performed to the COUNTY's satisfaction. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY; and will remit payment for the accepted work within thirty (30) days after receiving the invoice.

7. DEFECTS

In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without

Orig.: File - Lisa Small

cc: Auditor: R. Ozuna; Fowler General Construction

additional compensation. Compensation may be withheld until CONTRACTOR makes such corrections. All work submitted by the CONTRACTOR shall be held to applicable standards set forth in the 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.

FURTHER PROVIDED that if liability is caused by or results from the concurrent negligence of a) CONTRACTOR or CONTRACTOR'S agents or employees, and b) COUNTY or COUNTY'S agents or employees, then the indemnification contemplated in this section shall only apply to the extent of CONTRACTOR'S negligence.

- 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, and annually provide evidence thereof within 10 days of the signing of this contract and thereafter, by the 1<sup>st</sup> day of January of each contract year:

- a. 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.
- b. Commercial General Liability Insurance: CONTRACTOR shall maintain commercial general liability coverage for bodily injury, sickness, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000). The policy shall not contain exclusions or limitations applicable to any activities undertaken, or materials used by CONTRACTOR in fulfilling this agreement. CONTRACTOR shall cause COUNTY to be added as an additional insured and the policy shall state that it cannot be canceled except with 30 days written notice to COUNTY. This policy shall be primary to any of COUNTY'S other sources of insurance including self-insurance through a risk pool. CONTRACTOR shall provide certificate of such insurance, including the endorsements specified in this paragraph, to County's representative prior to start of work.
- c. Automobile Liability: The CONTRACTOR shall maintain business automobile liability insurance with a limit of not less than one million dollars (\$1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out of "Any Auto". CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by business auto liability.

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 COUNTY, its officers, officials, employees and agents shall be added as additional insured on all required insurance policies, except for any required automobile liability policy.
- 3) The CONTRACTORS'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
- 4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
- 5) 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.
- 6) All subcontractors shall comply with the same insurance requirements as are required of the CONTRACTOR as set forth in Section 10(a) through 10(e). Additionally, the insurance policies required of subcontractors shall list the COUNTY (and all of its elected officials, employees and agents) as well as the CONTRACTOR as additional insureds, and the subcontractors shall provide certificates listing these endorsements to the COUNTY and the CONTRACTOR prior to the commencement of any work by the subcontractor.
- 7) 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.
- 8) 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.
- 9) 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.

- 10) 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 then (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. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.
- 11) Certificates of insurance shall show the certificate holder as "Benton County". The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.
- 12) 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.
- 13) All written notices and notice of cancellation or change of required insurance coverage shall be mailed to the COUNTY at the following address:

Loretta Smith Kelty, Deputy County Administrator  
Benton County  
PO Box 190  
Prosser, WA 99350

- 14) 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. PERFORMANCE BOND

The CONTRACTOR agrees to furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to 100% of the contract sum as security for the performance by the contractor of this Agreement and payment of all the persons performing labor and supplying materials pursuant to this agreement.

12. 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.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, including, but not limited to, prevailing wage laws.

14. 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,

Orig.: File - Lisa Small

cc: Auditor: R. Ozuna; Fowler General Construction

7/10

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

15. 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.

16. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

The CONTRACTOR shall perform the services under this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior written consent of the COUNTY.

17. 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.

18. 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.

19. 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

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cc: Auditor: R. Ozuna; Fowler General Construction

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. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR regarding the work performed under this Contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend any regularly scheduled purge schedule.

#### 21. PUBLIC RECORDS ACT

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

#### 22. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, provisions for indemnification; insurance; compliance with laws; litigation hold; and the Public Records Act.

Orig.: File - Lisa Small

cc: Auditor: R. Ozuna; Fowler General Construction

9/10

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

FOWLER GENERAL CONSTRUCTION

\_\_\_\_\_  
Max Benitz Jr., Chairman  
Benton County Commissioner

\_\_\_\_\_  
John Payne, President

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Deputy Prosecuting Attorney

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROAD FUNDS RE: TRANSFER OF FUNDS WITHIN THE COUNTY ROAD FUND 0101-101

BE IT RESOLVED by the Board of Benton County Commissioners that funds be transferred between line items as defined in Exhibit A attached hereto.

Dated this 13th day of July 2009.

\_\_\_\_\_  
Chairman of the Board.

\_\_\_\_\_  
Chairman Pro-Tem.

\_\_\_\_\_  
Member.

Attest: \_\_\_\_\_  
Clerk of the Board

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

SWB:LJM:dlh

Exhibit A  
Page 2 of 2  
July 13, 2009

To transfer \$29,300,000 from the Construction Function  
595-120-4100 (Professional Services) to the Reimbursable  
Function 519-760-5200 (Intergovernmental Payments

There is no adverse affect on the Construction Function of  
the Road Fund.



m

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN  
CURRENT EXPENSE FUND NUMBER 0000-101, SHERIFF PATROL  
DEPARTMENT NUMBER 121.

BE IT RESOLVED, by the Board of Benton County Commissioners, that 2009  
funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

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

Attest: \_\_\_\_\_  
Clerk of the Board

**BENTON COUNTY LINE ITEM TRANSFER**

Dept Name: Sheriff Patrol Dept Nbr: 121  
 Fund Name: Current Expense Fund Nbr: 0000-101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.210	1465	Investigator	\$31,011	521.210	1567	Detective	\$32,511
521.210	1455	Investigator	\$1,500				
TOTAL			\$32,511	TOTAL			\$32,511

Explanation:

The following line item transfer is needed to fund a full time all benefits paid Detective position to participate in the Violent Gangs Task Force. The mission of the VGTF is to identify and target for prosecution organized crime groups responsible for drug trafficking, money laundering, alien smuggling, crimes of violence (murder), robbery (aggravated assault), violent street gangs, as well as an intensified focus on the apprehension of dangerous fugitives. The funding of this position will be from not filling a Patrol Deputy/Investigator vacancy due to the placement of the Deputy to the Detective position as well as from a line item that will not be fully utilized because of a leave of absence.

Prepared by: Julie Thompson Date: 06-Jul-2009

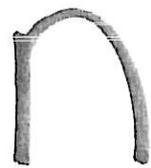
Approved  Denied

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

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member



# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE PORTABLE RADIO MAINTENANCE AGREEMENT BETWEEN WASHINGTON COMMUNICATIONS LLC, DOING BUSINESS AS DAY WIRELESS SYSTEMS, AND BENTON COUNTY, CURRENT EXPENSE FUND NO. 0000-101, SHERIFF CUSTODY DEPARTMENT 120.

WHEREAS, the Sheriff's Office Custody Department 120 has 80 XTS portable radios, which have a warranty period that expires on July 9, 2009; and

WHEREAS, Washington Communications LLC, doing business as Day Wireless Systems, has provided maintenance and repair services to Benton County's portable radios for several years; and

WHEREAS, Washington Communications LLC has a Radio Maintenance Agreement for 80 XTS2500 portable radios in the amount of \$649.80 per month including WSST; and

WHEREAS, per resolution 04-534, "...that for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but shall instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost."; and

WHEREAS, the Benton County Sheriff's Office recommends entering into the Radio Maintenance Agreement with Washington Communications LLC; **NOW, THEREFORE,**

**BE IT RESOLVED** by the Board of Benton County Commissioners, Benton County, Washington, the Board concurs with the Sheriff's Office recommendation and hereby authorizes the Chairman to sign the attached Radio Maintenance Agreement with Washington Communications LLC in the amount of \$649.80 per month including WSST; and

**BE IT FURTHER RESOLVED** that the term of the attached agreement commences August 1, 2009 and expires on July 31, 2010.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

Constituting the Board of Commissioners  
of Benton County, Washington.

