

August 18, 2008

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

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
August 11, 2008, 9:00 am.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

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

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Community Development Coordinator; Finance Manager Linda Ivey; Public Works Director Ross Dunfee; Planning Manager Mike Shuttleworth; Ed Thornbrugh, Human Services; Treasurer Duane Davidson; DPA Ryan Brown; and Steve Becken, Public Works.

Approval of Minutes

The Minutes of August 4, 2008 were approved.

Consent Agenda

MOTION: Commissioner Benitz moved to approve the consent agenda items "a" through "q", pulling "f" (Piert Road Consultants Supplemental Agreement and "i" (Line Item Transfer - Canine Boat Fund 0127-101). Commissioner Bowman seconded and upon vote, the Board approved the following:

Facilities

- a. Notice of Completion – Frontier Fencing, Inc.

Human Service

- b. Joint Resolution - Appointment of Mental Health Professionals

Juvenile

- c. Truancy Contract for Kiona-Benton School District
- d. Truancy Contract for Richland School District

Road/Engineer

- e. County Road Improvement District (C.R.I.D.) #15, Cottonwood Drive Property Segregation
- g. I-82 to SR 397 Intertie Project – Phase 3
- h. Rural Arterial Program Funds – Nine Canyon Road
- i. Rural Surface Transportation Program Funds
- j. Line Item Transfer – County Roads Fund 0101-101, Dept. 500

Sheriff

k. WASPC Registered Sex Offender Address and Residency Program Agreement

Workforce Development Council

m. Dislocated Worker Program Services Contract w/Employment Security Department

n. Adult Program Services Contract w/Columbia Industries

o. Youth Program Services Contract w/Career Path Services

p. Drop Out Prevention Program Services Contact w/Career Path Services

q. Integrated Basic Education & Skills Training Services Contract w/Career Path Services

Rattlesnake Mountain Update

Adam Fyall provided a summary memo regarding Rattlesnake Mountain and said they were working with Energy Northwest to put together a tour for the Sheriff, Public Works, and other offices. Additionally, he said that Battelle was going to take over the observatory, they had received a copy of the letter from the Governor, and were also working on a "white-paper" regarding security, road access issues, and short and long-term strategies.

Commissioner Benitz added that it would take time to work out a long-term commitment and funding for upkeep of the road, but were working with Public Works regarding a short-term proposal for maintenance and upkeep of the road. Additionally, he said he had a meeting with Mr. Brockman and he was very receptive to the County taking over the road.

Commissioner Bowman expressed concern about the County spending property tax money on roads that were not public owned, and about Public Works getting road equipment up that road in the winter. Commissioner Benitz said they had made it very clear the right of way issue had to be taken care of first.

Chairman Oliver discussed identifying a funding source, possibly federal transportation and tourism funding or a DOT grant.

Commissioner Benitz requested the short-term plan be presented within two weeks.

Request for Supplemental Appropriation

Sheriff Taylor (via videoconference) requested the Board approve a hearing for a grant supplement in the amount of \$80,166 to fund a full-time deputy to complete registered sex offender verifications and in the amount of \$6,000 for new computer equipment.

MOTION: Commissioner Benitz moved to approve the supplements go to public hearing. Commissioner Bowman seconded and upon vote, the motion carried.

Other Business

Letter from Terry Flores

Chairman Oliver discussed a letter received from Terry Flores concerning her frustration and displeasure with the way the Coroner's office handled her mother's death.

Rick Corson via/video conference said he personally communicated with Ms. Flores and he believed the matter was now resolved. Additionally, that the Board should be receiving another letter from Ms. Flores.

Piert Road Issue

Ross Dunfee and Steve Becken said they met with property owners in the new boundary area, minus one, and discussed participation in a County Road Improvement District (CRID). Mr. Dunfee said that all three players felt it was a good project, but were not willing to put out that much money for the CRID. They discussed possible funding avenues and the property owners indicated they were willing to work collectively to seek additional grant money.

Mr. Dunfee said there was concern from the residents about trucks traveling on Finley Road and they would be sending a resolution to the Board about eliminating through-trucks on Finley Road between Reik Road and SR 397 and between SR 397 and Bowles Road.

Other Business

Item "f" - Piert Road Consultants Supplemental Agreement

MOTION: Commissioner Bowman moved to approve the Supplemental Agreement for Piert Road. Chairman Oliver seconded.

Discussion

Commissioner Benitz said he would support the motion as soon as Columbia Energy honored their commitment in the amount of \$50,000 since the supplement would not be needed if the Board had the money.

Mr. Dunfee commented that there was some feeling that Columbia Energy had impacted this project by increasing it one million dollars due to the loss of the grant and the approval of the new route.

Commissioner Bowman requested the Chairman withdraw his motion to approve until such time as the written agreement was received from Columbia Energy. Chairman Oliver agreed.

WSAC Report

Commissioner Bowman reported the executive board of WSAC had approved a 4.1% increase for dues and that Scott Merriman was being appointed as the Deputy Director of WSAC.

Claim for Damages

CC 08-18: Received August 11, 2008 from David Brisby regarding personal injury caused in the jail.

Vouchers

Check Date: 08/05/2008
Warrant #: 219373-219565
Direct Deposit #: 39094-39634
Total all funds: \$1,906,829.98

Check Date: 08/05/2008
Taxes #: 10108081-10108082
Warrant #: 903800-903840
Total all funds: \$1,812,619.03

Check Date: 08/08/2008
Warrant #: 903919-904098
Total all funds: \$800,915.56

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

Resolutions

- 08-697 Notice of Completion – Frontier Fencing, Inc.
- 08-698 Joint Resolution - Appointment of Mental Health Professionals
- 08-699 Truancy Contract for Kiona-Benton School District
- 08-700 Truancy Contract for Richland School District
- 08-701 County Road Improvement District (C.R.I.D.) #15, Cottonwood Drive Property Segregation
- 08-702 I-82 to SR 397 Intertie Project – Phase 3
- 08-703 Rural Arterial Program Funds – Nine Canyon Road
- 08-704 Rural Surface Transportation Program Funds
- 08-705 Line Item Transfer – County Roads Fund 0101-101, Dept. 500
- 08-706 WASPC Registered Sex Offender Address and Residency Program Agreement
- 08-707 Dislocated Worker Program Services Contract w/Employment Security Department
- 08-708 Adult Program Services Contract w/Columbia Industries
- 08-709 Youth Program Services Contract w/Career Path Services
- 08-710 Drop Out Prevention Program Services Contact w/Career Path Services

08-711 Integrated Basic Education & Skills Training Services Contract w/Career Path
Services

There being no further business before the Board, the meeting adjourned at approximately at
9:59 a.m.

Clerk of the Board

Chairman

a.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE BOARD OF COMMISSIONERS TO SIGN A NOTICE OF APPROVAL TO HEAR PROPERTY TAX APPEALS

WHEREAS The county Board of Equalization, with the approval of the county legislative authority, may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater. (RCW 84.48.010), **NOW THEREFORE,**

BE IT HEREBY RESOLVED that the Board of Commissioners is hereby authorized to sign a notice of approval to hear property tax appeals.

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

NOTICE OF APPROVAL TO HEAR PROPERTY TAX APPEALS

Benton COUNTY LEGISLATIVE AUTHORITY

The county board of equalization, with the approval of the county legislative authority, may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater. (RCW 84.48.010)

Pursuant to RCW 84.48.010, the Benton County Legislative Authority hereby approves the Benton County Board of Equalization's request to convene for the purpose of hearing property tax appeals for the current year. This approval is based on a finding that the requirements for convening under RCW 84.48.010 have been satisfied.

DATED THIS _____ day of _____, (yr) _____

Walter G. Clander
Chairperson
Larry D. Bateman
Member
Jack V. Olsen
Member

Member

Member

Member

Member

For tax assistance, visit <http://dor.wa.gov> or call 1-800-647-7706. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users may call 1-800-451-7985.

b.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF PROCLAIMING SEPTEMBER 27 & 28, 2008, "A TIME OF REMEMBRANCE"

WHEREAS, a statewide effort is planned to honor the families and comrades of Washington's Fallen in Iraq and Afghanistan; and

WHEREAS, this tribute, led by the "2008 Washington State Time of Remembrance" committee, in partnership with American Citizens Encouraging Support (A.C.E.S.), honors those who have died for their country and the families they left behind; and

WHEREAS, the "Time of Remembrance" gathering is for the purpose of recognizing and honoring heroes from the State of Washington who were lost in service to their country in Afghanistan and Iraq and will acknowledge the anguish and suffering experienced by those surviving our fallen warriors, including family members and fellow military unit personnel; and

WHEREAS, it is the goal to have each of our heroes' memory represented; and

WHEREAS, it is the goal to involve Benton County citizens, organizations and businesses and encourage fundraising in order to provide "scholarships" to the immediate families to cover costs for their lodging and participation for this event; **NOW THEREFORE;**

BE IT HEREBY RESOLVED that the Board of Benton County Commissioners hereby proclaims September 27 & 28, 2008, *A Time of Remembrance*.

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

Tuesday, August 12, 2008 [Login](#) |

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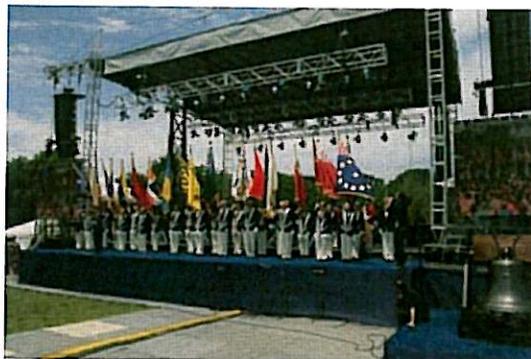
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[Descendants of Our Fallen](#)

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Go to Remember.gov



A TIME OF REMEMBRANCE

What is the purpose of "A Time of Remembrance"?

The purpose of our tribute is to bring together the families of America's fallen in Iraq and Afghanistan and to acknowledge the sacrifice you have made. Families will be brought together from across the country. This tribute, held on the grounds of the Washington Monument, honors those who have died in service to their country and the families they left behind.

For Media Only:

Contact 202-783-4665
or contact us at commission@remember.gov

"The beginning of the end of war lies in remembrance."
Herman Wouk, author
"War and Remembrance"

C.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING A SETTLEMENT AGREEMENT AND FULL RELEASE OF CLAIMS BETWEEN BENTON COUNTY AND ELISA V. RILEY

WHEREAS, Benton County terminated the Professional Services Agreement between Benton County and Elisa V. Riley by letter dated June 2, 2008 signed by the Bi-County Indigent Defense Coordinator; and

WHEREAS, Benton County desires to enter into a Settlement Agreement with Elisa V. Riley to settle alleged claims against Benton County; **NOW, THEREFORE**,

BE IT HEREBY RESOLVED that the Board of Benton County Commissioners hereby approves the Settlement Agreement and Full Release of Claims between Benton County and Elisa V. Riley and authorizes the Board to sign the attached Settlement Agreement and Full Release of Claims.

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

SETTLEMENT AGREEMENT AND FULL RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND FULL RELEASE OF CLAIMS ("Agreement") is entered into by and between BENTON COUNTY, a State of Washington political subdivision (the "County"); and ELISA V. RILEY ("Attorney"), on behalf of herself personally, her marital community (if married), and as an authorized member of the law firm of Saxton Riley, PLLC (hereinafter all collectively referred to as "Riley"); and for the direct intended benefit and use of the County; the County's elected/appointed/designated commissioners, officials, representatives, officers, employees, and agents; and the Benton County District Court (hereinafter all collectively referred to as the "Released Parties").

THIS AGREEMENT IS BEING ENTERED INTO AND EXECUTED WITH REFERENCE TO THE FOLLOWING STIPULATED FACTS:

- A. Attorney is an attorney licensed to practice law in the state of Washington under Washington State Bar Association #36142.
- B. On or about October 15, 2007, Attorney and the County entered into and executed a Professional Services Agreement to Provide Legal Representation to Indigent Persons Charged with Misdemeanors in Benton County District Court (hereinafter said agreement, together with any other documents that may be alleged to modify/amend/supplement its terms and provisions, are collectively referred to as the "Services Agreement").
- C. The Services Agreement has been and is terminated effective as of June 2, 2008.
- D. Attorney has raised and threatened claims ("Claims") against the County relating to additional compensation alleged to be owing to Attorney under or relating to the Services Agreement and the County's termination of the Services Agreement, which Claims are denied and disputed by the County.
- E. The County and Attorney have engaged in discussions and negotiations to attempt to address and resolve the Claims.
- F. Without intending as being or being any type of admission/concession by the County of any responsibility/liability whatsoever for the Claims (which responsibility/liability the County fully denies and disputes), but solely for purposes of fully and finally addressing, resolving, and settling the Claims and issues raised by Attorney, the County is willing to pay to Attorney the total,

aggregated, one-time, lump-sum amount of **Twenty-Five Thousand Five Hundred Dollars (\$25,500.00)** conditioned upon this Agreement being mutually executed and pursuant to this Agreement's terms and conditions.

- G. In exchange for, and in consideration of, the County's payment described in paragraph F above, Attorney is willing to fully settle and release the Claims and any and all other rights and claims that Riley may have against the Released Parties based on, or in any way arising from, the terms and provisions of the Services Agreement including, without limitation, any and all rights and claims relating to compensation or the termination of the Services Agreement.

NOW, THEREFORE, based upon, and in consideration of, the foregoing and the mutual and valuable reciprocal benefits to be derived and collectively realized and enjoyed hereunder, the County and Attorney hereby agree as follows:

1. **Recital Paragraphs:** All provisions of the above-stated initial paragraph and the above-stated recital paragraphs A through G, inclusive, are hereby declared to be substantive and integral to this Agreement and, as such, are hereby fully incorporated into this Agreement by this reference.
2. **Full Settlement and Release of Claims by Riley:** Riley hereby fully, finally, unconditionally, and irrevocably settles the Claims and fully, finally, unconditionally, and irrevocably releases the Claims and any and all other rights, claims and causes of action of whatsoever nature, known or unknown, suspected or unsuspected, accrued or unaccrued, now existing or hereafter arising, liquidated or unliquidated, that Riley may have or may assert against the Released Parties that in any way whatsoever arise out of or in any way relate to the Services Agreement (including, without limitation, any and all rights, claims, and causes of action relating to compensation or the termination of the Services Agreement).
3. **Payment of Settlement Funds to Attorney:** The County shall pay the above-stated sum of **Twenty-Five Thousand Five Hundred Dollars (\$25,500.00)** to Attorney within ten (10) business days following the County's acceptance, authorization, and execution of this Agreement pursuant to the provisions of paragraph 5 below.
4. **Survival of Attorney's Post-Termination Obligations:** Nothing contained herein shall be interpreted or construed to waive or release Attorney from Attorney's continued post-termination (i.e., post-June 2, 2008) obligations and responsibilities under the Services Agreement including, without limitation, Attorney's post-termination obligation and responsibility to maintain the insurance coverage specified in paragraph 15 of the Services Agreement, which post-termination obligations and

responsibilities shall survive and continue beyond and notwithstanding the execution of this Agreement pursuant to the terms and requirements of the Services Agreement. Provided that, however, nothing contained in this paragraph or the Services Agreement requires Attorney to render any additional or continuing legal representation services to indigent persons whom Attorney may have previously been court-appointed to represent under the Services Agreement.

5. **Contingent on Mutual Execution:** This Agreement shall not be binding on or enforceable against any affected party unless and until this Agreement is mutually accepted, authorized, and executed via signatures hereinbelow of both Attorney and the County's Board of Commissioners, in its absolute discretion, pursuant to Board Resolution.
6. **Miscellaneous:** The timely, full and faithful performance of the terms and conditions contained herein are hereby made the essence of this Agreement. This Agreement constitutes the entire integrated and superseding understanding and agreement between the affected parties relating to the subject matter hereof and the settlement and release of the above-described claims and matters. No modification or amendment to this Agreement shall be valid or effective unless evidenced by a signed agreement between the parties specifically referencing this Agreement. The captions in this Agreement are for convenience purposes only, and are not to be considered in the interpretation/construction of its terms. This Agreement shall be binding upon and inure to the benefit of the affected parties' respective heirs, successors, legal/personal representatives, and assigns. The laws of the state of Washington shall exclusively govern this Agreement. The venue of any legal proceedings arising out of this Agreement shall lie exclusively in Benton County, Washington.

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

DATE: _____

DATE: _____

BENTON COUNTY

ATTORNEY

CHAIRMAN

ELISA V. RILEY
WSBA #36142

COMMISSIONER

COMMISSIONER

Approved as to Form:

TIMOTHY G. KLASHKE
Attorney at Law

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

COPY^{d.}

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment #0763-20235.01 with the Division of Alcohol and Substance Abuse	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
Prepared By: Carol Carey	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other

BACKGROUND INFORMATION

The Department of Human Services has an agreement with the Division of Alcohol and Substance Abuse (DASA) to provide treatment services to clients. DASA is decreasing the total amount by \$50,292.00. This decrease includes services to several treatment programs such as: Adult Treatment Expansion funding, State Grant-in-Aid, State Innovative Criminal Justice Treatment Account (CJTA), Temporary Assistance for Needy Families (TANF) Outstationed Staff services, and the Children's Administration Division of Children and Family Services Pass-through funds.

SUMMARY

Award: Decrease \$40,292.00 for a maximum consideration of \$4,698,371.00.
Period: July 7, 2008 through June 30, 2009.
Funding Source: Division of Alcohol and Substance Abuse

RECOMMENDATION

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

FISCAL IMPACT

Funding for the services described in this Amendment is provided by the Division of Alcohol and Substance Abuse and the US Department of Justice. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #0763-20235-01 with the Division of Alcohol and Substance Abuse and to authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

Benton County Resolution # _____

Franklin County Resolution # _____

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

IN THE MATTER OF EXECUTION OF AN AMENDMENT TO DECREASE THE TOTAL AMOUNT IN THE AGREEMENT FOR PROVIDING SUBSTANCE ABUSE TREATMENT SERVICES BETWEEN THE DIVISION OF ALCOHOL AND SUBSTANCE ABUSE AND BENTON AND FRANKLIN COUNTIES' DEPARTMENT OF HUMAN SERVICES, AGREEMENT #0763-20265-01

WHEREAS, the Division of Alcohol and Substance Abuse would like to amend the original agreement with the Department of Human Services to decrease contract amounts for treatment services; and

WHEREAS, the amendment decreases the contract by \$50,292.00 to a maximum consideration of \$4,698,371.00 and

WHEREAS, the amendment is effective July 7, 2008 through June 30, 2009, NOW THEREFORE,

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

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

Dated this . . . day of , 2008.

Dated this . . . day of , 2008.

Claude L. Oliver, Chair

Robert E. Koch, Chair

Max E. Benitz, Jr., Chair Pro-tem

Rick Miller, Chair Pro-tem

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

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

Attest _____
Clerk of the Board

Attest _____
Clerk of the Board

e.

AGENDA ITEM: <u>Consent</u>	<u>TYPE OF ACTION NEEDED</u>	
MEETING DATE: <u>B/C 08-18-08 F/C 08-13-08</u>	Executive Contract	CONSENT AGENDA <u> x </u>
SUBJECT: <u>Requesting Signature on JAIBG Contract Amendment for SAP- Selective Aggressive Probation Program for 2008 - 2009</u>	Pass Resolution <u> X </u>	PUBLIC HEARING
Prepared By: <u>Kathryn M. Phillips</u>	Pass Ordinance	1ST DISCUSSION
Reviewed By: <u>Sharon Paradis</u>	Pass Motion	2ND DISCUSSION
	Other	OTHER

BACKGROUND INFORMATION

The JAIBG (Juvenile Accountability Block Grant) Budget, which was established and supplemented on May 24, 1999, to initiate the Selective Aggressive Probation (SAP) Program, is a multi-agency, multi-jurisdictional strategy identifying violent, serious, repeat juvenile offenders and bringing together law enforcement agencies in Kennewick, Pasco, Richland, Benton and Franklin Counties, West Richland, Benton City, Prosser, Connell, Kahlotus, and Mesa, to collectively administer accountability-based probation for the high risk, violent, repeat juvenile offenders in the Tri-Cities area.

SUMMARY

The County Program Agreement has been received for the term of September 1, 2008 to August 31, 2009, in the amount of \$11,219.00, and provides services to Benton and Franklin Counties.

RECOMMENDATION

I recommend the Boards of County Commissioners authorize their Chairs to sign the County Program Contract Amendment (JABG), as attached.

FISCAL IMPACT

This is a grant whereby we are reimbursed for services

MOTION

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be and hereby authorized to sign, on behalf of their respective county the County Program Contract Amendment 0663-98393-02 between DSHS and the Benton-Franklin Juvenile Justice Center for services in the JABG/SAP program (Selective Aggressive Probation) for the program year of September 1, 2008 through August 31, 2009.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE COUNTY PROGRAM CONTRACT AMENDMENT BETWEEN THE JUVENILE JUSTICE CENTER AND THE STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, JUVENILE REHABILITATION ADMINISTRATION, AGREEMENT NUMBER 0663-98393-02 TO PROVIDE FOR SELECTIVE AGGRESSIVE PROBATION (SAP) THROUGH THE JUVENILE ACCOUNTABILITY BLOCK GRANT (JABG), and

WHEREAS, Sharon Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the proposed County Program Contract Amendment, between the Juvenile Court and the State of Washington, Department of Social and Health Services, Juvenile Rehabilitation Administration, be approved as presented for a term commencing September 1, 2008, and terminating on August 31, 2009, NOW, THEREFORE,

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be and they hereby are authorized to sign, on behalf of their respective county, the County Program Contract Amendment.

DATED this 18th day of August 2008.

DATED this 13th day of August 2008.

BENTON COUNTY BOARD OF COMMISSIONERS

FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman of the Board

Chairman of the Board

Member

Chairman Pro Tem

Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

ATTEST:

ATTEST:

Clerk of the Board

Clerk of the Board



CONTRACT AMENDMENT JABG FFY07

DSHS CONTRACT NUMBER:
0663-98393

Amendment No. 0663-98393-02

This Contract Amendment is between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below.

Program Contract Number
COJABG07
Contractor Contract Number

CONTRACTOR NAME Benton County		CONTRACTOR doing business as (DBA)	
CONTRACTOR ADDRESS 5605 W Canal Place, Suite 106 Kennewick, WA 99336		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI) 035-000-971	DSHS INDEX NUMBER 1122
CONTRACTOR CONTACT Sharon Paradis	CONTRACTOR TELEPHONE (509) 736-2722 Ext:	CONTRACTOR FAX (509) 222-2311	CONTRACTOR E-MAIL ADDRESS sharon.paradis@co.benton.wa.us
DSHS ADMINISTRATION Juvenile Rehabilitation		DSHS DIVISION Division of Operations Support Services	DSHS CONTRACT CODE 5002CS-63
DSHS CONTACT NAME AND TITLE Randy Sparks Capital Facilities Budget Administrator		DSHS CONTACT ADDRESS P.O. Box 45720 Olympia, WA 98504-5720	
DSHS CONTACT TELEPHONE (360) 902-8099 Ext:	DSHS CONTACT FAX (360) 902-8108		DSHS CONTACT E-MAIL ADDRESS sparkra@dshs.wa.gov
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? S		CFDA NUMBERS 16.523	
AMENDMENT START DATE 9/1/2008	CONTRACT END DATE 8/31/2009		
PRIOR MAXIMUM CONTRACT AMOUNT \$22,438.00	AMOUNT OF INCREASE OR DECREASE \$11,219.00	TOTAL MAXIMUM CONTRACT AMOUNT \$33,657.00	
REASON FOR AMENDMENT; CHANGE OR CORRECT PERIOD OF PERFORMANCE AND MAX CONTRACT AMOUNT			
ATTACHMENTS. When the box below is marked with an X, the following Exhibits are attached and are incorporated into this Contract Amendment by reference: <input checked="" type="checkbox"/> Additional Exhibits (specify): Exhibit E: JABG Annual Data Report			
This Contract Amendment, including all Exhibits and other documents incorporated by reference, contains all of the terms and conditions agreed upon by the parties as changes to the original Contract. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract Amendment shall be deemed to exist or bind the parties. All other terms and conditions of the original Contract remain in full force and effect. The parties signing below warrant that they have read and understand this Contract Amendment, and have authority to enter into this Contract Amendment.			
CONTRACTOR SIGNATURE <i>See Page 2</i>		PRINTED NAME AND TITLE	DATE SIGNED
DSHS SIGNATURE		PRINTED NAME AND TITLE Del Hontanosas Grants & Contracts Manager	DATE SIGNED

This Contract between the State of Washington Department of Social and Health Services (DSHS) and the Contractor is hereby amended as follows:

1. In Exhibit A – Statement of Work, #4. Contract Project Dates, is amended as follows:

"The project start date is September 1, 2008, with an estimated duration of 12 months, ending on August 31, 2009".

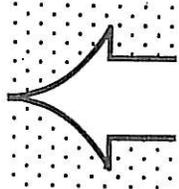
2. The amended total maximum consideration for this contract is \$33,657. However, for the new grant period of September 1, 2008 through August 31, 2009, the maximum consideration is only \$11,219. No unspent funds from the previous grant period of September 1, 2007 through August 31, 2008 may be carried forward.

3. In Section 20. Reports, add item (g) to read as follows:

"The Contractor shall submit "Exhibit E: JABG Annual Data Report" by May 15, 2009 to the JABG Program Administrator".

All other terms and conditions of this Contract remain in full force and effect.

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



Sharon A. Paradis 8/5/08

Sharon A. Paradis, Juvenile Court Administrator

BENTON COUNTY APPROVAL

FRANKLIN COUNTY APPROVAL

Approved as to Form:

Approved as to Form:

Sarah Perry 8/7/08
Sarah Perry, Deputy Prosecuting Attorney Date

Agreed Review Performed by Benton County
Ryan Verhulp, Civil Deputy Prosecuting Attorney Date

By: _____
Name: Claude L. Oliver
Title: Chairman, Board of Commissioners
Date: _____
Attest:

By: _____
Name: Robert E. Koch
Title: Chairman, Board of Commissioners
Date: _____
Attest:

Clerk of the Board: _____

Clerk of the Board: _____

JABG ANNUAL DATA REPORT

EXHIBIT 'E'

UGL: BENTON/FRANKLIN CO.

We are required by the Dept of Justice to report statistics each year on our Juvenile Accountability Block Grant (JABG). The reporting period is April 2008 thru March 2009. Please complete this Exhibit AS BEST YOU CAN. Please FAX to: RANDY SPARKS (360) 902-8108 by 15 May 2009.

TARGET POPULATION (PLEASE CHECK APPROPRIATE BLOCKS)

		Did you serve this Group during the Reporting Period	Did this Subgrant provide Targeted Services to the following Groups
RACE/ETHNIC	American Indian/Alaskan Native	_____	_____
	Asian	_____	_____
	Black/African American	_____	_____
	Hispanic or Lantino (of any race)	_____	_____
	Native Hawaiian & Other Pacific Islander	_____	_____
	Other Race	_____	_____
	White/Caucasian	_____	_____
	Youth Population not served directly	_____	_____
JUSTICE	First Time Offenders	_____	_____
	Repeat Offenders	_____	_____
	Sex Offenders	_____	_____
	Status Offenders	_____	_____
	Violent Offenders	_____	_____
	Youth Population not served directly	_____	_____
GENDER	Male	_____	_____
	Female	_____	_____
	Youth population not served directly	_____	_____
AGE	Under 11	_____	_____
	12 - 13	_____	_____
	14 - 15	_____	_____
	16 - 17	_____	_____
	18 and over	_____	_____
	Youth population not served directly	_____	_____
GEO	Rural	_____	_____
	Suburban	_____	_____
	Tribal	_____	_____
	Youth population not served directly	_____	_____
OTHER	Mental Health	_____	_____
	Pregnant	_____	_____
	Substance Abuse	_____	_____
	Truant/Dropout	_____	_____

JABG PURPOSE AREA 11

purpose area			Indicator				
JABG	11	Accountability-Based Programs	Direct Service Mandatory	12	Number and percent of eligible youth served using graduated sanctions approaches*	As unduplicated count of the number of youth served using a graduated sanctions approach by the program during the reporting period, Definition of the number of youth served for a reporting period is the number of program youth served during any part of the reporting period using a graduated sanctions approach. To calculate the percentage, divide the number above by the total number of youth served during the reporting period. Program records are the preferred data source.	OP A. Number of youth admitted to graduated sanctions program (numeric) B. Number of youth admitted into any grantee program (numeric) C. Percent A/B $((A/B)*100)$
JABG	11	Accountability-Based Programs	Direct Service Mandatory	12a	Number and percent of program youth completing program requirements*	The number and percent of program youth who have successfully fulfilled all program obligations and requirements. Program obligations will vary by program, but should be a predefined list of requirements or obligations that clients must meet prior to program completion. Program records are the preferred data source.	OC A. Number of program youth who exited the program having completed program requirements (numeric) B. Number of youth who left the program (numeric) C. Percent A/B $((A/B)*100)$
JABG	11	Accountability-Based Programs	Mandatory	13	Number and percent of program youth who reoffend	The number and percent of program youth who were rearrested or seen at juvenile court for a new delinquent offense. Appropriate for any youth-serving program. Official records (police, juvenile court) are the preferred data source. (Short term if it occurs during or by the end of the program year. Long term if it occurs 6 months to 1 year after program completion/or program enters maintenance phase).	OC A. Number of youth with a new offense (numeric) B. Number of youth in the program (numeric) C. Percent A/B $((A/B)*100)$
JABG	11	Accountability-Based Programs	Mandatory	14	Number and percent of program youth who reoffend	The number and percent of program youth who were rearrested or seen at juvenile court for a new delinquent offense. Appropriate for any youth-serving program. Official records (police, juvenile court) are the preferred data source. (Short term if it occurs during or by the end of the program year. Long term if it occurs 6 months to 1 year after program completion/or program enters maintenance phase).	OC A. Number of youth with a new offense (numeric) B. Number of youth in the program (numeric) C. Percent A/B $((A/B)*100)$
JABG	11	Accountability-Based Programs	Mandatory, Direct Service Mandatory	15a	Substance Use	The number of youth who have exhibited a decrease in substance use. Self-report or staff ratings are the preferred data sources.	OC A. Number of program youth participating in the program who have exhibited indicated change in behavior (numeric) B. Number of youth served during the reporting period (numeric) C. A/B $((A/B)*100)$
JABG	11	Accountability-Based Programs	Mandatory, Direct Service Mandatory	15b	Social Competence (ST)	The number of youth who have exhibited an improvement in social competence. Social competence is defined as the ability to achieve personal goals in social interaction while maintaining positive relationships with others over time and across situations. Self-report or staff ratings are the preferred data sources.	OC A. Number of program youth with the noted behavioral change (numeric) B. Number of youth in the program during the reporting period (numeric) C. A/B $((A/B)*100)$
JABG	11	Accountability-Based Programs	Mandatory, Direct Service Mandatory	15c	School Attendance	The number of youth who have exhibited an improvement in school attendance. Official records are the preferred data source.	OC A. Number of program youth participating in the program who have exhibited indicated change in behavior (numeric) B. Number of youth served during the reporting period (numeric) C. A/B $((A/B)*100)$
JABG	11	Accountability-Based Programs	Mandatory, Direct Service Mandatory	15d	GPA	Number and percent of program youth who exhibited an increase in GPA 6 months to 1 year after exiting the program.	OC A. Number of program youth participating in the program who have exhibited indicated change in behavior (numeric) B. Number of youth served during the reporting period (numeric) C. A/B $((A/B)*100)$
JABG	11	Accountability-Based Programs	Mandatory, Direct Service Mandatory	15e	GED	Number and percent of program youth who earned a GED (through the program) 6 months to 1 year after exiting the program.	OC A. Number of program youth participating in the program who have exhibited indicated change in behavior (numeric) B. Number of youth served during the reporting period (numeric) C. A/B $((A/B)*100)$
JABG	11	Accountability-Based Programs	Mandatory, Direct Service Mandatory	15f	High School Completion	The number of youth who have completed High School during the reporting period. Program records are the preferred data source.	OC A. Number of program youth with the noted behavioral change during the reporting period (numeric) B. Number of youth in program

ATTACHMENT A

JABG PURPOSE AREA 11 (CONTINUED)

JABG	11 Accountability-Based Programs	Mandatory, Direct Service Mandatory	15i. Teen Pregnancy	The number of girls who have exhibited no pregnancies during the reporting period. Self-report or staff ratings are the preferred data sources.	OC A. Number of program youth participating in the program who have exhibited indicated change in behavior (numeric) B. Number of youth served during the reporting period (numeric) C. $A/B ((A/B)*100)$
JABG	11 Accountability-Based Programs	Mandatory, Direct Service Mandatory	15j. Family Relationships	The number of youth, or youth and families, who have exhibited an improvement in family relationships. Self-report or staff ratings are the preferred data sources.	OC A. Number of program youth with the noted behavioral change during the reporting period (numeric) B. Number of youth in program during the reporting period (numeric) C. $A/B ((A/B)*100)$
JABG	11 Accountability-Based Programs	Mandatory, Direct Service Mandatory	15k. Family Functioning	The number of youth, or youth and families, who have exhibited an improvement in family functioning. Self-report or staff ratings are the preferred data sources.	OC A. Number of program youth with the noted behavioral change during the reporting period (numeric) B. Number of youth in program during the reporting period (numeric) C. $A/B ((A/B)*100)$
JABG	11 Accountability-Based Programs	Mandatory, Direct Service Mandatory	15l. Antisocial behavior	The number and percent of youth who have exhibited a decrease in antisocial behavior. Self-report or staff ratings are the preferred data source.	OC A. Number of program youth with the noted behavioral change during the reporting period (numeric) B. Number of youth in program during the reporting period (numeric) C. $A/B ((A/B)*100)$
JABG	11 Accountability-Based Programs	Mandatory, Direct Service Mandatory	15m. Gang activities	The number and percent of program youth who have exhibited a decrease in gang activities during the reporting period. Self-report or staff ratings are the most likely data sources.	OC A. Number of program youth exhibiting indicated change in behavior (numeric) B. Number of youth served (numeric) C. $A/B ((A/B)*100)$
JABG	11 Accountability-Based Programs	Mandatory, Direct Service Mandatory	15g. Job skills	Number and percent of program youth who exhibited an increase in job skills 6 months to 1 year after exiting the program.	OC A. Number of program youth participating in the program who have exhibited indicated change in behavior (numeric) B. Number of youth served during the reporting period (numeric) C. $A/B ((A/B)*100)$
JABG	11 Accountability-Based Programs	Mandatory, Direct Service Mandatory	15h. Employment status	The number of program youth who have exhibited an improvement in employment status during the reporting period. Self-report or staff ratings are most likely data sources.	OC A. Number of program youth participating in the program who have exhibited indicated change in behavior (numeric) B. Number of youth served during the reporting period (numeric) C. $A/B ((A/B)*100)$

f.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF TERMINATION OF PERSONAL SERVICE AGREEMENT WITH CHRISTOPHER A. SWABY, ATTORNEY AT LAW FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH FELONIES IN SUPERIOR COURT; RESCINDING RESOLUTION 07-875

WHEREAS, the Board of Benton County Commissioners and Christopher A. Swaby, both desire to terminate the Personal Service Agreement for Legal Representation of Indigent Individuals Charged with Felonies in Superior Court;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby Terminates the Personal Service Agreement for Legal Representation of Indigent Individuals Charged with Felonies in Superior Court effective August 1, 2008 and rescinds Resolution No. 07-875.