Attest.....  
Clerk of the Board

Orig: Sheriff's Office  
cc: Auditor, Rosemary, Day Wireless



# MAINTENANCE AGREEMENT

www.daywireless.com

FCC LICENSEE		
COMPANY NAME Benton County Jail		
ADDRESS 7122 W Okanogan		
CITY Kennewick	STATE WA	ZIP 99337

Company Number		
<input type="checkbox"/> 03	<input type="checkbox"/> 13	<input checked="" type="checkbox"/> 18
<input type="checkbox"/> 04	<input type="checkbox"/> 15	<input type="checkbox"/> 20
<input type="checkbox"/> 11	<input type="checkbox"/> 16	<input type="checkbox"/> _____
CUSTOMER NO. 33255		SHOP NO. 1806
AGREEMENT DATE		CONTRACT NO.
DATE MAINTENANCE BEGINS 08-01-2009	TAX Y	
DATE MAINTENANCE ENDS 07-31-2010	STATE WA	
NEGOTIATED BY Ramona Reitan	COUNTY CODE 302	

NEW     
  SUPERSEDE     
  ADD/UPDATE     
  DELETE     
  CANCEL

BILLING PERIOD     
  MONTHLY     
  QUARTERLY     
  SEMI ANNUAL     
  ANNUAL

NO. UNITS	DESCRIPTION	TYPE	PLACE OF SERVICE	MONTHLY FEES	
				PER UNIT	TOTAL
80	XTS2500 Portable radios: serial numbers defined below	134	Depot	7.50	600.00
	205CFT3893, 205CFT3896, 205CFT3897, 205CFT3891				
	205CFT3892, 205CFT3898, 205CFT3895, 205CFT3890				
	205CFT3894, 205CGD1970, 205CGD1960, 205CGD1962				
	205CGD1967, 205CGD1964, 205CGD1963, 205CGD1966				
	205CGD1968, 205CGD1969, 205CGD1961, 205CGD1965				
	205CHD1136, 205CJM6149, 205CJM6150, 205CJM6151				
	205CJM6152, 205CJM6153, 205CJM6154, 205CJM6155				
	205CJM6156, 205CJM6157, 205CJM6158, 205CJM6159				
	205CJM6160, 205CJM6161, 205CJM6162, 205CJM6163				
	205CJM6164, 205CJM6165, 205CJM6166, 205CJM6167				
	205CJM6168, 205CJM6169, 205CJM6170, 205CJM6171				
	CONTINUED ON PAGE 2				

THE TERMS AND CONDITIONS OF THIS MAINTENANCE AGREEMENT ARE PRINTED ON THE SECOND PAGE

CLIENT		DAY WIRELESS SYSTEMS	
FCC LICENSEE		DATE	
WITNESS		WITNESS	
_____	AUTHORIZED SIGNATURE	_____	AUTHORIZED SIGNATURE

NOTE: Make sure the second page is initialed by the customer.



# MAINTENANCE AGREEMENT

www.daywireless.com

FCC LICENSEE		
COMPANY NAME Benton County Jail		
ADDRESS 7122 W Okanogan		
CITY Kennewick	STATE WA	ZIP 99337

Company Number		
<input type="checkbox"/> 03	<input type="checkbox"/> 13	<input checked="" type="checkbox"/> 18
<input type="checkbox"/> 04	<input type="checkbox"/> 15	<input type="checkbox"/> 20
<input type="checkbox"/> 11	<input type="checkbox"/> 16	<input type="checkbox"/> _____
CUSTOMER NO. 33255		SHOP NO. 1806
AGREEMENT DATE		CONTRACT NO.
DATE MAINTENANCE BEGINS 8-01-2009	TAX Y	
DATE MAINTENANCE ENDS 07-31-2010	STATE WA	
NEGOTIATED BY Ramona Reitan	COUNTY CODE 302	

NEW     
  SUPERSEDE     
  ADD/UPDATE     
  DELETE     
  CANCEL

BILLING PERIOD     
  MONTHLY     
  QUARTERLY     
  SEMI ANNUAL     
  ANNUAL

NO. UNITS	DESCRIPTION	TYPE	PLACE OF SERVICE	MONTHLY FEES	
				PER UNIT	TOTAL
	205CJM6172, 205CJM6173, 205CJM6174, 205CJM6207				
	205CJM6175, 205CJM6176, 205CJM6177, 205CJM6178				
	205CJM6179, 205CJM6180, 205CJM6181, 205CJM6182				
	205CJM6183, 205CJM6184, 205CJM6185, 205CJM6186				
	205CJM6187, 205CJM6188, 205CJM6189, 205CJM6190				
	205CJM6191, 205CJM6192, 205CJM6193, 205CJM6194				
	205CJM6195, 205CJM6196, 205CJM6197, 205CJM6198				
	205CJM6199, 205CJM6200, 205CJM6201, 205CJM6202				
	205CJM6203, 205CJM6204, 205CJM6205, 205CJM6206				
			80 Units	7.50	\$600.00
	NOTE: contract does not cover liquid or physical damage		Tax	8.3%	\$ 49.80
	Covers the radio only, no accessories.		total monthly charge		\$649.80

THE TERMS AND CONDITIONS OF THIS MAINTENANCE AGREEMENT ARE PRINTED ON THE SECOND PAGE

CLIENT		DAY WIRELESS SYSTEMS	
FCC LICENSEE		DATE	
WITNESS		WITNESS	
_____	AUTHORIZED SIGNATURE	_____	AUTHORIZED SIGNATURE

TERMS & CONDITIONS

1. DEFINITIONS. "DWS" shall mean Day Wireless Systems. "Licensee" shall mean and apply to the FCC Licensee, or the User, or the Purchaser of the equipment to be maintained by the terms of this agreement.

2. PERFORMANCE OF MAINTENANCE. DWS agrees to provide maintenance (as defined below) for the Licensee of the equipment described on the previous page of this agreement beginning and ending on the dates indicated in consideration of Licensee's payment of the monthly maintenance charges. Maintenance shall include the labor and parts required to repair equipment, which has become defective through normal wear and usage.

3. MAINTENANCE STANDARDS.

a. The equipment will be maintained by DWS in accordance with these standards: (I) Motorola parts of equal quality will be used; (II) oil, water, dust and foreign substances will be removed from the equipment; (III) the equipment will not be subject to mechanical abuse; (IV) the equipment will be maintained at the levels necessary to provide the required communication; (V) routine maintenance procedures will be followed; and (VI) all maintenance work will be done by qualified technicians. The equipment will be inspected and adjusted periodically and as often as required. Maintenance service does not insure uninterrupted operation of the equipment.

b. EXCEPT FOR THE FOREGOING, DWS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. TIME AND PLACE OF MAINTENANCE WORK. Maintenance work on the base station and other fixed equipment shall be performed at the location of the equipment, and the Licensee shall furnish heat, light, and power at the locations. Mobile units and removable equipment shall be delivered by the Licensee to the place of service indicated on the previous page of this agreement.

5. EXCLUSIONS.

a. This agreement does not include maintenance of any transmission line, antennas, tower, or tower lighting, unless such work is described on the previous page of this agreement, such maintenance may be furnished upon request at mileage, materials, and labor rates prevailing at the time of each call.

b. Maintenance does not include the repair or replacement of equipment which has otherwise become defective, including, but not limited to, damage caused by accidents, physical abuse or misuse of the equipment, acts of God, fires, and does not include extensive maintenance or replacement of equipment due to interference, intermodulation, or other degrading signals causing poor service that the equipment is not designed to reject.

6. PAYMENT.

a. DWS shall invoice Licensee on a monthly, quarterly, semi annual or annual basis for all amounts due under this agreement. Licensee agrees that payment shall be made in ten (10) days after the date of the invoice.

b. Each invoice shall be due and payable whether or not the equipment is operating, and DWS may terminate this agreement by giving Licensee ten (10) days notice by certified mail if the Licensee defaults in its payment to DWS.

7. FCC RECORDS. Application and statements of fact when required by the Federal Communications Commission must be subscribed and sworn to by the Licensee, and the Licensee is responsible for meeting FCC requirements. However, DWS will provide the Licensee with forms, advice, and technical assistance, including frequency, modulation and power measurements, to aid in meeting those requirements.

8. INTERRUPTION OF SERVICE. The Licensee shall notify DWS in the event of the failure or malfunction of the unit. If DWS fails to repair the unit within a reasonable time, the Licensee shall notify the Headquarters Office in writing. After said notice from the Licensee to the Headquarters Office, DWS shall be liable for any interruption or interference affecting the use of or transmission through the equipment maintained to the extent of a pro rate

allowance based on the monthly maintenance fee for the time which interruption or interference is attributable to the fault of DWS.

9. FORCE MAJEURE. DWS shall not be responsible for any damages, delay in performance or failure to perform under this Agreement if such damage, delay in performance, or failure to perform is caused by any acts or omissions of Licensee, fire, strike, or other labor disputes, embargo, government regulations or requirements (legislative, judicial, military or otherwise), power failure, electrical power surges or current fluctuations, lightning strike, flood war, water, the elements, or other forces of nature, delays or failures of transportation, equipment shortages, suppliers' failures or other causes beyond its reasonable control, whether or not similar to the foregoing.

10. AUTOMATIC RENEWAL. After the "Date Maintenance Ends" indicated on the previous page of this agreement, this agreement shall continue for successive additional periods of 1 month, provided that either DWS or the Licensee may terminate this agreement on the "Date Maintenance Ends" or thereafter upon 30 days written notice to the other party sent by certified mail to the address indicated herein.

11. WAIVER. Failure or delay on the part of DWS to exercise any right, power, or privilege hereunder shall not operate as a waiver thereof.

12. PRIOR NEGOTIATIONS. This contract constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations, and agreements.

13. AMENDMENT. No revision of this agreement shall be valid unless made in writing and signed by a General Manager or corporate officer of DWS and an authorized agent of the Licensee.

14. CONTROLLING LAW. The parties agree that the terms of this Agreement shall be interpreted in accordance with the laws of the state of Oregon. Licensee agrees that venue of any action to enforce this Agreement shall be in Multnomah County, Oregon.

15. WAIVER OF BREACH. The waiver by DWS of any term under this Agreement is not a waiver of any other term or the waiver of the same term at any other time.

16. NOTICES. Any notice required or permitted to be given under any provisions of this Agreement or governing law shall be given in writing and either hand delivered or sent by certified first class mail, postage prepaid, to the Licensee's address on the face of this Agreement and to DWS at 4700 SE International Way, Milwaukie, OR 97222.

17. ATTORNEYS' FEES. In the event DWS retains an attorney to compel compliance with the terms of this Agreement, DWS shall be entitled to recovery attorneys' fees, collection costs incurred, and any other associated fees and charges.

18. SEVERABILITY. If any portion of this Agreement is declared invalid, the remainder of this Agreement shall continue to be binding upon the parties.

19. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between Licensee and DWS. This Agreement may be amended only by written instrument executed by both parties.

20. LIMITATION OF LIABILITY. In no event shall DWS be responsible to the Licensee for any indirect, special or consequential damages or lost profits arising out of or related to this Agreement or the performance or breach thereof. DWS's liability to the Licensee, if any, shall in no event exceed the total amount paid hereunder to DWS by the Licensee.



CUSTOMER INITIAL

DATE

9:05  
RECEIVED  
MAR 17 2009  
BENTON COUNTY  
COMMISSIONERS

**From:** Marilu Flores  
**To:** Hewitt, Eileen  
**Subject:** Re: Request to be on Commissioner's Schedule

Hi Eileen:

Items below before the board have been scheduled at 9:05 am EXCEPT for the March 23rd item which is scheduled at 11:00 am. I have given each item 10 minutes before the board.

Please let Marianne know the times and have her be here at her scheduled times (last time she was a bit late) as I'd hate for her to lose her spot.....Marilu

>>> Eileen Hewitt 3/16/2009 4:41 PM >>>  
Marilu,

Marianne Ophardt requested that I ask you to schedule some of our WSU Extension Area Educators for regular Monday Commissioner meetings.

No documents will be presented at these meetings. The intent is just an informal appearance so the Benton County Commissioners can get to know our WSU Extension Area Educators.

Please add to the schedule the following people on the dates indicated:

- ✓ March 23rd - Natalie Kinion, WSU Benton - Franklin Extension - 4-H Youth Development
- ✓ April 27th - Gwen-Alyn Hoheisel, WSU Benton-Franklin Extension - Commercial Fruit
- ✓ May 11th - Jean Smith, WSU Benton-Franklin Extension - Animal Sciences
- ✓ June 1st - Tim Waters, WSU Benton-Franklin Extension - Commercial Vegetables
- ✓ June 22nd - Lauri Sherfey, Director, WSU Franklin County Extension
- ✓ July 13th - Lizann Powers-Hammond, WSU Benton-Franklin County Extension - Food Science & Human Nutrition

Thanks,  
Eileen Hewitt

Eileen Hewitt  
[eileen.hewitt@co.benton.wa.us](mailto:eileen.hewitt@co.benton.wa.us)

WSU Benton County Extension - Kennewick  
5600-E West Canal Drive  
Kennewick, WA 99336  
(509) 735-3551

WSU Extension programs and employment are available to all without discrimination. Evidence of non-compliance may be reported through your local extension office.

9:15



June 25, 2009

Mr. David Sparks  
Benton County Administrator  
PO Box 190  
Prosser, WA 99350

Dear David:

The City of Kennewick recently became aware of a state program that could greatly assist our local economic development efforts. The Local Revitalization Financing program (LRF) was created by Second Substitute Senate Bill 5045 and passed by the Washington State Legislature in 2009.

The LRF is the most recent addition to the State's Tax Increment Financing laws. It captures a local property tax increment based on new construction value within a designated revitalization area and makes a state contribution available to approved jurisdictions in the form of a local option sales tax credited against the state sales tax.

The City is preparing to apply for a LRF, designating the Southridge area indicated on the attached map as the revitalization area. We would use the increased tax revenues from development within this area to provide infrastructure for the Southridge area. Projects anticipated to be funded would include construction of Hildebrand Boulevard from 10<sup>th</sup> Avenue to Southridge, significant work on the Southridge Sports Complex as

well as construction of numerous smaller streets in the Southridge area. We believe these efforts would greatly enhance the value of this area, spur public and private development and help to create private sector jobs.

The LRF application is due to the Department of Revenue on September 1, 2009. We intend to hold a public hearing on July 28, 2009 regarding adoption of the Southridge revitalization area ordinance. We are anticipating issuing bonds for a maximum amount of \$14,000,000 for construction of improvements in the Southridge area indicated on the attached map by the green line.

Additionally, we need to provide 30 days notice to overlapping taxing districts, such as Benton County, that they have the opportunity to opt out of the revitalization area. This letter is providing you such notice.

If you desire to opt out, you would need to adopt an ordinance or resolution doing so prior to the City adopting the ordinance designating the revitalization area. At this time, we anticipate presenting such an ordinance to the City Council on or about July 28.

We would hope that Benton County sees the value in the efforts the City is taking with the infrastructure proposals being recommended for the Southridge area, and that completion of these projects would provide benefit to Benton County.

We plan to have financial information available in mid-July, and plan to meet with you during the week of July 13.

If you have any questions, please contact Marie Mosley, Executive Director of Support Services, at 585-4260.

Sincerely,

*Robert R Hammond*

Robert R. Hammond

City Manager

City of Kennewick

Attachments



July 1, 2009

Mr. David Sparks  
Benton County Administrator  
PO Box 190  
Prosser, WA 99350

Dear David:

This letter is to clarify some of the information in the June 25 letter to your agency announcing our intention to pursue the LRF infrastructure financing option provided by Substitute Senate Bill 5045 and passed by the Washington State Legislature in 2009.

The name of the revitalization area (RA) is the "*Southridge Area*" as indicated on the map attached to the original letter. At this time, we anticipate presenting such an ordinance to the City Council for adoption on July 28. We are planning on issuing bonds for a maximum amount of \$14,000,000 for construction of improvements in the "*Southridge Area*" indicated on the attached map by the green line.

Again, thanks for your consideration of this proposal, we plan to have financial information available in mid-July, and plan to meet with you during the week of July 13.

If you have any questions, please contact Marie Mosley, Executive Director of Support Services, at 585-4260.