Dated this day of, 2008

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

Original: file
cc: Auditor (Rosie); PA (R. Ozuna); Christopher Swaby; Pat Austin

JPaxton

Rafael Gonzales

From: "Christopher A. Swaby, Esq." <swabylaw@charter.net>
To: "Rafael Gonzales" <Rafael.Gonzales@co.benton.wa.us>
Date: 5/22/2008 3:04 PM
CC: "Judy Paxton" <Judy_Paxton@co.benton.wa.us>

It is with a great deal of regret that I must inform you of my resignation from the Benton County Felony Defense Panel effective July 31, 2008. My wife has taken a job in Seattle and I feel it necessary that my daughter and I to join her there. I will do my best to complete my cases by that date.

I have enjoyed this job more than I could have imagined. I have been excited about the future of public defense in Benton County with your having taken over supervision of the public defense contracts. Leaving would be all the more difficult if I thought there would be no one left who cared about our clients. I know in your hands, they will receive the advocacy they deserve.

I hope, should fate ever bring me back to this area, you would consider having me on one of the panels again. It has been an honor.

Thanks.

Christopher Swaby
PO Box 771
Richland WA 99352
(509) 628-3592

CONFIDENTIALITY. This email and any attachments are confidential and may also be privileged. If you are not the named recipient, please notify the sender immediately and do not disclose the contents to another person, use it for any purpose or store or copy the information in any medium.

9.

Return to: Benton County Public Works
P.O. Box 1001
Prosser, WA 99350-0954

RESOLUTION

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

IN THE MATTER OF COUNTY ROADS, RE: IN THE MATTER OF COUNTY ROADS, RE:
COUNTY ROAD IMPROVEMENT DISTRICT (C.R.I.D.) #15, COTTONWOOD DRIVE,
PROPERTY SEGREGATION

WHEREAS, the amended final assessment roll for C.R.I.D. #15, Cottonwood Drive was approved by Resolution Number 05-750 on November 28, 2005, and

WHEREAS, Parcel Number 1-1088-400-0001-000 defined as: The Southeast $\frac{1}{4}$ of the East 879.85 feet of the North 1,006.06 feet of the South 3,018.18 feet of the East $\frac{1}{2}$ of Section 10, Township 8 North, Range 28 East, W.M. Except road right of way

Containing 4.47 acres more or less.

had an original assessment of \$2,667.79 and now has an outstanding assessment of \$2,267.62, and has been subdivided into two parcels identified as Assessor's Parcel Numbers 1-1088-401-3109-001 and 1-1088-401-3109-002, and

WHEREAS, Parcel Number 1-1088-400-0002-000 defined as: The Southwest $\frac{1}{4}$ of the East 879.85 feet of the North 1,006.06 feet of the South 3,018.18 feet of the East $\frac{1}{2}$ of Section 10, Township 8 North, Range 28 East, W.M.

Containing 5.08 acres more or less.

had an original assessment of \$4,713.82 and now has an outstanding assessment of \$4,006.75, and has been subdivided into two parcels identified as Assessor's Parcel Numbers 1-1088-401-3109-003 and 1-1088-401-3109-004, NOW, THEREFORE

BE IT RESOLVED, that the final assessment roll be amended and that each parcel and assessment is defined as follows:

Old Number	New Number	New Assessment
1-1088-400-0001-000	1-1088-401-3109-001	\$1,105.91
	1-1088-401-3109-002	\$1,161.71
1-1088-400-0002-000	1-1088-401-3109-003	\$2,003.37
	1-1088-401-3109-004	\$2,003.38

Dated this 18th day of August 2008.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

RBD:SWB

h.

**INTERLOCAL COOPERATION AGREEMENT
BRIDGE INSPECTION**

THIS AGREEMENT is made and entered into this 5 day of August, 2008, by and between Klickitat County whose address is 228 West Main Street, Mail Stop CH-19, Goldendale, Washington, 98620 (hereinafter "Klickitat County") and Benton County, whose address is P.O. Box 1001, Prosser, Washington, 99350 (hereinafter "Benton County").

WHEREAS, Klickitat County, desires to utilize Benton County personnel to inspect bridges, and has requested that the Bridge Inspection Team complete their bridge inspections before the end of 2008; and

WHEREAS, the parties hereto agree that Benton County shall inspect Klickitat County's bridges pursuant to the Washington Interlocal Cooperation Act, RCW 39.34, and RCW 35.21.730 - .740.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, the parties agree as follows:

1. **Responsibilities of Benton County.** Benton County agrees to inspection services for all required Klickitat County bridges, as follows:
 - A. Benton County Project Manager will oversee Lead Inspector and Assistant Inspector in all aspects of bridge inspection and file maintenance.
 - B. Complete visual field inspections on all required bridges before December 31, 2008; Benton County will complete inspection reports and data entry and comply with all requirements of the Washington State Department of Transportation (WSDOT) Local Programs Bridge Preservation Office.
 - C. Make sure soundings are completed if necessary.
 - D. Take digital photos if necessary.
 - E. Create damage or repair reports if necessary.
 - F. Route a copy of all inspection reports to Klickitat County along with any damage or repair reports

2. **Responsibilities of the Klickitat County:** Klickitat County shall have the following duties and responsibilities under this Agreement:
 - A. Review all inspection reports.

- B. Review all damage or repair reports. Complete or retain consultant, private contractor, or WSDOT Bridge Preservation to perform maintenance and repair on bridges if necessary if called for within the bridge reports..
- C. Keep information current on level of contact in case of emergency closure.
- D. Reimburse all Benton County costs for personnel, equipment, mileage, hotel accommodations, meals, etc. for inspection of the bridges, preparation and submittal of reports and filing needed for the bridge files.

3. Representation, Warranties, and Indemnities:

- A. Klickitat County represents and warrants to Benton County that it has authority to enter into this Interlocal Agreement pursuant to RCW 39.34.030(2).
- B. Benton County represents and warrants to Klickitat County that it has the authority to enter into this Interlocal Agreement pursuant to RCW 39.34.030(2).
- C. Each party shall defend, protect, and hold harmless the other party from and against all claims, suits, and/or actions arising from negligent or intentional acts or omissions of that party's employees and agents while performing this Agreement. In case of joint negligence, any damages allowed shall be levied in proportion to the percentage of negligence attributed to each party.

4. Duration of Agreement. The term of this Agreement shall commence upon the execution by both parties and shall expire on December 31, 2008.

5. Termination of Agreement. This Agreement may be terminated by either party, by providing written notice to the designated contacts for each party identified in Section 12 of this Agreement. This written notice must be served on the other party within sixty days (60) of the date of termination.

6. Partial Invalidity. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provisions of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provisions herein, and such other provisions shall remain in full force and effect.

7. No Third-Party Rights. Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the covenants and agreements herein not to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of nonperformance hereunder.

- 8. Assignability.** The rights, duties, and other obligations of either party to this Agreement may not be assigned to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 9. Entire Agreement.** This Agreement and any amendments thereto mutually agreed to by the parties, constitutes the entire Agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties. Either party may request changes to the Agreement. Proposed changes that are mutually agreed upon shall be incorporated by written amendment hereto.
- 10. Dispute Resolution.** It is the parties' intent to resolve any disputes relating to the interpretation or application of this Agreement informally through discussions at the staff level. In the event disputes cannot be resolved informally at the staff level, then the parties agree to first submit the dispute to non-binding mediation/dispute resolution before resorting to litigation.
- 11. Litigation.** In the event that any suit or action is instituted by either party to enforce compliance with or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party shall be entitled to collect, in addition to necessary court costs, such sums as the court may adjudge as reasonable attorney fees. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court for Benton County, Washington.
- 12. Notices.** All notices and demands shall be in writing and sent to the parties hereto at their address as follows:

To Benton County:

Benton County Public Works
P.O. Box 1001
Prosser, WA 99350-0954

To Klickitat County:

Klickitat County
228 West Main Street,
Mail Stop CH-19,
Goldendale, WA, 98620

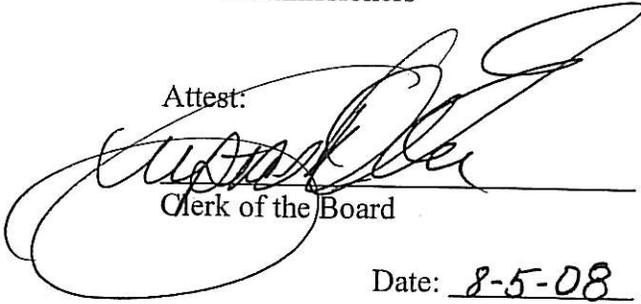
- 13. Filing of Agreement.** A copy of this Agreement shall be filed with the Benton County Auditor.
- 14. Evidence of Authority.** Upon execution of this Agreement, Klickitat County shall provide Benton County and Benton County shall provide Klickitat County with a certified copy of the resolution, ordinance, or other authority given to execute this Agreement pursuant to RCW 39.34.030(2), and said document will be attached hereto and incorporated herein as **Exhibit "A"** (Klickitat County) and **Exhibit "B"** (Benton County).

IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

KLICKITAT COUNTY,
WASHINGTON

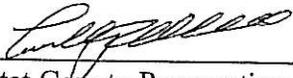
By: 
Chairman, Board of County
Commissioners

Attest:


Clerk of the Board

Date: 8-5-08

Approved as to form:


Klickitat County Prosecuting Attorney

Date: 7/25/08

BENTON COUNTY,
WASHINGTON

By: _____
Chairman, Board of County
Commissioners

Attest:

Clerk of the Board

Date: _____

Approved as to form:

Benton County Prosecuting Attorney

Date: _____

EXHIBIT A

BEFORE THE BOARD OF COUNTY COMMISSIONERS
Klickitat County, Washington

IN THE MATTER OF)
AN INTERLOCAL COOPERATIVE)
AGREEMENT WITH BENTON COUNTY)
FOR THE INSPECTION OF)
Klickitat County BRIDGES)

Resolution No. 13708

WHEREAS, Klickitat County does not have staff available to inspect Klickitat County Bridges; and

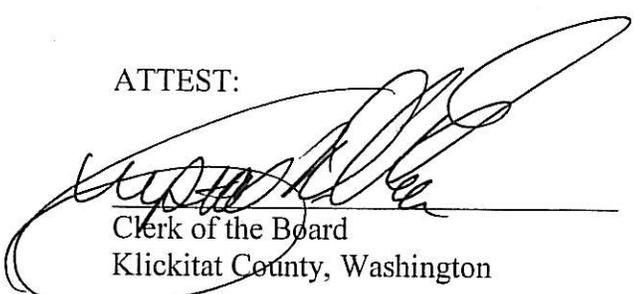
WHEREAS, Benton County has the staff and means to perform bridge inspection for Klickitat County; and

WHEREAS, the Board of Klickitat County Commissioners and the Board of Benton County Commissioners desire to enter into an Interlocal Cooperative Agreement for inspection of Klickitat County Bridges.

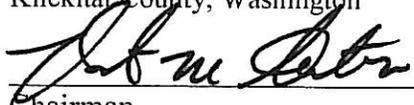
NOW, THEREFORE BE IT HEREBY RESOLVED that the Board of Klickitat County Commissioners has authorized the Chairman to sign the Interlocal Cooperative Agreement with Benton County.

5th August
Dated this ~~28th~~ day of ~~July~~ 2008.

ATTEST:


Clerk of the Board
Klickitat County, Washington

BOARD OF COUNTY COMMISSIONERS
Klickitat County, Washington


Chairman


Commissioner


Commissioner

RESOLUTION

Exhibit B

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

IN THE MATTER OF COUNTY ROADS, RE: INTERLOCAL COOPERATION
AGREEMENT FOR BRIDGE INSPECTIONS FOR KLICKITAT COUNTY

WHEREAS, the Acting Klickitat County Engineer has recently requested that Benton
County Bridge Inspection staff once again aid them in inspecting bridges; and

WHEREAS, the parties hereto agree that Benton County Staff should inspect some of
the bridges in Klickitat County and complete all the reports and paperwork as described
in the agreement, NOW, THEREFORE,

BE IT RESOLVED that an Interlocal Cooperation Agreement Bridge Inspection with
Klickitat County be approved and the Chairman of the Board of Benton County
Commissioners is hereby authorized to sign said agreement.

Dated this _____ day of _____, 2008

Chairman, Board of Benton County
Commissioners

Chairman Pro-Tem

Member

Attest: _____
Clerk to the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

RBD:lss

i.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CANINE BOAT FUND FUND NUMBER 0127-101, DEPARTMENT NUMBER .

BE IT RESOLVED, by the Board of Benton County Commissioners, that 2008
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: Sheriff, Auditor, File

J. Thompson

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Sheriff Dept Nbr: _____

Fund Name: Canine Boat Fund Fund Nbr: 0127-101

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
521.220	3103	Fuel, Oil & Lubricants	\$1,500	594.210	6401	Capital Outlay - Hardware	\$12,500
521.220	4802	Vehicle Maintenance	\$3,000				
521.230	4301	Travel	\$4,000				
521.230	4905	Training	\$4,000				
TOTAL			\$12,500	TOTAL			\$12,500

Explanation:

The Benton County Sheriff's Office participated in a state program that covered the cost of two new patrol boats. However the cost of the new boats did not include the David Clark System that is used to communicate while performing boat patrols. This line item transfer will allow for the proper accounting of the cost of the David Clark System, which wasn't budgeted during the 2008 budget process.

Prepared by: Julie Thompson Date: 12-Aug-2008

Approved Denied Date: _____

Chairman

Member

Member

j.

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: August 18, 2008 Subject: Bergstrom Aircraft, Inc. Contract Prepared By: Julie Thompson Reviewed By:	Execute Contract <u>xxxx</u> Pass Resolution <u>xxxx</u> Pass Ordinance Pass Motion Other	Consent Agenda <u> X</u> Public Hearing 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION / SUMMARY

Benton County Sheriff's Office has utilized Bergstrom Aircraft, Inc for many years to perform maintenance, repairs and modifications to the aircraft as well as fueling and pilot supplies and hereby recommends the Board of Benton County Commissioners to enter into an agreement with Bergstrom Aircraft, Inc to provide maintenance, repairs, modifications to the aircraft as well as fueling and pilot supplies.

This contract was agreed upon in 2007 but staff failed to have the contract fully executed. Contractor is still in agreement with the contract.

RECOMMENDATION

Pass resolution and execute contract.

FISCAL IMPACT

This amount will be paid from existing budgeted areas for this purpose.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON

IN THE MATTER OF AUTHORIZING THE BENTON COUNTY BOARD OF COMMISSIONERS
TO SIGN THE AGREEMENT BETWEEN BENTON COUNTY AND BERGSTROM AIRCRAFT,
INC. FOR AIRCRAFT MAINTENANCE, REPAIR, MODIFICATIONS, FUELING AND PILOT
SUPPLIES

WHEREAS, per resolution 04-534 contracts for non-public works services need not advertise or follow a formal competitive bidding procedure, but shall 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, Benton County Sheriff's Office has utilized Bergstrom Aircraft, Inc for many years to perform maintenance, repairs and modifications to the aircraft as well as fueling and pilot supplies and hereby recommends the Board of Benton County Commissioners to enter into an agreement with Bergstrom Aircraft, Inc to provide maintenance, repairs, modifications to the aircraft as well as fueling and pilot supplies; **NOW THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby concurs with the recommendation and is hereby authorized to sign the agreement between Benton County and Bergstrom Aircraft, Inc. with an expiration of December 31, 2008

Dated this 18 day of August, 2008

Chairman of the Board

Member

Member

Constituting the Board of County Commissioners
of Benton County, WA

Attest: _____

Clerk of the Board

J. Thompson

**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 **Bergstrom Aircraft, Inc.** with its principal offices at **4102 Streaman Avenue, Tri Cities Airport, Pasco, WA 99301** (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of the following documents:

- a. **Terms and Conditions (this contract); only**

2. DURATION OF CONTRACT

The term of this Contract shall begin immediately upon execution by the COUNTY and shall expire on December 31, 2008. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

Aircraft maintenance, repair and modification. Aircraft fueling and pilot supplies.

The CONTRACTOR shall perform the following services:

- a. Aircraft maintenance, repair and modification. Aircraft fueling and pilot supplies.
- b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the COUNTY.
- c. The CONTRACTOR shall perform the work specified in the

Contract according to standard industry practice.

- d. The CONTRACTOR shall ensure that only employees who are FAA certified mechanics or employees that are supervised by FAA certified mechanics perform repairs to the aircraft.
- e. The CONTRACTOR shall return the aircraft to the COUNTY "certified for flight" pursuant to FAA guidelines.
- f. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- g. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

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

- a. For CONTRACTOR Malin Bergstrom,
President/G.M.
4102 Stearman Ave.
Pasco, WA. 99301

- b. For COUNTY: Julie Thompson,
Administrative Assistant
7122 W. Okanogan Place Bldg. A
Kennewick, WA 99336

5. COMPENSATION

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

- a. Service Rates: Time and Materials - current shop rate \$73.00 single-engine aircraft, \$78 multi/turbine-engine aircraft. Rates subject to change with 10 days written notice.
- b. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.
- c. The CONTRACTOR may, in accordance with services and equipment provided, submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.
- d. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.
- f. 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 rendered prior to the execution of this Contract or 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 submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment, 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 the COUNTY providing the COUNTY holds the CONTRACTOR harmless. 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, personal or advertising injury, infringement upon intellectual property rights or damage to property or business, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.