Sincerely,

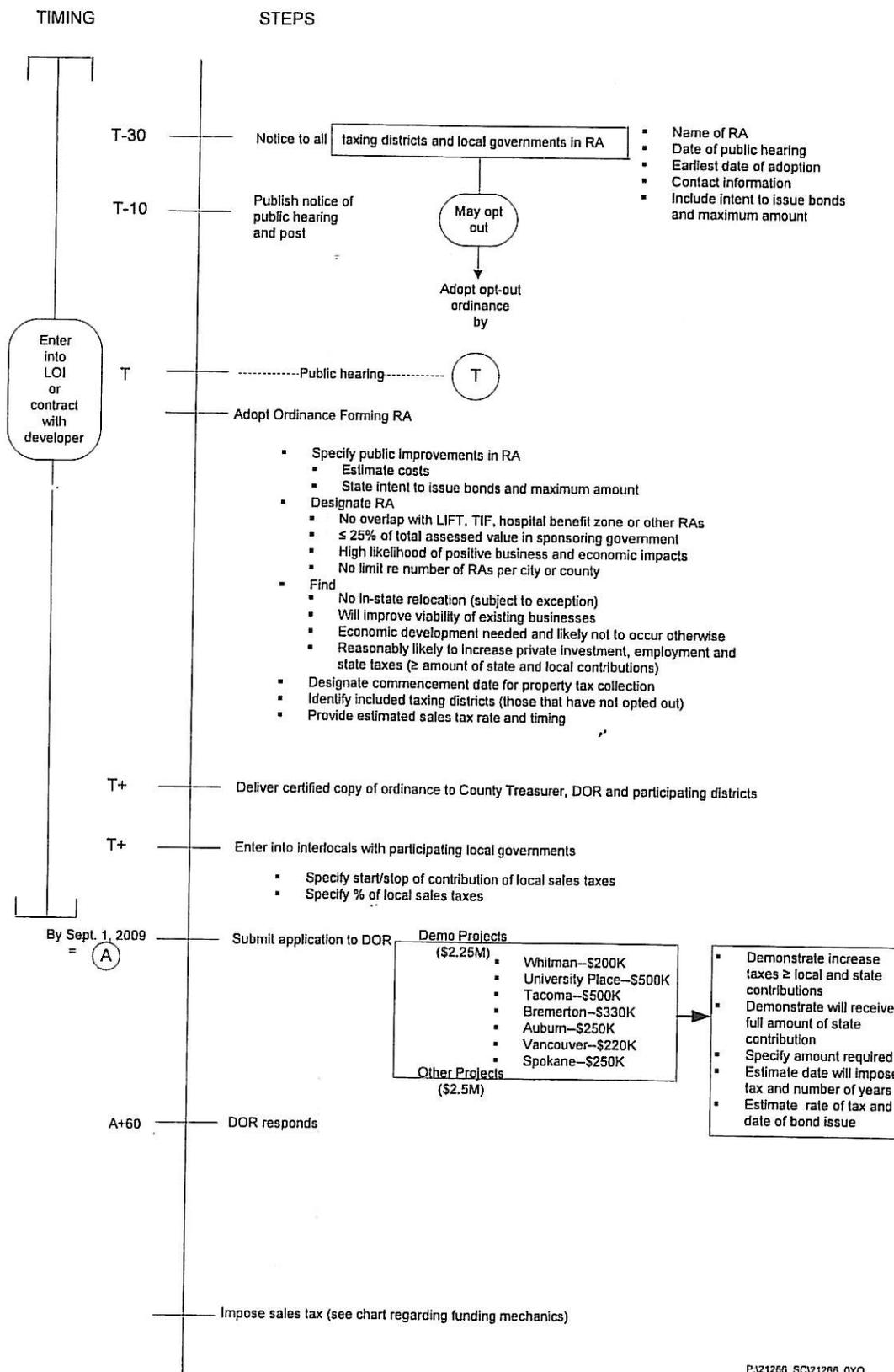
Robert R. Hammond

City Manager

City of Kennewick

Attachments

# Forming a Revitalization Area ("RA") (Under SSB 5045, passed Legislature 4/20/09)



# Southridge Partnership

Local Revitalization Financing Opportunity

**BENTON COUNTY COMMISSIONERS MEETING**

**JULY 13, 2009**

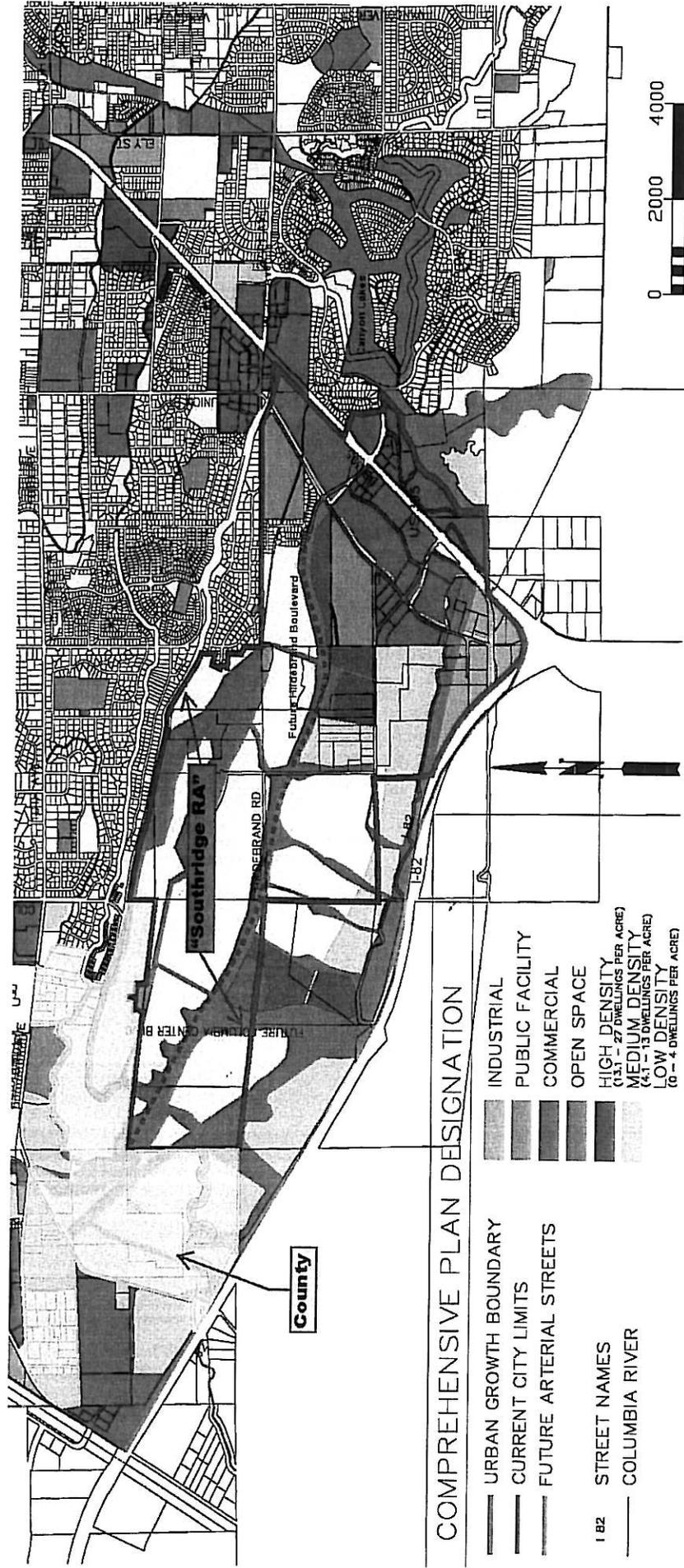
# What is Local Infrastructure Financing (LRF)

New Tax Increment Financing (TIF) Option



- **Designed for Infrastructure Improvements that will:**
  - Promote Community and Economic Development
  - Stimulate Business Activity
  - Help Create Jobs
  - Increase Private Investment
  - Increase State and Local Tax Revenue
- **State Legislation SSB 5045 approved in 2009:**
  - Legislature recognizes these activities generate revenue
  - Public interest to invest in these projects through State Sales Tax Credit
  - Must demonstrate that improvements will produce expected returns to the State (thru increased sales & property taxes)

# Where is the Southridge Revitalization Area?



# Southridge Project Scope



## \$45.6M in Infrastructure Improvements

- Southridge Sports Complex:
  - Complete 3 Ball Fields
  - Complete 1 Pavillion
- Hildebrand Boulevard – from 10<sup>th</sup> to Southridge
- Zone 4 Reservoir
- Southridge Infrastructure – Street Construction:
  - Plaza Way – Ridgeline to existing
  - Ridgeline Drive – Plaza Way to Southridge
  - Ridgeline Drive – US 395 to Plaza Way
  - Southridge Blvd – Ridgeline to 27<sup>th</sup> Avenue
  - Zintel Way – Christensen North to existing
  - US395 Intersections
- Steptoe – 10<sup>th</sup> to Center Parkway (not in RA)

## How Will Improvements be Funded?

- **\$13.6M Bond Issue by the City to be paid back by:**
  - \$500k – State Funding (LRF sales tax credit by State)
  - \$500k – Local Sales & Property Tax from New Development
    - Incremental Increases in Property & Sales Tax (based on interlocal)
    - 75% of Property Tax due to new construction & development in RA
    - Sales Tax due to new retail sales from development in RA
- **\$18.4M – Potential Grant, City CIP & W/S Funding**
- **\$9.6M – Potential Partnership Opportunities:**
  - LID's, Latecomers, Developer Contributions – to complete US395 Intersections; Hildebrand
- **\$4.0M – Partnership Opportunities:**
  - Full build-out of Southridge Sports Complex

# What is the Benefit to Benton County?



- Promotes Community & Economic Development
- Begins Implementation of Southridge Master Plan Vision
- New Construction Property Tax:
  - 25% of the projected taxes based on anticipated development
  - 100% of New Construction from additional development
- Sales Tax Revenue:
  - Amount above projected retail sales from anticipated development
  - Sales Tax Revenue from additional economic development efforts in Southridge
- Other Opportunity Centers:
  - Sales & Property Tax – will generate funding for future infrastructure improvements that will promote economic development efforts (Vista Entertainment, Bridge to Bridge, Columbia Park, etc.)