- b. 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.
- c. The COUNTY shall hold harmless, indemnify and defend the CONTRACTOR, 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, personal or advertising injury, infringement upon intellectual property rights or damage to property or business, caused by or arising out of the COUNTY'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the COUNTY'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the CONTRACTOR, its officers, officials, employees or agents.
- d. The COUNTY'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 COUNTY, COUNTY'S employees, agents or subcontractors.
- e. In the event liability, in the forms and for the reasons referenced earlier within this section, arises as a result of the concurrent actions, errors or omissions of both CONTRACTOR and COUNTY, each party shall be responsible for that portion of liability properly attributable to their actions, errors or omission as well as that proportion of attorney's fees and other costs properly associated thereto. If the parties are found to be jointly liable, then each party shall be responsible for that portion of the damages as represents their percentage of fault as determined by or before a Court of competent jurisdiction.

8. INSURANCE

- a. The CONTRACTOR shall provide the COUNTY with proof of insurance to include premises liability of not less than \$1,000,000 per occurrence, Hangarkeepers liability of not less than \$100,000 per aircraft, completed operations liability of not less than \$1,000,000 per occurrence, and products liability of not less than \$1,000,000 per occurrence / \$100,000 per person. Such proof shall be in the form of unaltered Acord Form certificates for each policy, as well as copies of the exclusions and endorsements pages of the insurance policy itself.
- b. **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.

(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.

(5) All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:

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

(6) The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager.

(7) If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, CONTRACTOR must describe its financial condition and the self-insured funding mechanism.

9. **TERMINATION**

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made

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

- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
- c. If the CONTRACTOR breaches any, of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may 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. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- a. All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, register, and the ability to transfer these

rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.

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

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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 a mutually agreed upon mediator or designee. All rulings, orders, instructions and decisions of the a mutually agreed upon mediator or designee shall be final and conclusive, subject to the parties' right to seek judicial relief.

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION AND VENUE

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

21. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves, their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators,

and assigns of such other party in respect to all covenants to this Contract.

22. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if 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.

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. CUSTODY OF AIRCRAFTS

The parties understand that in order to accomplish the work required by this agreement, CONTRACTOR will have the need to

take temporary custody of marked law enforcement patrol aircraft for periods of time. Accordingly, the parties agree that the custody of the patrol aircraft will be subject to the following conditions:

- a. All patrol aircraft that are left in the custody of CONTRACTOR shall not contain firearms or ammunition of any sort - representatives of the Benton County Sheriff's Office have responsibility to ensure that firearms and ammunition are removed from the aircraft when they are left in CONTRACTOR's custody. Additionally, CONTRACTOR shall immediately notify the Benton County Sheriff's Office if it discovers any firearms or ammunition within the aircraft while work is being done;
- b. CONTRACTOR shall ensure that only those trusted, full-time or part-time employees who are required to do work under this contract shall have access to the patrol aircraft or to the keys which access same and shall not permit any third parties or sub-contractors to have access to patrol aircraft or keys without prior written permission from COUNTY;
- c. During all times when CONTRACTOR is not actively working on patrol aircraft, said patrol aircraft shall be fully locked, any available alarm or anti-theft systems shall be activated, and the aircraft shall be stored in a secure location protected by, at a minimum, locked fencing, and the keys which access same shall be in a locked, secured location;
- d. If CONTRACTOR or any of its employees discovers that any patrol aircraft in its custody are missing, it shall immediately notify the Sheriff's Office patrol lieutenant by paging same at 737-5533 and ensuring contact and notification is made;
- e. CONTRACTOR and its employees shall not operate any patrol aircraft in its custody anywhere outside of CONTRACTOR's property for any reason whatsoever. The only exception is for incidental traveling along a portion of a roadway for purposes of moving patrol aircraft from one portion of CONTRACTOR's premises to another portion of CONTRACTOR's

premises as necessitated by the work being done pursuant to this agreement;

- f. If it becomes necessary to test-fly any patrol aircraft in CONTRACTOR's custody for the purposes of testing or verifying work being done pursuant to this agreement, CONTRACTOR shall contact the Benton County Sheriff's Office via the designated contact, and shall arrange for a representative of the Benton County Sheriff's Office to be physically present in the patrol aircraft during any such test flights;
- g. In the same manner as stated in the indemnification section of this agreement, CONTRACTOR shall indemnify COUNTY for any claims, liability, attorney's fees, judgments, expenses or costs whatsoever, related in any way to claims or lawsuits filed as a direct result of misuse of any patrol aircraft while it is legally in CONTRACTOR's custody.

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

DATED: _____

BENTON COUNTY BOARD OF COMMISSIONERS

Chairman

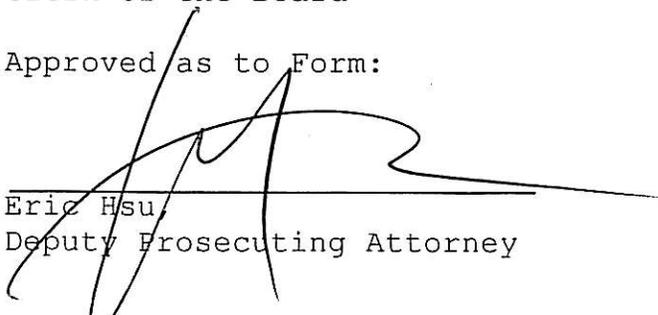
Member

Member

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

Attest:
Clerk of the Board

Approved as to Form:



Eric Hsu,
Deputy Prosecuting Attorney

DATED: 9/20/07

CONTRACTOR
Bergstrom Aircraft, Inc.



President

K.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE AMENDED AGREEMENT BETWEEN BENTON COUNTY AND BENTON COUNTY FIRE DISTRICT #1 FOR THE PURPOSE OF HAVING BENTON COUNTY PROVIDE WORK CREW(S) TO BENTON COUNTY FIRE DISTRICT #1

WHEREAS, the Board awarded the Agreement and authorized the Chairman to sign the Agreement between Benton County and Benton County Fire District #1 for the purpose of having Benton County provide work crew(s) to Benton County Fire District #1, via Resolution 07-338 on May 21, 2007; and

WHEREAS, the duration of the contract expired May 21, 2008; and

WHEREAS, Benton County wishes to amend the Agreement and extend the expiration date to September 30, 2008; and

BE IT RESOLVED, the Benton County Commissioners hereby approves the attached amended Agreement and authorized the Chairman of the Board to sign the attached Agreement Amendment between Benton County and Benton County Fire District #1.

Dated this _____ day of _____, 2008.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

Orig Sheriffs Office
cc: Auditor, R. Ozuna, BCFD #1

Prepared by: Keith Mercer

AGENDA ITEM =====	TYPE OF ACTION NEEDED =====	
Meeting Date: August 18, 2008 Subject: Agreement Extension Prepared By: Keith Mercer Reviewed By: Al Thompson, L. Smith Kelty	Execute Contract <u>xxx</u> Pass Resolution <u>xxx</u> Pass Ordinance Pass Motion Other	Consent Agenda <u> X</u> Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY & BACKGROUND INFORMATION

Work Crew 4's current Agreement expired May 21, 2008. Benton County and Benton County Fire District #1 (BCFD #1) have been negotiating a new Agreement, which should be finalized before the end of next month. In the mean time, we need to extend the current Agreement in order to be in compliance with the State Auditors.

FISCAL IMPACT

MOTION

AGREEMENT AMENDMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2008 by and between BENTON COUNTY, WASHINGTON hereinafter called "COUNTY" and BENTON COUNTY FIRE DISTRICT #1, WASHINGTON, hereinafter called "BCFD #1".

WHEREAS, the parties entered into an Agreement dated May 21, 2007 (the "AGREEMENT") for the purpose of having Benton County provide work crew(s) to BCFD #1 for monetary compensation; and

WHEREAS, the AGREEMENT specifies that the AGREEMENT may be amended if agreed upon by both parties and the amendment is set forth in writing; and

WHEREAS, the original duration of the AGREEMENT expired May 21, 2008, and

WHEREAS, Benton County wishes to amend the AGREEMENT and extend the expiration date to September 30, 2008; and

BE IT RESOLVED, in consideration of the provisions and agreements set forth herein, the parties agree as follows:

1. Paragraph 7 of the AGREEMENT shall be replaced with the following:

Duration:

The term of the contract shall begin when executed by both parties and expire on September 30, 2008.

2. All other terms and conditions of the "AGREEMENT" shall remain the same.

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

BENTON COUNTY

BENTON COUNTY FIRE DISTRICT 1

Claude Oliver, Chairman

Bob Gear BCFD #1 Chief

Date: _____

Date: _____

Approved as to Form:

Deputy Prosecuting Attorney

Date: _____

AGENDA ITEM =====	TYPE OF ACTION NEEDED =====	
Meeting Date: August 18, 2008 Subject: weapons storage equipment Prepared By: Keith Mercer Reviewed By: L. Smith Kelty A. Thompson	Execute Contract <u>xxx</u> Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda <u> </u> X Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY & BACKGROUND INFORMATION

In efforts to organize the Corrections Armory, to properly store weapons, ammunition and emergency response equipment. The Corrections Bureau has requested to purchase weapons and equipment storage cabinets, to be installed in the Corrections Armory. The cabinets will secure weapons such as rifles, pistols, tasers and ammunitions within the Corrections Armory. This will enable Officer to respond to an emergency in a more organized and timely fashion, with all equipment readily available for issue to the Officers.

FISCAL IMPACT

\$3,514.16 including WSST to be paid out of personnel risk management
\$3,619.89 including WSST to be paid out of Jail (120) budget
 \$7,134.05 Total

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING THE CONTRACT FOR THE PURCHASE AND INSTALL OF WEAPONS STORAGE LOCATED IN THE BENTON COUNTY JAIL FACILITY, KENNEWICK, WA

WHEREAS, per resolution 08-131, any public works services or materials involving less than \$10,000, advertisement and competitive bidding may be dispensed, and such contracts may be entered into after direct negotiation and authorization from the Board of Benton County Commissioners; and

WHEREAS, Corrections personnel solicited the following companies to provide a quote for weapons storage equipment located in the Benton County Jail Arms room, Kennewick, WA:

SNW LLC, Seattle, WA (\$7,134.05 including WSST, delivery, and installation), DataLink Assc, No Bellmore, NY (\$4,885.16 including WSST, delivery, but not installation), TSI Technical Solutions, Colorado Springs, CO (\$5,928.07 including WSST, delivery, but not installation), SecureIt East, Syracuse, NY (\$5,757.78 including WSST, delivery, but not installation)

WHEREAS, SNW LLC, Seattle, WA – Contractors License No. - SPACENL998D8, was the only company that complied with our need for both procurement and installation; and

WHEREAS, the Benton County Jail Captain has reviewed the quote for completeness and recommends contracting with SNW LLC, Seattle, WA; **NOW THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board concurs with the Jail Captain's recommendation and hereby awards SNW, LLC the purchase and personal service contract for weapons storage located in the Benton County Jail Facility, Kennewick, WA in the amount of \$7,400.00 excluding WSST.

BE IT FURTHER RESOLVED the Board hereby authorizes the Chairman to sign the construction contract attached hereto.

Dated this _____ day of _____, 2008

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

**PURCHASE AND PERSONAL SERVICES CONTRACT
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 SNW LLC, dba Spacesaver Northwest, with its principal mailing address at 9877 40th Ave. SO, Seattle, 98118 Washington 99301 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of this agreement and the following exhibits, which are incorporated herein by this reference

A. Exhibit A - Proposal/Scope of Work

2. DURATION OF CONTRACT

The term of this Contract shall begin when executed by both parties and expire when the COUNTY accepts the work performed

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. The CONTRACTOR shall deliver and install new Spacesaver 4-post Shelving, a Rollok Pull down security door, Spacesaver Universal Weapons Racks stacked 2 high per drawings dated 7/18/08 in the Corrections Armory located at the Benton County Jail Facility in accordance with Exhibit A including all accessories and options referenced therein, which is attached hereto and incorporated herein by reference.
- b. In the event that the work requires, under State or local law, the issuance of a building permit, CONTRACTOR shall be responsible for procuring such building permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and any labor time for any of its employees involved in the permitting process, but may not charge any additional processing or other fees that it does not actually incur.
- c. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material,

labor, or facilities will be furnished by the COUNTY.

- d. The CONTRACTOR shall perform the work specified in the Contract according to all federal, state and local standards including OSHA and L & I standards as well as standard industry practice.
- e. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- f. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. **CONTRACT REPRESENTATIVES**

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

- a. For CONTRACTOR:

Dean Smith
9877 40th Ave. SO
Seattle, 98118
Phone 509-329-0107

- b. For COUNTY:

Al Thompson - Jail Captain
7122 W. Okanogan Pl.
Kennewick, WA 99336
Phone 509-783-1451 ext 3290

5. **COMPENSATION**

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

- a. The CONTRACTOR shall be paid in accordance with the proposal provided in Exhibit A attached hereto.
- b. The total amount payable to the CONTRACTOR under this Contract shall not exceed seven thousand four hundred dollars and zero cents (\$7,400.00) excluding Washington State Sales Tax.

- c. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.
- d. The CONTRACTOR may, in accordance with **Exhibit A**, submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.
- e. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- f. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.
- g. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

6. **AMENDMENTS AND CHANGES IN WORK**

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment, 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, 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. 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. **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 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 will provide 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.

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

- c. **Automobile Liability:** 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 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 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 premiums sufficient to cover all of its employees who may do any work pursuant to this agreement.
- (5) All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:

Risk Manager
Benton County Prosecuting Attorney's Office
7320 W. Quinault Avenue

Kennewick, WA 99336

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

9. PERFORMANCE BOND

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

10. TERMINATION

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

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

- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may 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.

11. 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.

12. 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.

13. 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.

14. COMPLIANCE WITH LAWS AND PREVAILING WAGE

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

15. 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.

16. 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.

17. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- a. All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.
- b. All design work done by the CONTRACTOR shall be done on AutoCAD, release 12 or higher or other systems mutually agreed upon, an electronic copy of which shall be submitted to the COUNTY upon request and/or at the end of the job. Should a construction project result from the work of the CONTRACTOR, the record drawings from the CONTRACTOR shall be transposed onto the electronic design drawings and submitted to the COUNTY.
- c. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

18. PATENT/COPYRIGHT INFRINGEMENT

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

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 7(b) are mutually negotiated.

BENTON COUNTY

SNW, LLC

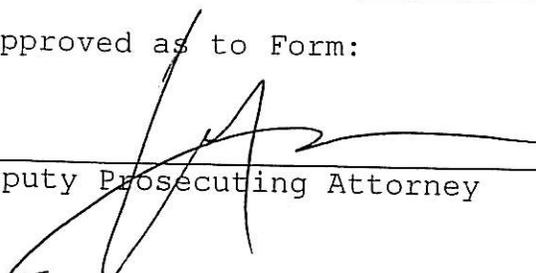
**Claude Oliver, Chairman
Benton County Commissioner**

**Name:
Title:**

Dated: _____

Dated: _____

Approved as to Form:



Deputy Prosecuting Attorney

Orig.: File - Lisa Small
cc: Auditor: R. Ozuna;

Spacesaver Northwest
 921 West Broadway
 Suite 205D
 Spokane, WA 99201
 Phone: 509-329-0107
 Fax: (509) 325-2494



Quote # 30352
 Project # 10080
 Quote Date 7/18/08

Benton County Sheriff Risk Management Department - Ammo, Helmet, Vest Storage

Bill To **Ship To** **Install To**

Benton County Sheriff
 7122 W. Okanogan Place
 Kennewick, WA 99336

Salesperson	Quote Name	Terms of Sale
Dean Smith	Ammo, Helmet, Vest Storage – Risk Management	Net 30

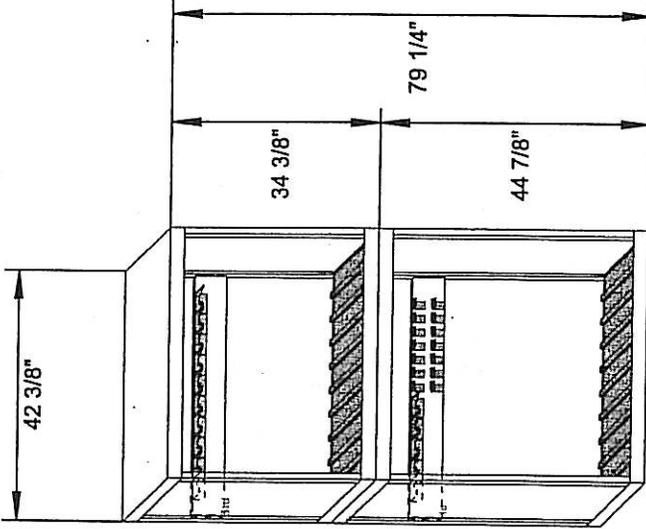
Name	Description	Total
Spacesaver 4-Post Shelving with Rollok Security Door	Includes new Spacesaver 4-post Shelving and a Rollok Pull down security door per drawing dated 7/18/08. Open shelving for Vest and Helmets, and secured storage for Ammo.	\$3,224.00

Subtotal:	\$3,224.00
Tax:	\$290.16
Total:	\$3,514.16

Pricing includes new product, freight with inside delivery, full system installation, and removal of packing materials. 10 standard colors to choose from. Weapons Rack Forest Green only. Other colors available for UWR that require up charge. Allow 4-6 weeks for delivery and installation after receipt of order.

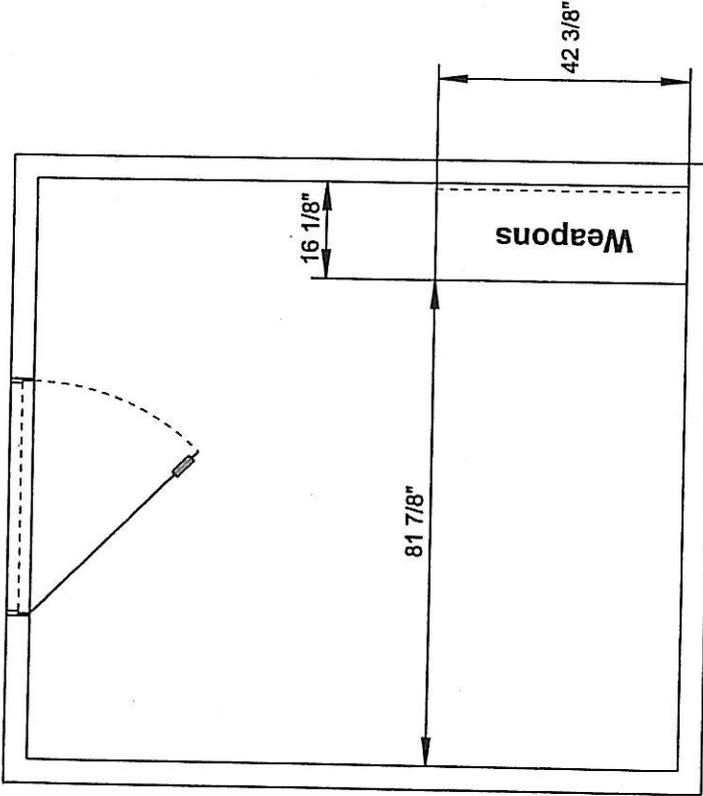
2 purchasing contracts available. State of Washington Public Higher Education (WHIPE) contract #KI SSCD-101 or U.S. Communities contract #RQ01-878957-20e

Auth. Contact _____	Auth Signature _____
Acceptance Date _____	Purchase Order _____



Weapons

Universal Weapons Racks stacked 2 high. 1.45" tall on bottom able to hold 5 870 Shotguns or 5 M-4's or other similar weapons. 14 Pistol Hooks to store handguns. Support rail able to accommodate more rifle barrel supports or other pistol barrel supports. Top rack 34" high and to store 10 M-4's with stocked collapsed. Each rack can lock separately and are bolted together, too the floor and to the wall.



Project Name:

**Benton County Sheriff
Corrections Weapons Storage**

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Saved Date:

07/18/2008

Filename:

UWR.om

Printed Date:

07/18/2008

Revision:

Scale:

1:30

Total Actual LFI:

0 LFI

Rep:

Dean Smith

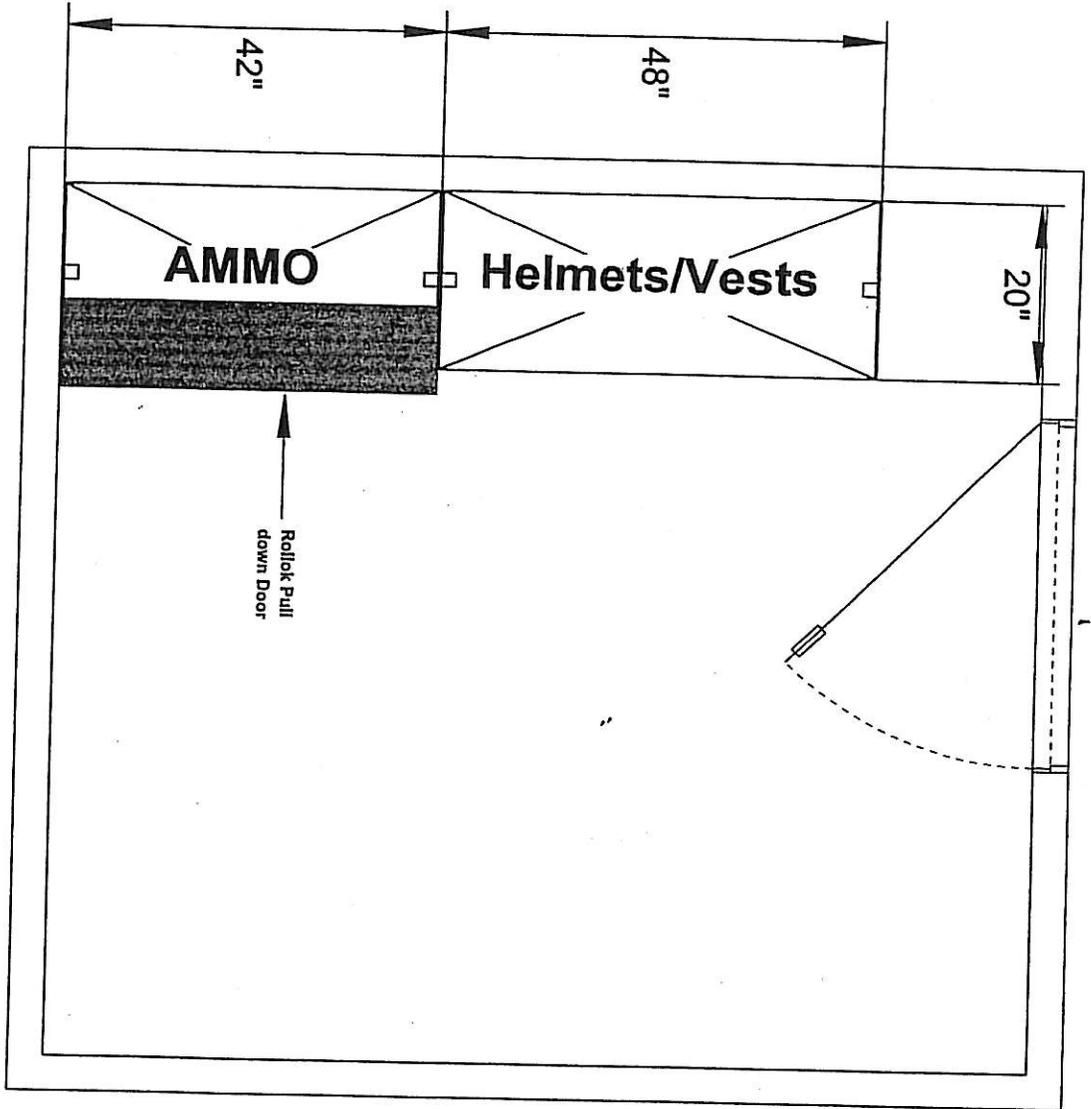
Drawn by:

ADS

Sheet No:

1 of 1





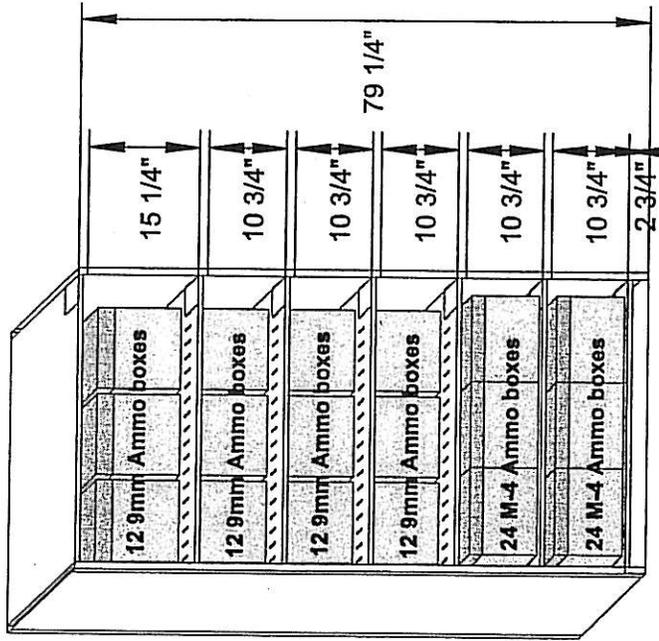
Project Name:

Benton County Risk Management Ammo, Helmets, Vest Storage

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Rep:	Dean Smith	Drwn by:	ADS	Sheet No:	1 of 2
Printed Date:	07/18/2008	Revision:		Total Actual LFI:	424 LFI
Scale:	1:20	Filename:	Ammo - Vests.om		
Saved Date:	07/08/2008				

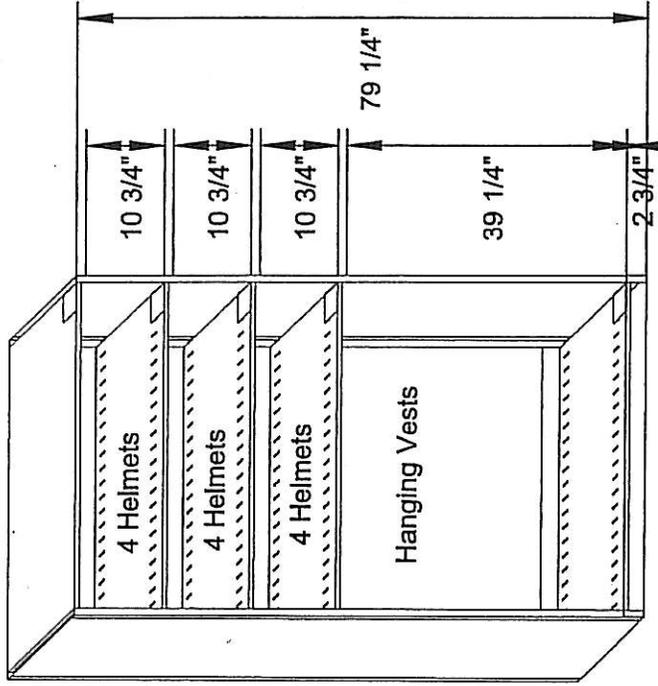
H79 1/4"
79 1/4"x42" d20"



AMMO

Open 4-Post Shelving for Ammo Storage. Shelving adjustable on 1 1/2" vertical increments. Total estimated weight capacity per shelf 320 lbs.

H79 1/4"
79 1/4"x48" d20"



Helmets/Vests

Open 4-Post Shelving for Helmets and Hanging Vests. Shelving adjustable on 1 1/2" vertical increments. Heavy Duty Garment Hanger not shown.

Project Name:

**Benton County Risk Management
Ammo, Helmets, Vest Storage**

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Saved Date:

07/08/2008

Filename:

Ammo - Vests.om

Printed Date:

07/18/2008

Revision:

Scale:

1:25

Total Actual LFI:

424 LFI

Rep:

Dean Smith

Drawn by:

ADS

Sheet No:

2 of 2





RESOLUTION

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

**IN THE MATTER OF AWARDING THE PERSONAL SERVICE CONTRACT FOR THE
INSTALLATION OF THE MOVEABLE SHELVING LOCATED IN THE BENTON COUNTY
JAIL FACILITY, KENNEWICK, WA**

WHEREAS, per resolution 08-131, any public works services or materials involving less than \$10,000, advertisement and competitive bidding may be dispensed, and such contracts may be entered into after direct negotiation and authorization from the Board of Benton County Commissioners; and

WHEREAS, per resolution 08-537 Benton County was authorized to purchase moveable shelving from Kardex Systems Inc.; and

WHEREAS, Kardex Systems Inc. is responsible for paying Brutzman's Office Solutions for the installation of the moveable shelving located in the Benton County Jail Property room; and **NOW THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, hereby awards Brutzman's Office Solutions the personal service contract for the installation of the moveable shelving located in the Benton County Jail Facility, Kennewick, WA in the amount of \$0.00.

BE IT FURTHER RESOLVED the Board hereby authorizes the Chairman to sign the personal service contract attached hereto.

Dated this _____ day of _____, 2008

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

AGENDA ITEM =====	TYPE OF ACTION NEEDED =====	
Meeting Date: August 18, 2008 Subject: Brutzman's contract Prepared By: Keith Mercer Reviewed By: Al Thompson, L. Smith Kelty	Execute Contract <u>xxx</u> Pass Resolution xxx Pass Ordinance Pass Motion Other	Consent Agenda <u> X</u> Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY & BACKGROUND INFORMATION

On May 27, 2008 the Board approved the purchase of moveable shelving from Kardex, per resolution 08-537, for the property room located in the Jail. The moveable shelving is to be installed by Brutzman's Office Solutions. Since Brutzman's is going to be on our facility working, it has been recommended by the Prosecuting Attorney that we have a contract with Brutzman's indemnifying us if any accidents should happen and to make sure they have the necessary insurance requirements.

FISCAL IMPACT

\$0.00

MOTION

**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 Brutzman's Office Solutions, a Washington corporation with its principal offices at 2600 N Columbia Center Blvd, Richland, WA 99352, (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of the terms herein and no additional documents

2. DURATION OF CONTRACT

The term of this Contract shall begin when executed by both parties and shall expire when the COUNTY accepts the work performed.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. The CONTRACTOR agrees to setup the Kardex "Kompakt" movable shelving that was purchased from Kardex Systems Inc. and which has already been delivered to COUNTY.
- b. In the event that requested work requires, under State or local law, the issuance of a building permit, CONTRACTOR shall be responsible for procuring such building permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and any labor time for any of its employees involved in the permitting process, but may not charge any additional processing or other fees that it does not actually incur.
- c. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.

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:

Ken Brutzman
2600 N. Columbia Center Blvd
Richland, WA 99352
Phone 509-735-0300

b. For COUNTY:

Captain Al Thompson
7122 W. Okanogan Pl.
Kennewick, WA 99336
Phone 509-735-6555
Fax 509-783-5852

5. COMPENSATION

The compensation to be made to CONTRACTOR for the services detailed herein has been made directly to Kardex. The parties hereby agree that Kardex is responsible for remitting such compensation directly to CONTRACTOR in the amount agreed upon between CONTRACTOR and Kardex. Under no circumstances shall COUNTY be liable for any further compensation to CONTRACTOR regardless of whether Kardex has complied with its contractual or other obligations to CONTRACTOR.

6. INVOICING

The CONTRACTOR may not submit invoices to the COUNTY for services that have been performed. Any invoices for services performed shall be submitted directly to Kardex.

7. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible

for the accuracy of the work, even if the work is accepted by the COUNTY.

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

8. **HOLD HARMLESS AND INDEMNIFICATION**

- a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.

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. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws including but not limited to Title 51 of the Revised Code of Washington. By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually

negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTORS obligations under this Section 8 shall survive termination and expiration of this Contract.

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

9. INSURANCE

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

- 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. CONTRACTOR shall further procure and maintain employer's liability that provides coverage up to one million dollars (\$1,000,000) covering employee injuries or disease.
- 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 (per project) 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. CONTRACTOR shall cause the carrier for its automobile liability policy to execute a waiver of subrogation in favor of COUNTY.
- 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 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, and specifically shall not exclude coverage for any indemnification as set out in section 9 above.
 - 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 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. 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" 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.
- 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:

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

- 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.

10. 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.

11. COMPLIANCE WITH LAWS AND PREVAILING WAGES

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit B shall be paid to all employees, agents, sub-contractors or sub-sub-contractors who do any work for CONTRACTOR on this project. CONTRACTOR shall ensure that all sub-contractors or sub-sub-contractors sign an agreement to pay these same wages, and that such a signed agreement is submitted to COUNTY prior to

sub-contractor commencing any work on the project. This schedule is duplicated from the Washington State Department of Labor & Industries website, is provided for informational purposes only and COUNTY takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedules contains any such ambiguities or inaccuracies then CONTRACTOR is responsible for contact the Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this contract and relevant law to pay prevailing wages.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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 8(b) are mutually negotiated.

BENTON COUNTY

Brutzman's Office Solutions

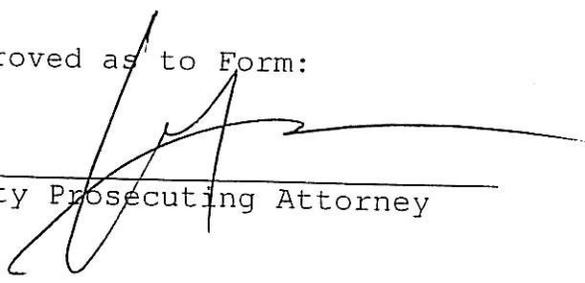
Claude Oliver, Chairman
Benton County Commissioner

Name: _____
Title: _____

Dated: _____

Dated: _____

Approved as to Form:



Deputy Prosecuting Attorney

RESOLUTION



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

**IN THE MATTER OF AWARDING THE PERSONAL SERVICE CONTRACT FOR
EVIDENTIARY VEHICLE TOWS AND TOWS OF DISABLED VEHICLES BELONGING
TO THE BENTON COUNTY SHERIFF'S OFFICE**

WHEREAS, per resolution 08-131, any public works services or materials involving less than \$10,000, advertisement and competitive bidding may be dispensed, and such contracts may be entered into after direct negotiation and authorization from the Board of Benton County Commissioners; and

WHEREAS, The Benton County Sheriff's Office has used Mel's Inter-City Towing for evidentiary vehicle tows for a number of years and have been very happy with their service; and

WHEREAS, Mel's Inter-City Towing provided a contract rate sheet for vehicle tows; and

WHEREAS, the Benton County Patrol Captain has reviewed the rate sheet for completeness and recommends contracting with Mel's Inter-City Towing, Kennewick, WA;
NOW THEREFORE,

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board concurs with the Patrol Captain's recommendation and hereby awards Mel's Inter-City Towing the personal service contract for evidentiary vehicle tows and tows of disabled vehicles belonging to the Benton County Sheriff's Office.

BE IT FURTHER RESOLVED the Board hereby authorizes the Chairman to sign the personal service contract attached hereto.

Dated this _____ day of _____, 2008

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

AGENDA ITEM =====	TYPE OF ACTION NEEDED =====	
Meeting Date: August 18, 2008 Subject: Mel's towing contract Prepared By: Keith Mercer Reviewed By: S. Keane, L. Smith Kelty	Execute Contract <u>xxx</u> Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda <u> X</u> Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY & BACKGROUND INFORMATION

Per Benton County's policy, a contract should be in place for any services provided to Benton County. We had a contract with Mel's Inter-City Towing in the past, but for some reason the contract expired and was never renewed. We have contacted Mel's and put together a contract in order to be in compliance with our policy as well as receive contract pricing from Mel's. Right now we are paying full price on all Sheriff tows.