## What is Needed & When?

- **July 28<sup>th</sup> – Public Hearing & Adopt RA Ordinance** – County would need to establish an “opt out” ordinance by this date if you decide not to participate
- **September 1<sup>st</sup> – Interlocal Agreement** – to identify the agreed upon property & sales tax increments from development in the Revitalization Area (RA)
- **September 1<sup>st</sup> – LRF Application to DOR** – City submits application (first come; first served basis)
- **November 1<sup>st</sup> – DOR Notifies Applicants**
- **After November 1<sup>st</sup> – Projects Begin** – if awarded City will issue bonds and begin measuring incremental increases
- **July 1, 2011 – Impose State Sales Tax Credit** – if sales & property tax increase by more than award amount

Thank You!



Questions or Comments?

**9:30 AM**

## EXECUTIVE SESSION

Potential Litigation – R Brown

Contact: Wendy Christensen, 509-575-5848, ext. 203

Derek Sandison, 509-457-7120

## Agenda

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# Yakima River Basin Water Enhancement Project 2009 Work Group

## *Kickoff Meeting*

June 30, 2009, 10 a.m. to 1 p.m. Yakima Arboretum, Yakima WA

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9:45

### 1. Welcome and Introduction (Silver)

- Welcome: Congressional Representatives, Dan Newhouse, Jay Manning and Bill McDonald
- Introductions: Reclamation/Ecology/Work Group Participants/Public
- Purpose of this meeting
- Agenda Review

### 2. Setting the Stage: (Kelso, Sandison, Christensen)

- How We Got Here (5 minutes)
- Background (10 minutes)
- Work Group Formation (5 minutes)
- Where we are going (5 minutes)
- Work Group Perspectives: Q&A, expectations (All, facilitated by Silver—60-90 minutes)

### 3. Meeting 1 - Work Group Process (Silver—45 minutes)

- Executive Committee – Yakama Nation, Counties, Irrigation Districts, Instream Interest Entities, Reclamation and Ecology
- Work Group Logistics
  - Duration, number of meetings & schedule
  - Work plan; Criteria for selecting an implementation plan
  - "Rules of engagement" (facilitator, members, technical staff, public)

### 4. Wrap-Up: Public Comments, Action Items, Next Meeting (Silver – 15-30 minutes)

### 5. Closing: Jay Manning and Bill McDonald

Adjourn

Yakima River Basin Integrated Water Resource Management Alternative Final EIS  
SUMMARY

RECEIVED

(pgs: S-2, S-3)

JUN 30 2009

S.3 Description of the Integrated Water Resource Management  
Alternative

BENTON COUNTY  
COMMISSIONERS

The Integrated Water Resource Management Alternative includes a package of elements to improve water supply and fish habitat. The proposed elements include:

- Fish passage at existing reservoirs as part of a phased program;
  - Cle Elum, Bumping, Kacheelus, Kachess and Tieton Dams.
- Structural and operational changes to existing facilities;
  - Changes to Roza and Chandler Power Plants,
  - Improvements to Wapato Irrigation Project and Chandler fish bypass,
  - Completion of the Kennewick Irrigation District Pump Exchange and similar projects in the lower basin,
  - Improvements to Kittitas Reclamation District facilities, and
  - Completing the Wapatox Project.
- New or expanded storage reservoirs;
  - Naches River basin storage options, including Bumping Lake expansion,
  - Wymer reservoir including new reservoir fill options, and
  - Modification to river operations in conjunction with storage and direct pump projects.
- Ground water storage;
  - Injection recharge with active recovery, and
  - Surface recharge with passive recovery.
- Fish habitat enhancements on the mainstem Yakima River and its tributaries;
  - Reconnecting and reestablishing floodplains and side channels,
  - Enhancing and restoring riparian habitat conditions,
  - Increasing channel complexity, and
  - Fish passage and stream flow improvements on tributaries.
- Enhanced water conservation;
  - Enhanced conservation for irrigation district infrastructure improvements; on-farm conservation and irrigation efficiency improvements; and municipal, commercial, and industrial conservation, and
  - Incentives for conservation including new proposals for the percentage of conserved water retained by the implementing entity and instream flows.

more details are needed

1.3 million ac ft of new storage.

75% entity  
25% instream flow

- Market-based reallocation of water resources;
  - Short-term options that are a continuance of existing programs with additional steps taken to reduce impediments to transfer of water for water markets, and
  - Long-term options designed to open the water market to a much larger group of water users and change the administration of water markets.

These elements would be implemented as an integrated package, not as separate projects, to maximize benefits to fisheries and water supply. The Integrated Water Resource Management Alternative would likely be implemented over a period of years. The timeline would depend on available funding.

(pg: S-10)

### S.5.3 Criteria for Prioritizing Projects

This EIS presents a number of projects for each of the elements of the Integrated Water Resource Management Alternative. As part of the comprehensive implementation plan, Reclamation, Ecology, and the Work Group will refine criteria for evaluating and prioritizing projects that will be included in the legislative package. The following criteria represent a starting point for the implementation plan.

**Table S-2 Criteria for Evaluating Projects**

<b>Viability Criteria</b>	<b>Implementation Criteria</b>
<b>Technical Viability.</b> Are there technical obstacles that would prevent the project from being constructed?	<b>Ability to Meet Goals.</b> Does the project meet the goals of the Integrated Water Resource Management Alternative?
<b>Cost and Funding Sources.</b> How expensive is the project and are there parties that are likely to be willing to accept the costs? Will funding sources be available, both in the short-term and long-term?	<b>Cost-effectiveness.</b> Of those projects that meet the objectives, which deliver the highest benefit per dollar invested?
<b>Acceptability.</b> Is the project broadly acceptable to the stakeholders in the Yakima basin?	<b>Timeliness.</b> How long will it take to implement the project?
<b>Sustainability/Adaptability.</b> Does the project improve the ability to adapt to climate change and other future changes?	<b>Permitting Ease.</b> What approvals or permits will be required? Is it likely that such permits and approvals could be secured within the project schedule and timelines?
<b>Environmental Benefits.</b> Does the project provide environmental benefits? Would the project create significant adverse impacts that cannot be effectively mitigated?	

June 30, 2009

## Yakima River Basin Water Enhancement Project 2009 Work Group

Name	Agency
✓ Brad Avy	Washington Department of Agriculture
✓ Dale Bambrick	NOAA Fisheries Service
Max Benitz	Benton County
Alex Conley	Yakima Basin Fish & Wildlife Recovery Board
Rick Dieker	Yakima-Tieton Irrigation District
David Fast	Yakama Nation - Fisheries
Michael Garrity	American Rivers
Ken Hasbrouck	Kittitas Reclamation District
✓ Mike Leita	Yakima County
Bill Lover	City of Yakima
Mark McClain	Kittitas County
Sid Morrison	YBSA
Scott Revell	Kennewick Irrigation District
✓ Phil Rigdon	Yakama Nation - Natural Resources
Derek Sandison	Washington Department of Ecology
Jeff Tayer	Washington Department of Fish and Wildlife
Jeff Thomas	USFWS
Jim Trull	Sunnyside Valley Irrigation District
✓ Ron VanGundy	Roza Irrigation District
Dawn Wiedmeier	Bureau of Reclamation
<b>Congressional representatives:</b>	
Rebecca Mengelos	Office of Senator Patty Murray
David Reeploeg	Office of Senator Maria Cantwell
Barb Lisk	Office of Senator Doc Hastings

*executive committee*

## Yakima River Basin Water Enhancement Project (YRBWEP)

Contact: Dawn Wiedmeier, 509-575-5848, ext. 213 (dwiedmeier@usbr.gov)

### Legislative History

- P.L. 96-162 Feasibility Study, December 28, 1979
- P.L. 98-381 Section 109 of Hoover Power Plant Act of 1984, August 17, 1984
- P.L. 103-434 Title XII Yakima River Basin Water Enhancement Project, October 31, 1994, as amended by P.L. 105-62, October 13, 1997, and P.L. 106-372, October 27, 2000

### Purposes of YRBWEP

- To protect, mitigate, and enhance fish and wildlife through improved water management; improved instream flows; improved water quality; protection, creation and enhancement of wetlands; and by other appropriate means of habitat improvement;
- To improve the reliability of water supply for irrigation;
- To authorize a Yakima River Basin water conservation program;
- To provide for implementation by the Yakama Nation of an irrigation demonstration project, Wapato Irrigation Project improvements, and a Toppenish Creek Corridor enhancement project.