FISCAL IMPACT

Refer to Exhibit A of the contract for the rate sheet

MOTION

**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 **Mel's Inter City Towing**, a for-profit corporation organized under the laws of the State of Washington with its principal offices at 310 N. Dayton Street, Kennewick, WA 99336 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of the terms and conditions contained herein and the following documents:

- a. Exhibit A - Contractor's Proposal

2. DURATION OF CONTRACT

The term of this Contract shall begin when executed by both parties and shall expire on December 31, 2009 with an option to extend the contract term for four (4) additional one (1) year periods. Price rates are subject to change for each calendar year. Price adjustments and extensions of this contract will only be effective with an executed amendment to this contract. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. The CONTRACTOR agrees to tow vehicles on an "as needed" basis. The vehicle tows will consist only of tows of vehicles necessary for evidentiary purposes in an investigation conducted by the Benton County Sheriff's Office, and tows of disabled vehicles belonging to the Benton County Sheriff's Office.

- b. The CONTRACTOR agrees to provide the described services in their entirety, including supplying any necessary equipment. None of the services may be subcontracted unless agreed to by COUNTY in writing, in advance of the provision of such services. Services shall be conducted as directed by Benton County Sheriff's Office personnel including any special instructions regarding the tow and the destination of tow.
- c. The CONTRACTOR shall perform the work specified in the Contract according to standard industry practice.
- d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- e. CONTRACTOR shall have exclusive first right of refusal to provide the services described above in paragraph "a" only. This means that for each incident where the services described in paragraph "a" are required, COUNTY shall contact CONTRACTOR first and offer CONTRACTOR the opportunity to provide the requisite tow services. At the time of contact, COUNTY shall provide CONTRACTOR with time parameters for towing. For cases involving disabled Benton County Sheriff's Office vehicles, the response time shall be thirty (30) minutes for vehicle tows within the City of Richland or City of Kennewick and sixty (60) minutes for vehicles outside of city limits unless otherwise agreed upon by the primary Deputy. For cases involving evidence tows, the response time shall be dictated by the lead investigating deputy or detective and may vary from case to case depending on the needs of the investigation. If, upon contact, CONTRACTOR believes it cannot meet the response time requirements, it shall inform COUNTY and COUNTY will then be permitted to seek the service of another tow company. CONTRACTOR shall make all reasonable efforts to respond in a timely manner when it accepts tow jobs.

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:

Leigh Eayrs
310 N. Dayton St.
Kennewick, WA 99336
Phone: 509-586-8383
Fax: 509-586-6459

b. For COUNTY:

Julie Thompson
Administrative Assistant
Benton County Sheriff's Office
7122 W Okanogan Pl Bldg A
Kennewick, WA 99336
Phone: 509-735-6555 ext 3273
Fax: 509-736-3895

5. COMPENSATION

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

- a. The CONTRACTOR shall be paid in accordance with the proposal provided in Exhibit A attached hereto. Invoices may be sent to COUNTY anytime after the towed vehicle is dropped off as directed. Invoices will be paid by COUNTY warrant within one billing cycle as determined by the Benton County Auditor's Office.
- b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed \$10,000.00 including Washington State Sales Tax.
- c. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract unless agreed to by both the CONTRACTOR and COUNTY.

- d. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.
- f. 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 rendered prior to the execution of this Contract or 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 services provided by the CONTRACTOR, including any reports generated as a result thereof, shall be certified by the CONTRACTOR and checked for errors and omissions. The Contractor shall be responsible for the accuracy of the services, even if the services are accepted by the COUNTY.
- c. 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, 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. **Workers Compensation:** If CONTRACTOR intends to utilize the services of any employees in providing the services contemplated by this agreement, then 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 does not intend to utilize the services of employees during any portion of providing the services under this agreement, then it must notify COUNTY of this fact in writing prior to commencing any services under this contract.

CONTRACTOR shall further procure and maintain in place employer's liability stop-gap insurance in the amount of \$1 million for disease/illness or injuries suffered by employees.

- b. **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). This policy shall specifically cover damage done to towed vehicles including damage done by reason of improper towing methods, techniques or equipment.

The CONTRACTOR will provide 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.

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 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 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) Unless CONTRACTOR does not intend to utilize the services of any employees in fulfilling the terms of this contract, and CONTRACTOR has so notified counties in writing, CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.
- (5) All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:

Julie Burkos
Administrative Assistant
Benton County Sheriff's Office
7122 W Okanogan Pl Bldg A
Kennewick, WA 99336

- (6) The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County

Risk Manager.

- (7) If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, CONTRACTOR must describe its financial condition and the self-insured funding mechanism.

9. TERMINATION

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving sixty (60) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.
- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision "in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may 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 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 CONTRACTOR and its employees, officers councilors and agents are 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. This includes, but is not limited to, implementation of privacy and record-keeping practices in compliance with the Health Insurance Portability and Accountability Act (HIPAA).

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. If County learns of circumstances which may lead to an increased likelihood that County may be named as a defendant in a lawsuit where any books or records created or maintained pursuant to this agreement may be of evidentiary value and County so advises CONTRACTOR in writing, CONTRACTOR shall suspend any document purging or destruction schedule related to the books or records identified by County, and shall take all reasonable steps to protect and keep such books and records safe from destruction, unauthorized access, or alteration.

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. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

- c. An electronic copy of all word processing documents including reports shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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.

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION AND VENUE

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or

invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if 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.

23. ENTIRE AGREEMENT

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

24. NOTICES

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

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 7(b) are mutually negotiated.

DATED: _____

DATED: _____

BENTON COUNTY BOARD OF COMMISSIONERS

CONTRACTOR
Mel's Inter City Towing

Chairman

Signature

Member

Printed Name/Title

Member

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

Attest: _____
Clerk of the Board

Approved as to Form:

Eric Hsu, Sr. Deputy
Prosecuting Attorney
Its _____

Mel's Inter-City Towing

310 N. Dayton Street
PO Box 6819
Kennewick, WA 99336

24 Hour Towing Service
509-586-8383 Phone

July 31, 2008

We would like to take this opportunity to offer the Benton County Sheriff Dept. an exclusive towing contract with our company. We feel it would be advantageous for both entities to take this proposal into consideration. Mel's is willing to make many concessions to provide special towing service to the Benton County Sheriff Dept..

Mel's towing is conveniently located in the downtown Kennewick area and is on a one acre paved property. This facility is completely secured with a six foot sight obscured fence. We have a new security system for both the building and the fenced yard. .

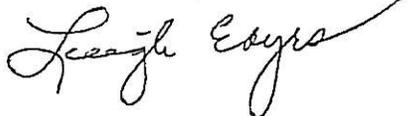
Our company is willing to make adjustments as needed to provide the BCSD with excellent service. . Mel's would like to offer the evidence tows on a yearly contract basis. This rate would be for \$50.00 for evidence tows vehicles and motorcycles, that are towed from within the Kennewick city limits. We would also be offering class A towing to the BCSD for \$50.00 plus mileage of \$3.00 a towed mile, outside the City limits.

Our company has worked with you for many years, we have had a little problem, with getting paid on evidence tows that we drop off in your yard, and would like to invoice those tows to you, the BCSD the day we do the tow.

Mel's Towing is owned and operated by Merrill & Leigh Eayrs. We have been in business in the Tri-Cities since 1977 and have expanded many times over the years. Nick Smith has been the towing fleet manager at Mel's since 1999. Nick is very knowledgeable and is always prompt and courteous while doing his job. We feel we have a real great team to work with, the employees at Mel's.

Thank You for your consideration,

Merrill & Leigh Eayrs



PH 9:05

AGENDA ITEM MTG. DATE: August 18, 2008 SUBJECT: Draft Ordinance – Procedure for Amending Comprehensive Plan. MEMO DATE: August 12 th , 2008 Prepared By: Susan M. Walker Reviewed By: Michael Shuttleworth	TYPE OF ACTION NEEDED Execute Contract Pass Resolution X Pass Ordinance X Pass Motion X Other	Consent Agenda Public Hearing X Public Meeting 1st Discussion 2nd Discussion Other - Workshop
---	--	--

BACKGROUND INFORMATION

On April 15, 2008, the Benton County Planning Commission conducted an open record hearing on the proposed ordinance relating to growth management, setting procedures and standards for amendments to the Comprehensive Plan, adding a new chapter to Title 16 of the Benton County Code. After closing the Open Record Hearings and discussing the proposed ordinance, the Planning Commission made a recommendation that the Board of County Commissioners approve the proposed ordinance. The Planning Commission's record and recommendation for the proposed ordinance was submitted for your review. The Board reviewed the proposed ordinance at a workshop on July 7, 2008 and directed staff to set a public hearing for the proposed ordinance. A public hearing held by the Board on July 28, 2008, to review the record and recommendation of the Planning Commission and make a decision on the proposed ordinance was continued to Monday, August 18th at 9:05 a.m. for discussion purposes.

The July 28, 2008 hearing included comments submitted by John Ziobro, representing Thayne Wisser. He requested that if the County allows Urban Growth Area (UGA) amendment applications on an every five-year basis, that when an application is deemed incomplete it could be resubmitted the following year. Planning staff has made changes to Section 5 of the proposed Comprehensive Plan Amendment Ordinance that would allow application for Urban Growth Area Boundaries to be considered every five years starting next year (2009) with applications submitted by December 1st of this year.

Attached is also a letter from John Ziobro, attorney for Thayne Wisser requesting that the public hearing be continued until September, as they are unable to attend the public hearing. Staff has been in contact with Mr. Ziobro and has provided him with a copy of the attached draft revised ordinance and will bring to the Board any comments from Mr. Ziobro at the hearing on Monday.

SUMMARY

The following is a summary of the proposed ordinance:

- Section 1: Is the purpose of the Ordinance.
- Section 2: Provides definitions for "Comprehensive Plan" and "Urban Growth Area".
- Section 3: Provide who would be eligible to request an amendment to the Benton County Comprehensive Plan.

- Section 4: Provides that the Benton County Planning Department will place a legal notice in the official County newspaper announcing that comprehensive plan amendments must be submitted by December 1.
- Section 5: Provides that applications for comprehensive plan amendments will be accepted only between October 1 and December 1 of each year. That requests to amend urban growth area boundaries will be accepted only every five years.
- Section 6: This section provides a list of items that must be submitted to the Planning Department before an application for amending the comprehensive plan or urban growth area will be considered a complete application.
- Section 7: This section provides what will be done if the application submitted is determined to be an incomplete application.
- Section 8: This section provides how a comprehensive plan amendment will be reviewed.
- Section 9: This section provides that if any provision of the ordinance is declared unconstitutional the rest of the ordinance will not be affected.
- Section 10: Is the effective date of the ordinance.

RECOMMENDATION

After closing the Open Record Hearing and discussing the issue, the Planning Commission voted to recommend approval of the proposed ordinance. The Planning Department recommends that the Board of County Commissioners after conducting the public hearing and reviewing the record created by the Planning Commission, the Board make a motion to adopt the proposed ordinance attached to this memo.

FISCAL IMPACT

None.

MOTION

At the conclusion of the public hearing, the Board will need to make a motion adopting the their own Findings of Fact, approving the resolution and adopting the ordinance that sets up the procedure of how and when the Benton County Comprehensive Plan could be amended.

ORDINANCE NO. _____

AN ORDINANCE relating to growth management, setting procedures and standards for amendments to the Comprehensive Plan, adding a new chapter to Title 16 of the Benton County Code.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. PURPOSE. The purpose of this ordinance is to set forth the timing and procedures for requesting and processing amendments to the Benton County Comprehensive Plan.

SECTION 2. DEFINITIONS. For the purposes of this ordinance, the following words and phrases shall have the indicated meanings unless the context clearly indicates otherwise:

(a) "Comprehensive Plan" means the comprehensive land use plan of Benton County adopted on June 22, 1998, and as amended by the Board of County Commissioners.

(b) "Urban Growth Area" or "UGA" means the areas designated by the County pursuant to RCW 36.70A.110.

SECTION 3. COMPREHENSIVE PLAN--AMENDMENTS--PERSONS ELIGIBLE TO REQUEST AMENDMENTS--APPLICATIONS. (a) An application to amend the County's Comprehensive Plan to revise the boundaries of an Urban Growth Area may only be submitted by the city whose Urban Growth Area is the subject of the application and must be signed by a representative of that city authorized in writing by that city's council to submit the application.

(b) Applications to amend any other portion of the County's Comprehensive Plan can be submitted at the direction of the Benton County Planning Commission, Benton County Board of Commissioners, the Benton County Planning Director, any owner of property in unincorporated Benton County seeking an amendment that only affects that person's property, any resident of unincorporated Benton County supported by signatures of ten (10) residents of unincorporated Benton County, or any general or special purpose local governmental entity operating in Benton County pursuant to an adopted resolution of its legislative body or board of directors.

SECTION 4. COMPREHENSIVE PLAN--AMENDMENTS--PUBLIC NOTICE OF DEADLINE FOR SUBMITTAL OF COMPLETE APPLICATIONS. (a) Prior to October 1st of each year, the Planning Department shall place legal notices in the official county newspaper announcing the December 1st deadline for submitting complete applications for amendments to the Comprehensive Plan.

(b) The notice shall indicate whether applications to amend Urban Growth Area boundaries will be accepted during the upcoming application period.

SECTION 5. COMPREHENSIVE PLAN--AMENDMENTS--APPLICATION PERIOD. (a) Subject to the exceptions found in RCW 36.70A.130(2)(a) and 36.70A.130(2)(b), applications to amend the

Comprehensive Plan shall only be accepted between October 1st and December 1st of any year, and all applications will be considered concurrently by the Board of County Commissioners in the calendar year that follows the year in which the application is submitted.

(b) Applications to amend Urban Growth Area boundaries shall only be accepted every five (5) years to be acted upon by the Board of County Commissioners every fifth year counting from the year 2009 (i.e., 2014, 2019, etc.). Complete applications for the five-year review cycle must be received by December 1st of the preceding year (i.e., December 1, 2008 for the 2009 UGA review process).

(c) Notwithstanding the designated application period set forth above under Section 5(a), the Board of County Commissioners may, after appropriate public participation, adopt amendments or revisions to the Comprehensive Plan whenever an emergency exists or to resolve an appeal of the Comprehensive Plan filed with a growth management hearings board or a court. For purposes of this subsection, an emergency exists when the Board of County Commissioners determines that there exists an imminent threat to life, property, public health or safety, air or water resources.

SECTION 6. COMPREHENSIVE PLAN--AMENDMENTS--DOCUMENTATION REQUIRED FOR A COMPLETE APPLICATION. (a) Within fourteen (14) days after receiving an application for amendment to the Comprehensive Plan, the County Planning Department shall review the application and place in the mail or personally deliver a written determination addressed to the applicant stating that the application is complete or that the application is incomplete and identifying what is necessary to make the application complete.

(b) All applications for amendment to the Comprehensive Plan must provide all information requested on the application form and include the following documentation:

- (1) a completed environmental checklist in accordance with the State Environmental Policy Act (SEPA);
- (2) an application fee as set by resolution of the Board of County Commissioners;
- (3) a textual and graphic description of the requested Comprehensive Plan amendment which shall identify the specific portions of the Plan proposed for amendment;
- (4) an explanation of why the amendment is being proposed; and
- (5) the signature of the person or persons eligible to make the application as set forth in Section 3 above.

(c) All applications for an amendment to an Urban Growth Area must also include the following:

- (1) a copy of the city's State Environmental Policy Act (SEPA) determination and Environmental Impact Statement (EIS), if required by the SEPA determination;

(2) a map(s) and an aerial photograph(s) depicting the specific land area(s) proposed for inclusion within the UGA boundary, the relationship of such area(s) to the existing UGA, the current corporate boundaries and the general location and acreage of planned open spaces and greenbelts that will remain as open space within the area(s) proposed for inclusion within a UGA, as per RCW 36.70A.110(2);

(3) a map and aerial photograph(s) showing the total acreage involved in the proposed UGA addition, the proposed pattern and acreages of urban land uses and densities for the area proposed for inclusion, with any residential areas requiring a minimum average density of six (6) dwelling units per acre;

(4) a spreadsheet, in the form provided by the County, completed to contain the information necessary to demonstrate and allow confirmation that the proposal is consistent with Benton County County-wide Planning Policies, including but not limited to policies 3, 4, and 5;

(5) a copy of the city council resolution or ordinance authorizing submittal of the application to the County and approving the capital facilities plan referenced below with a finding that the capital facilities plan complies with RCW 36.70A.070(3); and

(6) a capital facilities plan for the area proposed to be added to the UGA that has been approved by resolution of the city council that contains the following:

- (i) An inventory of the existing public facilities, as that term is defined by RCW 36.70A.030, that are within the current UGA (inclusive of incorporated areas) and the area proposed to be added to the UGA, showing the locations and capacities of the public facilities;
- (ii) A forecast of the needs for the next twenty (20) years of such public facilities at identified levels of service that are needed within the current UGA (inclusive of incorporated areas) and the proposed area to be added to the UGA;
- (iii) The necessary locations and capacities of expanded or new public facilities within the current UGA (inclusive of incorporated areas) and the proposed area to be added to the UGA;
- (iv) For the proposed area to be added to the UGA at least a six-year plan to finance such public facilities within projected funding capacities that clearly identifies sources of public money for such purposes; and
- (v) Identification of revisions to the city's land use element if probable funding falls

short of meeting existing needs and to ensure that the city's land use element and capital facilities plan element (and financing plan therein) are coordinated and consistent.

SECTION 7. COMPREHENSIVE PLAN--AMENDMENTS--INCOMPLETE APPLICATIONS. (a) If an application to amend the Comprehensive Plan is determined to be incomplete under Section 6 above and is not made complete by December 1st, it will be rejected and returned to the applicant.

(b) If an application to amend an Urban Growth Area is determined to be incomplete under Section 6 above and is returned to the applicant, unless such application is made complete and submitted by that December 1st, it may not be resubmitted until the next five-year cycle for UGA amendments.

(c) Applications for other Comprehensive Plan amendments that are rejected for filing due to being incomplete, may be resubmitted by December 1st or may be submitted during the next application period during which applications of that nature are accepted. If such an application is deemed complete but is denied, it cannot be resubmitted until the third calendar year following the date of denial.

SECTION 8. COMPREHENSIVE PLAN--AMENDMENTS--PROCEDURAL STEPS FOR REVIEW OF PROPOSED AMENDMENTS. (a) The Planning Department will initiate review of complete applications by listing them in a posted legal notice along with the State Environmental Policy Act (SEPA) review dates. Analysis of each application for consistency with the Washington State Growth Management Act and the Comprehensive Plan, including the adopted County-wide Planning Policies, will be conducted and summarized in a staff report. The Planning Department shall also make a recommendation to the Planning Commission for approval or denial of each application.

(b) The Planning Commission will conduct at least one open record public hearing on the applications and forward a recommendation for approval or denial of each application to the Board.

(c) The Board of County Commissioners will conduct at least one open record public hearing on the applications prior to approving, approving with modifications and/or conditions, or denying the applications.

SECTION 9. SEVERABILITY. If any provision of this ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

NOTE: This ordinance is continued on the following page.

Ordinance No.
Continued
Page 5

SECTION 10. EFFECTIVE DATE. This ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this ____ day of _____, 2008.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Approved as to Form:

Constituting the Board of
County Commissioners of
Benton County, Washington

Deputy Prosecuting Attorney

Attest: _____
Clerk of the Board



SPERLINE ■ TELQUIST ■ ZIOBRO ■ RAEKES

ATTORNEYS AT LAW ■ PLLC

August 11, 2008

Claude Oliver
Chairman, Benton County Board of Commissioners
620 Market Street
Prosser, Washington 99350

RE: Benton County Code – Title 16 Amendments
Our File No. 08-131

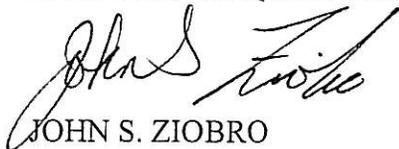
Dear Commissioner Oliver:

I am writing you on behalf of Thayne Wisner. As you know, the Board met on July 28, 2008 to discuss proposed amendments to Benton County Code Title 16. At that meeting, the Board gave direction to make amendments to Title 16 consistent with the Board's directive. At the time of the hearing, this matter was scheduled for August 18, 2008 to be heard again by the Commissioners. However, if staff could not have a report ready by that date, it would be set for August 25, 2008.

I am writing to advise you that I will be on vacation the week of August 18th and Mr. Wisner will be undergoing medical procedures that will prevent either of us from attending the hearing on August 18th. I am requesting on behalf of Mr. Wisner that the matter be continued until the first week of September so that Mr. Wisner and I can attend.

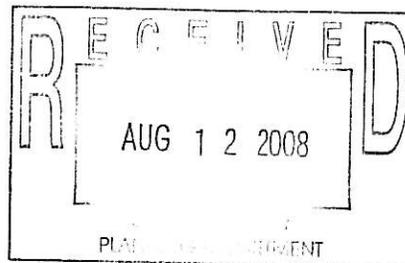
Sincerely,

SPERLINE TELQUIST ZIOBRO RAEKES, PLLC


JOHN S. ZIOBRO

JSZ/kk

cc. David Sparks
Mike Shuttleworth
Ryan Brown



Jeffrey T. Sperline • George E. Telquist • John S. Ziobro • John P. Raekes

BENTON COUNTY BOARD OF COMMISSIONERS
Reasons for Action, Findings of Fact and Analysis
of Factors Considered Controlling

I. INTRODUCTION

In the Matter of: County Planning,

Pursuant to Chapter 36.70 RCW, the Board of County Commissioners held a public hearing on July 28, 2008 and continued the hearing until August 18, 2008, for the purpose of hearing testimony for and against and considering adoption of an ordinance amendment relating to growth management, setting procedures and standards for amendments to the Comprehensive Plan, adding a new chapter to Title 16 of the Benton County Code.

The members of the Board of County Commissioners and their attendance for the afore-mentioned hearing(s) are as follows: Claude Oliver, Leo Bowman, Max E. Benitz, Jr.

All persons desiring to speak for or against, or in relation to the proposed ordinance(s) and amendment(s) were given full and complete opportunity to be heard.

The Board of County Commissioners is now satisfied that this matter has been sufficiently considered and hereby makes and enters the following:

II. FINDINGS OF FACT

A. Legal notification was given on July 17, 2008. The public hearing was conducted on July 28 and August 18, 2008.

B. The proposed ordinance(s) and amendment(s) are found to be in conformance with the intent of the Benton County Comprehensive Plan.

Yes No

C. Written and oral testimony have indicated the following concerning the proposed ordinance(s) and amendment(s):

Approval

Disapproval

Neither approval or disapproval but concern regarding the need for more frequent review of Amendments.

D. The record and testimony **does/does not** establish the need for the proposed ordinance(s) and amendment(s) for the following reasons: The

amendments will create a section in the Benton County Code that would set up how and when the Benton County Comprehensive Plan could be amended.

- E. S.E.P.A. - SEPA review is not required for ordinance amendments of this type.
- F. The Board of County Commissioners agreed with the staff recommendation to retain the current every five (5) year review to allow the utilization of the twenty-year population projections prepared on the same five-year cycle by the State Office of Financial Management (OFM). The use of OFM population projections are required by RCW 36.70A.110(2) and is consistent with the Benton County County-Wide Planning Policies specifically Policy #4 to ensure that urban growth areas are appropriately sized and are sufficient to meet the land use requirements for each city. The 5 year review will begin in 2009 to coincide with the adoption of this ordinance.

YES NO

- G. The record indicates the approval of the proposed ordinance(s) and amendment(s) **would/would not** be in the public interest.

Yes - It will set forth the timing and procedures for requesting and processing amendments to the Benton County Comprehensive Plan.

No - _____

III. STAFF REPORT

A majority of the Planning Commission members find that all the facts set forth in the Planning staff memos dated July 22 and August 12, 2008, **are/are not accurate.**

IV. ANALYSIS OF FACTORS CONSIDERED CONTROLLING

The Benton County Planning Commission considers all Findings of Fact heretofore entered to be controlling. **Yes No**

V. MOTION

It was moved by _____ and seconded by _____ that the chairman prepare and adopt written findings and conclusions reflecting **approval/disapproval/modification** of the proposed ordinance amendment relating to; growth management, setting procedures and standards for amendments to the Comprehensive Plan, adding a new chapter to Title 16 of the Benton County Code that articulate and are consistent with the findings, conclusions and recommendation made by the Board of County Commissioners.

From: Mike Shuttleworth
To: McKenzie, Cami
Date: 8/12/2008 3:55:52 PM
Subject: Re: Letter from John Ziobro - Richland UGA Hearing

Cami,

I will include the letter with the staff memo I am preparing for the Hearing on Monday. I have a copy of the letter.

Michael Shuttleworth
Planning Manager
Benton County Planning Department
P.O. Box 910
Prosser, WA 99350
Tel (509) 786-5612
Fax (509) 786-5629

>>> Cami McKenzie 8/12/2008 3:26 PM >>>

Mike: Ryan Brown called me to let me know the Chairman received a letter from John Ziobro about continuing the public hearing that is scheduled for August 18 to some time in September. He said the letter should be entered into the record, regardless of whether the Board grants the request or not. Please let me know if you will be including it as an exhibit to be entered into the record on August 18 or whether the Chairman should request it to be included. If you do not yet have a copy of the letter, I am requesting that Marilu send you one. Thanks Mike.

Cami McKenzie
Clerk of the Board
Benton County Commissioners
P.O. Box 190
Prosser, WA 99350
(509) 222-3712 (Kennewick) (Ext. 3712)
(509) 222-3714 (FAX - Kennewick)
509) 786-5600 (Prosser) (Ext. 5498)
(509) 786-5625 (FAX - Prosser)

CC: Brown, Ryan; Flores, Marilu

RECEIVED

AUG 12 2008

BENTON COUNTY
COMMISSIONERS



SPERLINE ■ TELQUIST ■ ZIOBRO ■ RÆKES

ATTORNEYS AT LAW ■ PLLC

Max	<input checked="" type="checkbox"/>
Leo	<input checked="" type="checkbox"/>
Claude	<input checked="" type="checkbox"/>
David	<input checked="" type="checkbox"/>
Loretta	<input checked="" type="checkbox"/>
Other	8-18-08/aga

August 11, 2008

Claude Oliver
Chairman, Benton County Board of Commissioners
620 Market Street
Prosser, Washington 99350

RE: Benton County Code – Title 16 Amendments
Our File No. 08-131

Dear Commissioner Oliver:

I am writing you on behalf of Thayne Wiser. As you know, the Board met on July 28, 2008 to discuss proposed amendments to Benton County Code Title 16. At that meeting, the Board gave direction to make amendments to Title 16 consistent with the Board's directive. At the time of the hearing, this matter was scheduled for August 18, 2008 to be heard again by the Commissioners. However, if staff could not have a report ready by that date, it would be set for August 25, 2008.

I am writing to advise you that I will be on vacation the week of August 18th and Mr. Wiser will be undergoing medical procedures that will prevent either of us from attending the hearing on August 18th. I am requesting on behalf of Mr. Wiser that the matter be continued until the first week of September so that Mr. Wiser and I can attend.

Sincerely,

SPERLINE TELQUIST ZIOBRO RÆKES, PLLC

JOHN S. ZIOBRO

JSZ/kk

cc. David Sparks
Mike Shuttleworth
Ryan Brown

Jeffrey T. Sperline • George E. Telquist • John S. Ziobro • John P. Raekes

9:30

BENTON COUNTY AGENDA ITEM

AGENDA ITEM: _____	Type of Action		
MEETING DATE: <u>8/18/08 9:30 am</u>	Execute Contract	_____	CONSENT AGENDA _____
SUBJECT: <u>Superior Court Update</u>	Pass Resolution	_____	PUBLIC HEARING _____
_____	Pass Ordinance	_____	1 ST DISCUSSION _____
_____	Pass Motion	_____	2 ND DISCUSSION _____
Prepared By: <u>Pat Austin</u>	Other	_____	OTHER _____
Reviewed By: <u>Dave Sparks</u>	Approve for Hearing	_____	<u>X</u>

BACKGROUND INFORMATION

The Superior Court will be updating the County Commissioners regarding goals and challenges currently before the court.

SUMMARY

RECOMMENDATION

FISCAL IMPACT

None

MOTION

No action required

10:10

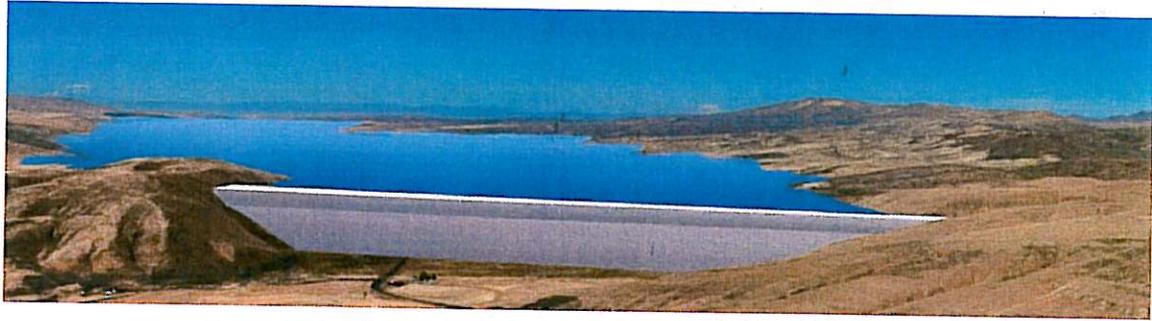
<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 18 Aug 2008 Subject: YBSA presentation Memo Date: 11 Aug 2008 Prepared By: AJF Reviewed By:	Execute Contract Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda Public Hearing 1st Discussion X 2nd Discussion Other

SUMMARY & BACKGROUND

Representatives from the Yakima Basin Storage Alliance will have a short discussion with the Board about the legislative renewal of the Yakima River Basin Water Enhancement Project (Title XII, Public Law 103-434).

No other preliminary information has been provided.

#



Yakima River Basin Environmental & Salmon Restoration Act

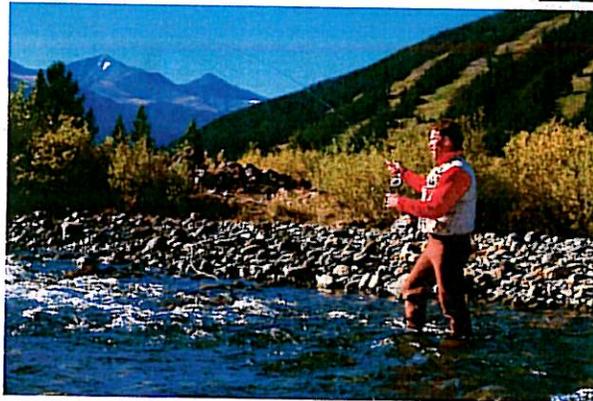


Table of Contents

EXECUTIVE SUMMARY

To authorize the Yakima Basin Environmental and Salmon Restoration Act

The draft Yakima Basin Environmental and Salmon Restoration Act is a comprehensive legislative package structured to meet the present and future instream and out-of-stream water needs of the Yakima basin. The draft bill consists of three Titles: Title I provides for implementation of a Black Rock Water Exchange Project as a division of the existing Yakima Project; Title II provides for a comprehensive habitat restoration program in the mainstem floodplains of the Yakima and Naches Rivers and in the tributaries to re-establish ecosystem functions in the Yakima basin; and Title III provides funding to implement and operate and maintain the actions authorized by Titles I and II.

Title I - Black Rock Water Exchange Project

The Black Rock Water Exchange Project is for the purpose of (1) improving the Yakima Project water supply for the benefit of (A) the anadromous fishery of the Yakima and Columbia River basins by means of stream flow enhancement in the mainstem Yakima and Naches Rivers of the Yakima basin, (B) improving the reliability of the Yakima Project irrigation water supply for junior water rights in dry years when water deficiencies occur, and (C) providing a surface water supply from the Yakima Project to meet future municipal water needs; and (2) providing future recreation and hydropower generation opportunities.

The Secretary of the Interior is authorized to construct, operate, and maintain the water exchange project as a division of the existing Yakima Project. The principal works of the Black Rock Division shall consist of the following:

- (1) lands, water rights or interests thereto required for construction and operation and maintenance
- (2) pumping plant near Priest Rapids Dam and Lake
- (3) Black Rock Storage about 1.3 million a/f
- (4) delivery system to Roza and Sunnyside Canal
- (5) hydropower generation at Roza and Sunnyside Canals
- (6) switchyards and transmission facilities
- (7) realignment and improvement of State Highway 24
- (8) mitigation of wildlife habitat and cultural areas

Development and administration of facilities at Black Rock reservoir for recreation and reservoir fishery purposes may be undertaken by a non-Federal entity with the concurrence of the appropriate local public and State entities and execution of a contract with the Secretary. Such development shall not preclude public access to recreation and reservoir fishery facilities.

An agreement may be consummated with a public or private entity for inclusion of pump-generation facilities.

Water may be withdrawn from the Columbia River during the 10 month period of September through June and may be withdrawn in July and August only with prior concurrence of the State of Washington and then only when instream flow targets are greater than those stipulated in the Biological Opinion and the Venita Bar Agreement. Exchange water shall be delivered during the

irrigation season to Roza and Sunnyside and shall not exceed the amounts to which they are entitled.

If exchange water is unable to be delivered from the Black Rock Division, Roza and Sunnyside may revert to diversion of water from the Yakima River. In dry years exchange water shall be prorated in the same manner as the water supply from the Yakima Project. However, supplemental water to provide a 70% proratable water supply to the exchange participants can be delivered if agreements have been executed with the Secretary.

The water rights for Roza and Sunnyside Divisions shall continue to be determined in accordance with the 1945 consent decree and shall be the basis for the volume of the exchange water.

A Tri-Party Ecosystem Operation Group comprised of the Deputy Director of Natural Resources of the Yakama Nation, the Regional Director, Region 3, of the Washington Department of Fish and Wildlife, and the Reclamation Field Office Manager shall be constituted through a memorandum of agreement to manage the volume of "Freed Water", for fish and wildlife purposes in the Yakima Basin.

During dry-years when the Yakima Project proration level is below 70%, water from the Yakima Project can be made available to supplement the proratable water supply of entities other than the exchange participants if agreements have been executed with the Secretary.

Water for future municipal supply of up to 80,000 acre-feet annually can be provided from the Yakima Project for municipalities pursuant to contractual arrangements with the Secretary.

BPA shall provide the project power needed for delivery of water to Black Rock Reservoir for exchange participants as a part of the Columbia River Fish and Wildlife Program. The energy generated by the hydropower generation facilities at Roza and Sunnyside Canals shall be marketed by BPA and revenues obtained shall be considered as assisting in reducing the annual pumping power cost.

Title II - - Ecosystem Restoration

The purpose of re-establishing ecosystem functions in the Yakima Basin is to biologically sustain the life stages of anadromous fishery by a comprehensive habitat restoration program in the mainstream floodplains of the Yakima and Naches Rivers and in the tributaries. This involves the participation of the Yakama Nation, local, state, federal entities and agencies, and qualified private groups, and the use of federal and non-federal funds to investigate and implement measures. The focus of this cooperative undertaking is (1) acquisition of lands and physical alterations in the major floodplain areas to address constraints which have adversely affected the hydrologic connectivity of these floodplains and the mainstem rivers, and (2) streamflow improvements and riparian habitat restoration measures in the Yakima basin tributaries.