### Recent Accomplishments

- Diversion Reductions
  - Sunnyside Valley Irrigation District (Phase I) – installed 15 automated check structures and built two reregulation reservoirs resulting in 9,850 acre-feet of water left in the Yakima River this irrigation season (funded by a YRBWEP grant). (Total reductions will be 19,440 acre-feet annually when Phase I is complete in fiscal year 2012.)
  - YRBWEP funds used to purchase the power water right formerly owned by Pacific Corps; powerplant was decommissioned resulting in 260,000 acre-feet of water being left in the Naches River.
  - YRBWEP funds used to purchase land and water in locations throughout the basin, resulting in an additional 1,100 acre-feet of water being left in the Yakima River.
- Land/Habitat Restoration
  - YRBWEP funds used to purchase almost 2,000 acres of ecologically significant area for restoration. Reclamation consulted with the University of Montana (Stanford) prior to purchasing lands. Lands are being restored to native grasses and trees; levees will be moved on some lands to restore the natural floodplain of the Yakima River.
- Yakama Nation
  - YRBWEP funds have been granted to the Yakama Nation for installing gaging stations and planning work to restore Toppenish and Satus Creeks.

### Near-Term Projects

- Diversion Reductions
  - Benton Irrigation District - converting from open canal and laterals to a new pumping plant and pressurized pipe system; also, a downstream change in the point of diversion;

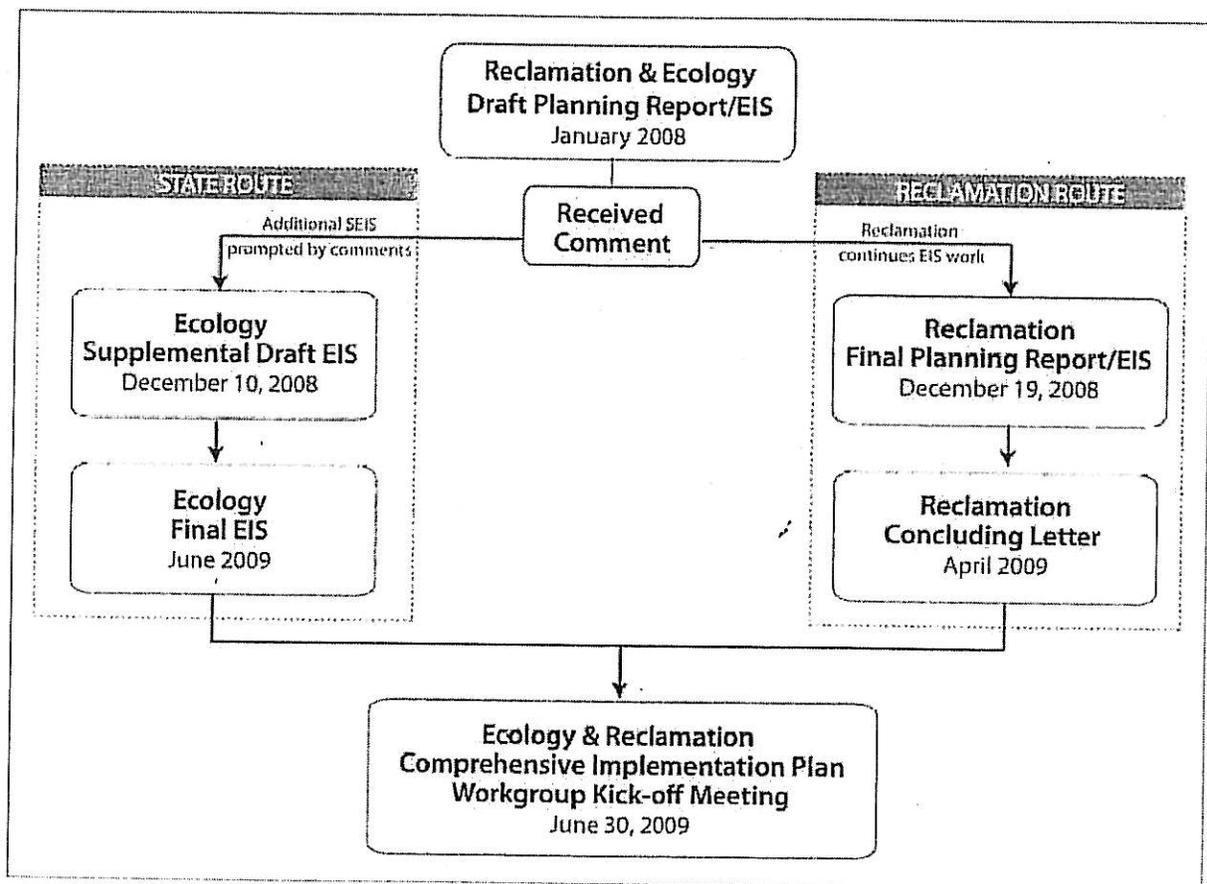


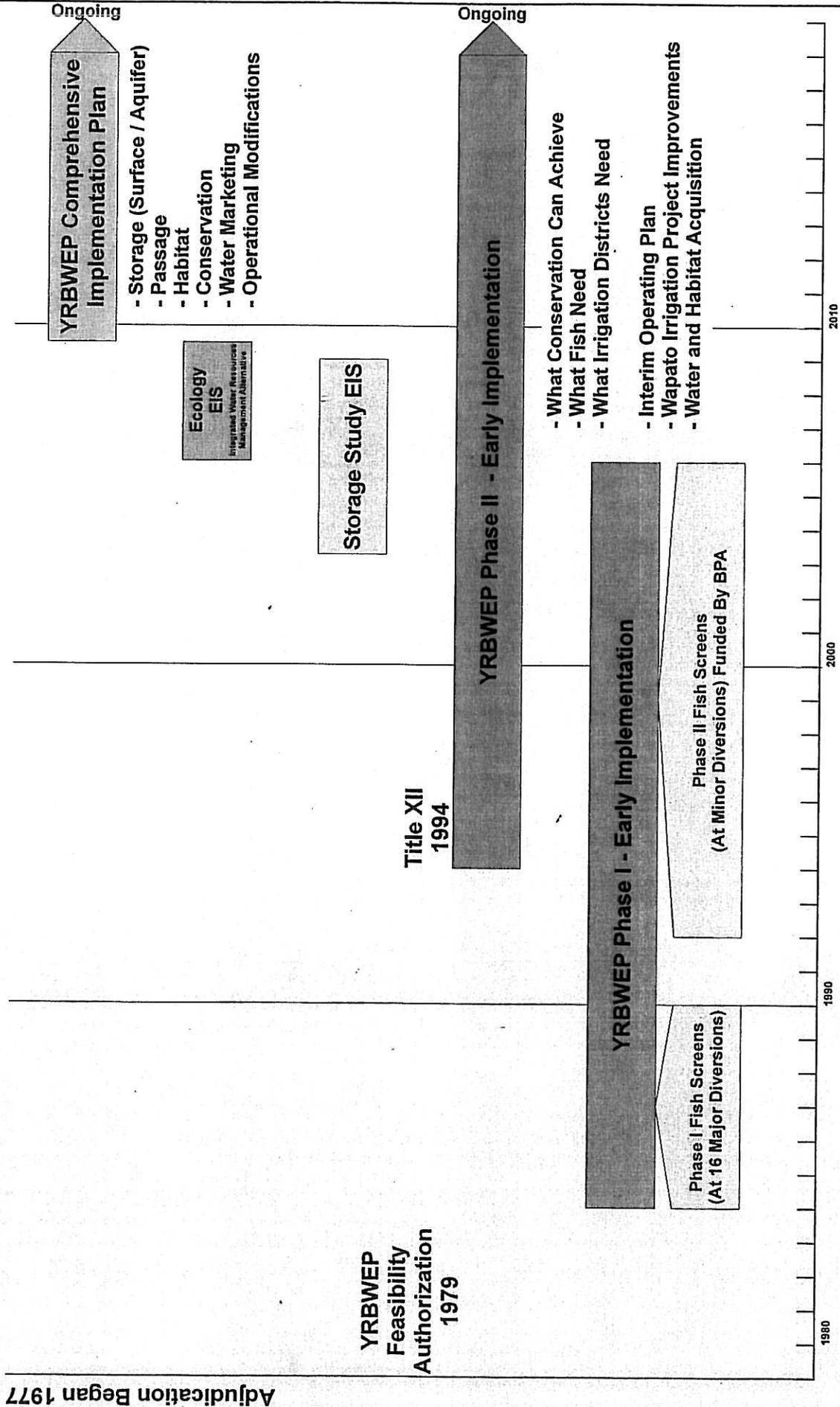
- will keep 21,000 acre-feet in a 72-mile stretch of the Yakima River and will reduce overall diversions by about 5,500 acre-feet (@ \$19.5 million in YRBWEP funds; 2009-2012).
  - Sunnyside Valley Irrigation District (Phase II) – converting from open lateral to a closed piped system; will reduce diversions by over 16,970 acre-feet in the Yakima River (@ \$68.8 million in YRBWEP funds).
  - Roza Irrigation District – construction of reregulation reservoir and conversion from open lateral to closed pipe system; project is still being designed; therefore, diversion reductions and costs are still estimates (10,000 acre-feet in diversion reductions and possibly about \$27 million in YRBWEP funds).
  - Kennewick Irrigation District – project is still being planned, but will likely include a downstream change in point of diversion, electrification of a pumping plant, construction of 4 reregulation reservoirs and conversion of open laterals to a closed pipe system; no firm acre-feet or cost data is yet available.
- Land/Habitat Restoration
  - Gap-to-Gap reach – cooperative effort with Yakima County, Yakama Nation, US Army Corps of Engineers, Washington State Department of Transportation, etc., to set back levees along the Yakima River, restore the natural floodplain, and reduce risk of damaging floods. YRBWEP funds have been used to buy land, reduce weeds and restore natural vegetation. Other entities are contributing funds to move levees and to reconstruct road bridges over the river to allow widening of the river channel. Most of the YRBWEP funds for land acquisition in this reach have been expended.
  - Schaake – restoration of former spray fields and feedlots; work will include levee setback, floodplain restoration, and native vegetation reestablishment.
- Yakama Nation
  - WIP implementation (Satus) – construction of pumping plant, pressurized pipe delivery system and measuring devices; costs may be up to \$5 million per year.
  - Toppenish Creek – construction to separate creek from irrigation canals and restore floodplain habitat; planning work in process, so no estimate yet on costs.
  - Demonstration Project – still in beginning stages to improve irrigation efficiencies; will apply for a planning grant in fiscal year 2010 or fiscal year 2011.
- Cle Elum Fish Passage
  - Future construction of permanent upstream and downstream fish passage; \$96 million estimate.
- Tributaries
  - Currently working with numerous entities to help purchase water, remove barriers, and deliver water through Reclamation facilities to improve habitat and passage conditions in key tributaries such as Manastash, Taneum, and Cowiche Creeks.
- Wapatox Canal
  - Reclamation owns and maintains this late-1800s canal to deliver water to Lower and Upper Wapatox water users. Original wood stave pipe; plan to convert to closed conduit system beginning in 2011 or 2012; will significantly reduce chance for failure of canal that could damage orchards and interrupt ability to deliver water; will result in additional diversion reductions of over 28,000 acre-feet.

### YRBWEP Budget

- YRBWEP budget has been @ \$8.5 million/year.
- Requests for \$17+ million/year for at least the next 5 years.

# Yakima River Basin Water Storage Feasibility Study Process

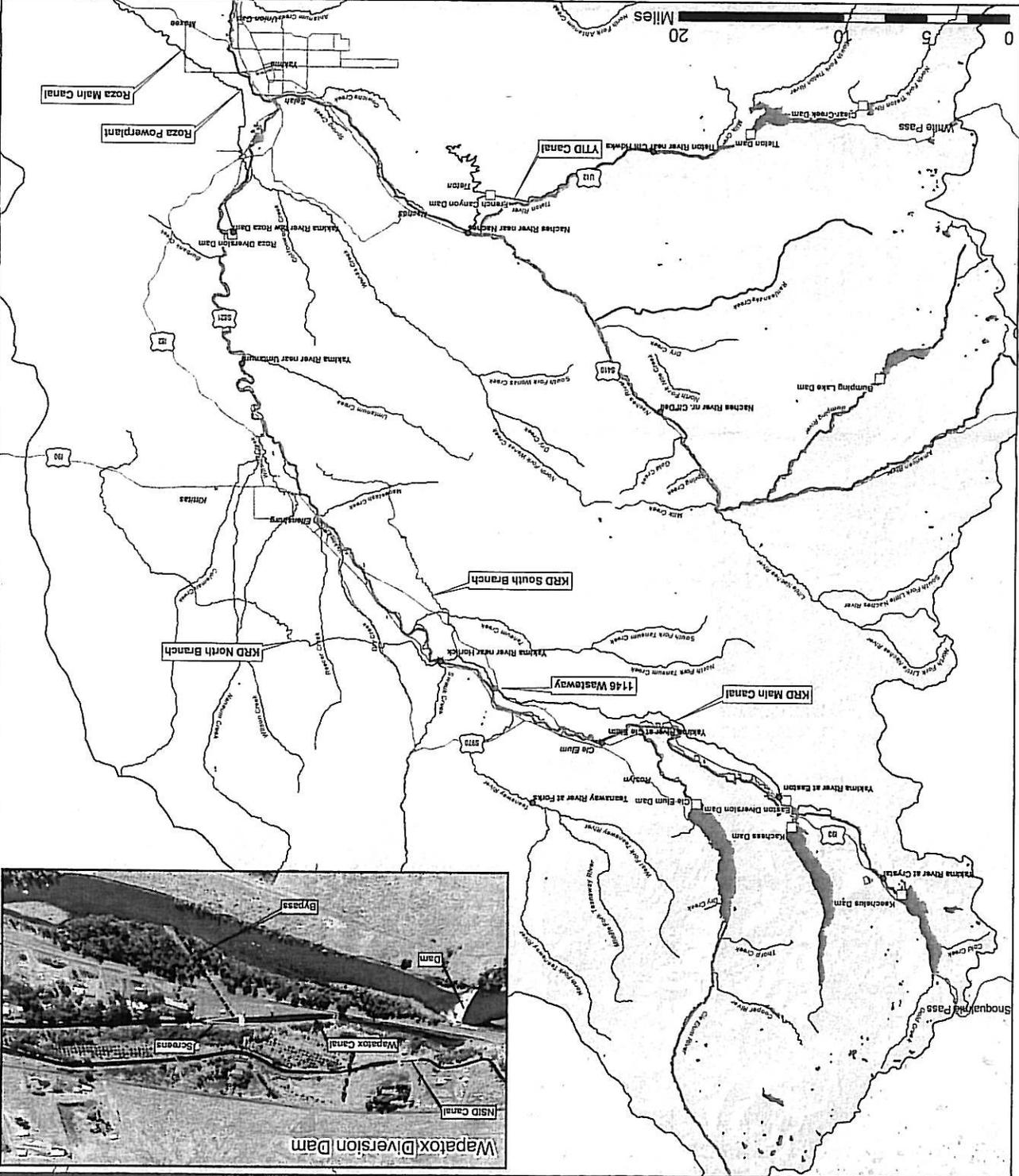
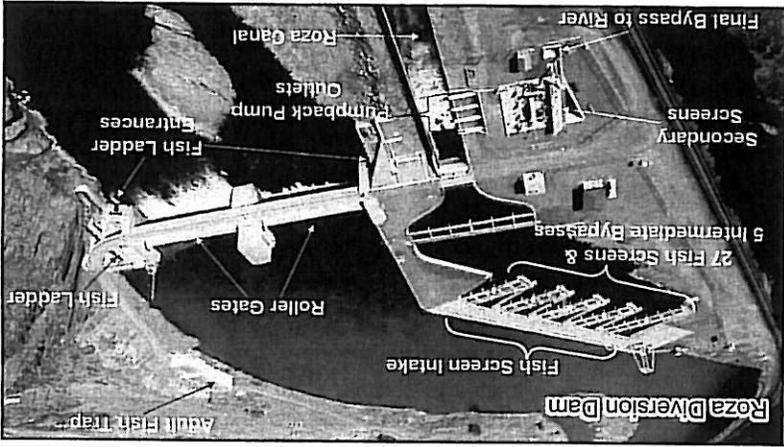




## **Work Group End Results**

- **Achieve consensus on comprehensive set of projects that collectively address water supply (storage, conservation, water markets), habitat, and passage issues and problems**
- **Incorporate comprehensive set of projects into the implementation plan**
- **Use comprehensive implementation plan as the basis for seeking Congressional and State Legislative authorization**
- **Pursue phased funding and implementation**





U.S. Department of the Interior  
Bureau of Reclamation  
Columbia-Gascades Area

Yakima Field Office  
Reference Graphic

RECLAMATION  
Managing Water in the West

**Max Benitz - YRBWEP July 15 Meeting**

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**From:** "Dan Silver" <danieljsilver@msn.com>  
**To:** "Urban Eberhart" <Urban@fairpoint.net>, "Scott Revell" <districtmanager@kid.org>, "Ron VanGundy" <ronvan@clearwire.net>, "Rick Dieker" <rickdieker@yvsn.com>, "Ric Valicoff" <ricvalicoff@aol.com>, "Phil Rigdon" <prigdon@yakama.com>, "Mike Leita" <mike.leita@co.yakima.wa.us>, "Michael Garrity" <mgarrity@americanrivers.org>, "Max Benitz" <Max\_Benitz@co.benton.wa.us>, "Ken Hasbrouck" <krdooffice@elltel.net>, "Jim Trull" <trullj@svid.org>, "Jeff Thomas" <jthomas@usbr.gov>, "Jeff Tayer" <tayerjtt@dfw.wa.gov>, "Derek S Sandison" <dsan461@ecy.wa.gov>, "Dawn Wiedmeier" <dwiedmeier@usbr.gov>, "Dave Fast" <fast@yakama.com>, "Dan Silver" <danieljsilver@msn.com>, "Dale Bambrick" <dale.bambrick@noaa.gov>, "Brad Avy" <bavy@agr.wa.gov>, "Bill Lover" <blover@ci.yakima.wa.us>, "Alex Conley" <aconley@ybfwr.org>, "Wendy Christensen" <GChristensen@usbr.gov>, "Mark McClain" <mark.mcclain@co.kittitas.wa.us>  
**Date:** 7/8/2009 8:19 PM  
**Subject:** YRBWEP July 15 Meeting  
**Attachments:** July 15 YRBWEP Workgroup Agenda (v2).doc; YRBWEP meeting notes June 30 (v2).doc

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Dear YRBWEP Workgroup members and alternates:

The Executive Committee of the YRBWEP Work Group met on Monday. They set the agendas for the next two meetings, clarified membership and alternates, and set the meeting dates through the first half of September.

Each member is welcome to appoint an alternate to represent him or her. PLEASE LET ME KNOW THE NAME AND CONTACT INFORMATION FOR YOUR ALTERNATE, so that I can keep him/her apprised of meetings. Members will sit at the table. Alternates will sit at the table only when the member is absent. For the time being, lunches will be provided for members and alternates so it would be useful if you could let me know if you or your alternate are not going to be attending, so I can get a count for the caterer. Our plan is to take half-hour breaks for lunch and return to work.

The dates and locations for the forthcoming meetings are:

**July 15 (Yakima School District #105)**  
**July 29 (Yakima Arboretum)**  
**August 12 (West Valley Fire Dept.)**  
**August 26 (Yakima Arboretum)**  
**September 8 (Yakima Arboretum)**

**Please mark your calendars. These are all day meetings.**

We may need to adjust locations if attendance exceeds 60 people.

The Executive Committee decided to cover the seven items from the Integrated Water Resource Management EIS in two groups, as well as demand. You can see the first grouping in the attached draft agenda for the July 15 meeting. The two meetings in July will be an overview to get everyone on the same page rather than a discussion of what the best options might be. This agenda is subject to change as we firm up presenters.

Also attached are minutes from our June 30 meeting. Please let me know if you have any suggested changes or additions to these minutes. They will be posted on Reclamation's website.

In a few moments I will be sending out the attached materials and meeting announcement to those people who have expressed an interest in being kept apprised of your meetings (about 70 people).

Please let me know if you have any questions. I look forward to seeing you next Wednesday.

Dan

P.S. DON'T FORGET TO SEND ME THE NAME OF YOUR ALTERNATE.

606 Columbia St. NW  
Suite 212  
Olympia, WA 98501  
(360) 754-9343



Contact: Wendy Christensen, 509-575-5848, ext. 203

Derek Sandison, 509-457-7120

**Draft Agenda**

**Yakima River Basin Water Enhancement Project Work Group**

July 15, 2009, 9:30 a.m. to 4:30 p.m. Yakima Educational School District 105, Yakima Room

33 South Second Ave, Yakima WA 98502

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9:30 – 9:40	Welcome and Introductions; Agenda Review
9:40 – 10:30	Demand – handout Instream Flows Irrigation Municipal
10:30 – 11:00	Conservation  Bureau of Reclamation Walt Larrick  Department of Ecology Derek Sandison
11:00 – 11:15	<i>Break</i>
11:15 – Noon	Surface Storage  Bureau of Reclamation Wendy Christensen  Department of Ecology Derek Sandison  Anchor Environmental Bob Montgomery
Noon – 12:30	<i>Lunch [Note: Lunch will be provided for members and alternates.]</i>
12:30 – 1:15	Surface Storage (cont'd)
1:15 – 2:30	Aquifer Storage  Department of Ecology Derek Sandison  Golder Associates Bob Anderson
2:30 – 2:45	<i>Break</i>

2:45 – 4:00

Structural and Operational Changes

Bureau of Reclamation  
Chuck Garner

Department of Ecology  
Derek Sandison

Anchor Environmental  
Bob Montgomery

4:00 – 4:30

Wrap up and adjourn

# RECLAMATION

*Managing Water in the West*

Contact: Wendy Christensen, Columbia-Cascades Area Office, (509) 575-5848, ext. 203  
Derek Sandison, Washington Department of Ecology, (509) 457-7120

## **Yakima River Basin Water Enhancement Project (YRBWEP) Meeting Notes June 30, 2009**

The Yakima River Basin Water Enhancement Project 2009 Work Group (hereafter called the YRBWEP Work Group) held its initial meeting on June 30, 2009. Welcoming remarks were made by Dan Newhouse, State Director of Agriculture; Bill McDonald, Regional Director of the Bureau of Reclamation; Jay Manning, Director of Ecology; Jamie Shimek, assistant to Senator Patty Murray; Barb Lisk, assistant to Congressman Doc Hastings; and Dave Reeploeg, assistant to Senator Maria Cantwell. These welcoming remarks emphasized that this was a time for action in the Yakima Basin. There is a need for local interests to come together to support an approach in common. Competition for Federal appropriates is intense and support from the local community is key to success in that competition.

Members of the YRBWEP Work Group shared their initial perspectives on the prospects for the group. Various speakers recognized a shift in attitudes in the basin in recent years and the development of improved working relationships. Significant leadership has been evident in recent years. This has created a renewed sense of opportunity for a comprehensive approach to water projects in the basin.

Wendy Christensen and Jerry Kelso of Reclamation and Derek Sandison of Ecology reviewed a series of events that led to the creation of the YRBWEP Work Group. The Group emerges from the previous work on the YRBWEP, initially enacted into law in December 1979. Most recently, Ecology and Reclamation completed a Draft Planning Report/Environmental Impact Statement (PR/EIS) in January 2008. Reclamation completed its Final PR/EIS in December 2008 and issued a Concluding Letter in April 2009 and, prompted by comments received, Ecology then completed a Final Supplemental EIS in June 2009. The two agencies concluded that no additional studies were needed, and that it was now essential to bring together a group of interests most directly affected by current conditions in the basin. The agencies are seeking a consensus on a comprehensive set of projects that collectively address water supply, habitat, and fish passage, and then incorporate these projects into an implementation plan.

An Executive Committee was formed consisting of Dale Bambrick (NOAA), Mike Leita (Yakima County), Phil Rigdon (Yakama Nation), Derek Sandison (Ecology), Ron Van Gundy (Roza Irrigation District), and Dawn Wiedmeier (Reclamation). The Executive Committee will decide on meeting logistics and schedule, prepare agendas, and generally assist the process for reaching a decision or set of decisions.

The YRBWEP Work Group scheduled the next two full-day meetings for July 15 and July 29. [Note: The July 15 meeting will be held at the Yakima Educational School District 105 and the 29<sup>th</sup> will be at the Yakima Arboretum.] They agreed that those two meetings would focus on reviewing data gathered to date to help ensure that all members are starting with a similar information base.

The YRBWEP Work Group seeks to reach a consensus in the next 6-9 months.



U.S. Department of the Interior  
Bureau of Reclamation



**Members in attendance:**

Brad Avy, Washington Department of Agriculture  
Dale Bambrick, NOAA Fisheries Service  
Max Benitz, Benton County Commission  
Alex Conley, Yakima Basin Fish & Wildlife Recovery Board  
Rick Dieker, Yakima-Tieton Irrigation District  
Michael Garrity, American Rivers  
Ken Hasbrouck, Kittitas Reclamation District  
Urban Eberhart, Kittitas Reclamation District  
Mike Leita, Yakima County Commission  
Bill Lover, City of Yakima  
Mark McClain, Kittitas County  
Sid Morrison, Yakima Basin Storage Alliance  
Scott Revell, Kennewick Irrigation District  
Phil Rigdon, Yakama Nation - Natural Resources  
Derek Sandison, Washington Department of Ecology  
Jeff Tayer, Washington Department of Fish and Wildlife  
Jeff Thomas, US Fish and Wildlife Service  
Jim Trull, Sunnyside Valley Irrigation District  
Ron VanGundy, Roza Irrigation District  
Dawn Wiedmeier, Bureau of Reclamation

**Members absent:**

Dave Fast, Yakama Nation – Yakima/Klickitat Fisheries Project