The State Salmon Recovery Act created lead entities such as the Yakima Basin Fish and Wildlife Recovery Board who could act as lead agency for ecosystem restoration for the purpose of this act.

revised June 15, 2008

A BILL

To authorize the Yakima Basin Environmental and Salmon Restoration Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. PURPOSE

The purpose of this Act, hereinafter referred to as the Yakima River Basin Environmental and Salmon Restoration Act, is to enhance the aquatic, environmental, and economic resources of the Yakima Basin by:

(a) improving the Yakima Project water supply infrastructure to benefit endangered and threatened fishery, existing irrigated agriculture, and future municipal needs, and to provide opportunities for recreation and hydropower generation developments; and

(b) restoring the Yakima basin ecosystem;

SECTION 2. DEFINITIONS

[To be completed]

TITLE 1. BLACK ROCK WATER EXCHANGE PROJECT

SECTION 101. PURPOSE AND AUTHORIZATION

(a) Purpose. Title 1 of this Act is for the purpose of (1) improving the Yakima Project water supply for the benefit of (A) the anadromous fishery of the Yakima and Columbia River basins (including current endangered and threatened species) by means of stream flow enhancement in the mainstem Yakima and Naches Rivers of the Yakima basin, (B) improving the reliability of the Yakima Project irrigation water supply for junior water rights in dry years when water deficiencies occur, and (C) providing a surface water supply from the Yakima Project to meet future municipal water needs; and (2) providing future recreation and hydropower generation opportunities.

(b) Authorization of a Black Rock Water Exchange Project. The Secretary of the Interior (Secretary), acting through the Bureau of Reclamation (Reclamation) in conjunction with the State of Washington, and pursuant to Federal reclamation law (Act of June 17, 1902, and Acts amendatory thereof and supplementary thereto) is authorized to construct, operate, and maintain the Black Rock Water Exchange Project (hereinafter referred to as the Black Rock Division) substantially in accordance with the Yakima River Basin Water Storage Planning Report/Environmental Impact Statement of _____, 2008. The principal works of the Black Rock Division shall consist of the following:

(1) lands, water rights, or interests therein required for the construction and operation and maintenance of the Black Rock Division;

(2) a Black Rock pumping plant near the vicinity of Priest Rapids Dam and Lake to pump Columbia River water for storage in a reservoir in the Black Rock Valley of Yakima County, Washington;

(3) a Black Rock dam and reservoir with a active storage capacity of about 1.3 million acre-feet;

(4) outflow conveyance works for delivery of water from Black Rock reservoir to the Roza Main Canal in the vicinity of MP 22.6 and to the Sunnyside Main Canal in the vicinity of MP 3.83, including modifications to the canals as may be necessary;

(5) hydropower generation works at the outflow conveyance works delivery points to the Roza and Sunnyside Main Canals;

(6) switchyards and transmission facilities as may be required to provide project pumping power and interties with existing transmission facilities of the Bonneville Power Administration and public and private utilities;

(7) realignment and improvement of State Highway 22 and public utilities;

(8) mitigation of wildlife habitat and cultural areas within the project areas; and

(9) appurtenant works as may be required for the operation and maintenance of the Black Rock Division.

(c) Recreation. (1) Pursuant to sections 1 and 2 of the Federal Water Recreation Act of July 9, 1965 (79 Stat. 213) a non-Federal entity may choose to administer Black Rock reservoir lands

and water areas for fish and wildlife purposes and, operate, maintain, and replace facilities provided for these purposes as a part of the Black Rock reservoir development.. Subsequently, contingent on the execution of an agreement among the non-Federal entity and the Secretary prior to the appropriation of funds and the initiation of construction of the Black Rock Division, recreation development at Black Rock reservoir may be undertaken as a part of the Black Rock Division in accordance with sections 1 and 2 of said Act.

(2) Further development of facilities at Black Rock reservoir for recreation and reservoir fishery purposes may be undertaken by the non-Federal entity with the concurrence of the appropriate local public and State entities having jurisdiction over planning, zoning, and operation of such development. Such development shall not preclude public access to recreation and reservoir fishery facilities developed pursuant to section (c)(1) hereof, nor impair the operation and maintenance of Black Rock reservoir and appurtenant facilities for the purposes of this Act.

(d) Hydropower Pump-Generation. Prior to preparation of final designs and specifications for construction of the Black Rock Division, and upon notification by the Secretary, any public or private entity may formally request the opportunity to evaluate the potential for pump-generation operation of the Black Rock Division. With approval of the Secretary such evaluation shall be conducted by the public or private entity within the timeframe specified and at no cost to the United States. Upon the determination of the Secretary and the State of Washington, that proposed modifications to the plans set forth in the Planning Report/Environmental Impact Statement for the pumping of water to Black Rock reservoir are technically feasible and can be

accommodated without undue delay of construction, an agreement may be consummated with the public or private entity providing for inclusion of pump-generation facilities as a part of the Black Rock Division. The execution of such agreement shall be contingent on the public or private entity providing preliminary designs and specifications associated with the pump-generation facilities, criteria for the conjunctive operation of the pump-generation facilities to supply water to Black Rock reservoir for the purposes of this Act and for pump-generation, and completion of the appropriate environmental compliance activities and proposed financial arrangements, all as satisfactory to the Secretary.

(e) Integration with Yakima Project. The Black Rock Division shall be integrated with, and be a division of the existing Yakima Project, both operationally and administratively and shall be operated in a manner consistent with the provisions of Section 102 herein and Federal reclamation law, permits, and water rights established pursuant to State Law.

SECTION 102. WATER EXCHANGE WITH THE ROZA DIVISION AND THE SUNNYSIDE DIVISION

(a) Columbia River Water Withdrawal. Columbia River water may be withdrawn from the Columbia River by the Black Rock pumping plant under the following conditions:

(1) During the 10 months of September through June when Columbia River flows are greater than the seasonal instream flow targets stipulated in the National Oceanic and Atmospheric Administration, National Marine Fisheries Service 2004 Biological Opinion downstream from Priest Rapids, McNary, and Bonneville Dams, and the spawning targets

pursuant to the Vernita Bar Agreement for non-listed species.

(2) During July and August only with prior concurrence of the State of Washington and then only when the instream flow targets for July and August are greater than those stipulated in the foregoing referenced Biological Opinion and Agreement.

Prior to the initiation of construction, the Secretary shall secure the necessary permits and other authorities for withdrawal of water from the Columbia River. Such permits and authorities shall take into account that Columbia River water is being withdrawn to deliver to irrigation entities in exchange for all, or some, of their current Yakima Project water supply in order to improve the ecosystem of the Yakima basin for the benefit of endangered and threatened fish.

(b) Delivery of Exchange Water. Exchange water from the Black Rock Division shall be delivered by the Secretary to the Roza and Sunnyside Divisions of the Yakima Project and shall be in accordance with the following:

(1) The points of delivery shall be at approximately MP 22.6 of the Roza Main Canal for the Roza Division and MP 3.83 of the Sunnyside main Canal for the Sunnyside Division.

(2) The exchange water shall be delivered during the irrigation season of approximately April 1 through October 31 pursuant to the schedules prepared and submitted in advance by the Roza Division and the Sunnyside Division as directed by the Manager, Yakima Field Office, Bureau of Reclamation (hereinafter called the Reclamation Field Office Manager). In no event shall the volume of exchange water delivered be more than that to which each Division is entitled pursuant to its water rights and contracts. During the period of such delivery, the Roza Division

and the Sunnyside Division will not divert water from the Yakima River without prior approval of the Reclamation Field Office Manager except as provided in Section 102(a)(4) hereof.

(3) The Secretary shall be responsible for the measurement of water at the points of delivery and shall maintain daily records of such deliveries and provide periodic accounting to the Roza Division and the Sunnyside Division. Each Division shall be responsible for the conveyance and delivery of exchange water from the points of delivery of water from the Black Rock Division.

(4) In the event the Secretary is unable to deliver any or all of the requested exchange water due to physical or operational problems of the Black Rock Division, the Roza Division and the Sunnyside Division may revert to diversion of water from the Yakima River. Any such diversions shall be in accordance with their water rights and contracts with the United States for water from the Yakima Project. Diversions from the Yakima River may continue during the irrigation season until such time as advised by the Reclamation Field Office Manager that exchange water may once again be delivered to the Roza Division and the Sunnyside Division from the Black Rock Division.

(5) If other irrigation entities are willing to participate in the Black Rock Division by means of an exchange of any, or all, of their Yakima Project water supply for the purposes herein, exchange water may be provided contingent on the availability of exchange water, capacity in the Black Rock Division to deliver such water, the action will not adversely impact the other purposes of this Act, and the consummation of appropriate agreements with the

Secretary.

(c) Dry-Year Irrigation Water Supply. (1) In years, when the Reclamation Field Office Manager determines that proration of the Yakima Project water supply available for irrigation is necessary, the exchange water to be delivered to the Roza Division and the Sunnyside Division shall be prorated in the same manner as the water supply being provided from the Yakima Project to non-exchange participants. In such prorated years, supplemental water from the Black Rock Division can be delivered to exchange participants if agreements have been entered into with the Secretary for the delivery of such supplemental water.

(2) Exchange water and dry-year supplemental water delivered from the Black Rock Division may be used only on presently irrigated lands pursuant to the existing contracts with the United States. Unless otherwise notified by the Secretary the volume of supplemental water provided in any year of proration shall not be greater than that necessary so the Roza Division has a 70 percent water supply and the Sunnyside Division has a 70 percent proratable water supply.

(d) Water Rights. The Roza Division and the Sunnyside Division right to the use of water from the Yakima Project as set forth in contracts with the United States and Decisions and Orders of the Superior Court of Yakima County, State of Washington Department of Ecology v. James J. Acquavella et al. shall not be affected by the water exchange. The water supply available to the Roza Division and the Sunnyside Division from the Yakima Project shall continue to be determined each year in accordance with the 1945 Consent Decree and shall be the basis for the

volume of the exchange water to be delivered from the Black Rock Division for irrigation use on currently irrigated lands of the Roza Division and the Sunnyside Diversion. As the result of such an exchange, the Yakima Project water supply which would have been available for diversion by the Roza Division and the Sunnyside Diversion shall be available for use by the Reclamation Field Office Manager pursuant to the provisions of Section 103 herein.

SECTION 103. CONJUNCTIVE OPERATION OF THE YAKIMA PROJECT

(a) Integrated Project Operation and Maintenance. The integrated Black Rock Division and the Yakima Project (collectively referred to as the Integrated Project) shall be operated and maintained by the Secretary for the authorized purposes and in accordance with Federal Reclamation Law, permits, water rights established pursuant to State Law, and contracts entered into with Yakima basin entities for water from the Integrated Project. Operation and maintenance of the Black Rock Division facilities of the Integrated Project may be transferred to public and private entities pursuant to agreements entered into by the Secretary.

(b) Tri-Party Ecosystem Operation Group. The conjunctive operation of the Integrated Project will result in a volume of water being available to maintain and improve fish and wildlife, to improve the reliability in dry-years of the irrigation supply for entities with proratable water rights, and for future municipal water use. To determine the annual water exchange operation and the manner in which the volume of "Freed Water" available for fish and wildlife purposes is to be used, a Tri-Party Ecosystem Operation Group comprised of the Deputy Director of Natural Resources, Yakama Nation, the Regional Director, Region 3, Washington Department

of Fish and Wildlife, and the Reclamation Field Office Manager shall be constituted. The duties and responsibilities of this Tri-Party Operation Group shall be set forth in a Memorandum of Agreement entered into by the respective parties prior to initiation of construction of the Black Rock Division. The Memorandum of Agreement shall provide, among other things, that the annual exchange and the volume of "Freed Water" shall not adversely impact the objective of providing from the Yakima Project a 70 percent dry-year proratable irrigation water supply and a future municipal water supply pursuant to Sections 103(c) and 103(d) hereof.

(c) Dry-Year Irrigation Water Supply. In years, when the Reclamation Field Office Manager determines that proration of the Yakima Project water supply available for irrigation is necessary, water from the Yakima Project can be delivered to irrigation entities (other than the exchange participants which is provided for in Section 102(c)), to supplement their available proratable water supply if agreements have been entered into with the Secretary for the delivery of such supplemental water. Such supplemental water may be used only on presently irrigated lands pursuant to the existing contracts with the United States.

(d) Municipal Water Supply. The Secretary is authorized to enter into contracts with municipal entities for the delivery of water from the Yakima Project to meet future municipal needs. Such contracts shall not adversely impact the capability of the Yakima Project to meet its other authorized purposes and shall not exceed a total of 80,000 acre-feet annually.

(e) Pumping Power and Hydropower Generation. (1) The Administrator of the Bonneville Power Administration consistent with the provisions of the Columbia River Basin Fish and

Wildlife Program established pursuant to the Pacific Northwest Power Planning and Conservation Act (92 Stat.2697) shall provide for project power needed for delivery of water to the exchange participants. The cost of pumping power shall be credited to fishery restoration goals of the Columbia River Fish and Wildlife Program.

(2) The hydropower generation facilities at the Black Rock reservoir outlet conveyance delivery points to the Roza and Sunnyside Main Canals shall be operated by Reclamation. The energy generated at these works shall be marketed by the Bonneville Power Administration and the revenues obtained there from shall be considered as assisting in reducing the annual cost of the pumping power required for delivery of water to the exchange participants.

TITLE II. ECOSYSTEM RESTORATION

SECTION 201. PURPOSE AND AUTHORIZATION

(a) **Purpose.** Title II of this Act is for the purpose of re-establishing ecosystem functions in the Yakima basin to biologically sustain the life stages of anadromous fishery by a comprehensive habitat restoration program in the mainstream floodplains of the Yakima and Naches Rivers and in the tributaries. This involves the participation of the Yakama Nation, local, state, federal entities and agencies, and qualified private groups, and the use of federal and non-federal funds to investigate and implement measures. The focus of this cooperative undertaking is (1) acquisition of lands and physical alterations in the major floodplain areas to address constraints which have adversely affected the hydrologic connectivity of these floodplains and the mainstem

rivers, and (2) streamflow improvements and riparian habitat restoration measures in the Yakima basin tributaries.

(b) Authorization. In 1998, the Washington State legislature enacted the Salmon Recovery Act (RCW 77.85) creating a statewide Salmon Recovery Funding Board for the purpose of financing habitat improvement projects with state appropriations and the state portion of the federal Pacific Coastal Salmon Recovery Fund. The Salmon Recovery Act created lead entities comprised of local organizations working at the watershed level to propose and prioritize projects for implementation. The Yakima Basin Fish and Wildlife Recovery Board¹ is the lead agency for the Yakima basin and has developed a Yakima Basin Salmon Recovery Plan and a subset Yakima Steelhead Recovery Plan focused specifically on measures designed to improve fish habitat and passage. Consideration should be given for the Yakima Basin Fish and Wildlife Recovery Board to also act as the lead agency for ecosystem restoration activities for the purpose of Title II of this Act pursuant to a Memorandum of Agreement to be entered into by the Secretary, the State of Washington, the Yakama Nation, and the Yakima Basin Fish and Wildlife Recovery Board.

(1) Mainstem Yakima and Naches Rivers Floodplain Areas. The Black Rock Division authorized by Title I of this Act will allow increased instream flow volumes in the mainstem Yakima and Naches Rivers. This can significantly improve the ecosystem of the mainstem rivers for anadromous fishery if physical alterations are also undertaken in the major floodplains to

¹ The Yakima basin Fish and Wildlife Recovery Board is comprised of the Yakama Nation, Benton, Kittitas, and Yakima Counties, and 18 municipalities in the Yakima basin

allow re-establishment of the hydrological connectivity with the mainstem Yakima River and Naches River. The Secretary is hereby authorized to participate in activities designed to re-establish hydrological connectivity and restore anadromous fishery habitat areas. Such activities shall include, but not be limited to (A) purchase or lease of lands and associated water rights by the Secretary with appropriated funds or the execution of grants or cooperative agreements by the Secretary whereby appropriated funds can be provided by the Secretary to State agencies and local governmental agencies and entities, and the Yakama Nation for the purchase and, or lease of lands and associated water rights, and (B) implementation of remedial measures to alter infrastructure constraints which impede the hydraulic connectivity with the mainstem Yakima River and Naches River and accessibility of anadromous fishery to the floodplain area(s). Title to lands and the responsibility for their operation, maintenance, and management whether purchased directly by the Secretary or through grants and cooperative agreements may be assumed by State agencies, the Yakama Nation and/or a local governmental agency or entity. Water purchased by means of grants or cooperative agreements shall be transferred to the State of Washington Trust Water Program.

(2) **Yakima Basin Tributaries.** Improved streamflows and riparian habitat restoration activities in the Yakima basin tributaries will enhance anadromous fish spawning, incubation, and rearing conditions. Title XII of the Act of October 31, 1994 (Public Law 103-434), Section 1207 "Enhancement of Water Supplies for Yakima Basin Tributaries" provides the authority for the Secretary to investigate and implement measures for fish and wildlife (and irrigation purposes) on tributaries of the Yakima basin. Section 1207 stipulates in part that such measures can

include the following: (A) water uses efficiency improvements, (B) conveyance of water from the Yakima Project through the facilities of any irrigation entity willing to contract with the Secretary without adverse impact to water users, (C) construction, operation, and maintenance of ground water withdrawal facilities, (D) contracting with any entity that is willing to voluntarily limit or forego present water use through lease or sale of water or water rights on a temporary or permanent basis, (E) purchase of water rights from willing sellers, and (F) other measures compatible with this title, including restoration of stream habitats. The provisions of Section 1207 of Title XII of the Act of October 31, 1994, are included herein by reference. The Secretary may execute grants and agreements with State agencies and local governmental agencies and entities whereby appropriated funds can be provided by the Secretary to the foregoing for investigation and implementation of such tributary measures.

SECTION 202. FISH PASSAGE AT YAKIMA PROJECT STORAGE DAMS

The Secretary is responsible for the operation and maintenance of the Storage Division of the Yakima Project consisting of the six major dams and reservoirs. None of these dams and reservoirs have fish passage facilities to allow upstream migration to headwater spawning areas. An additional purpose of Title II is to investigate the feasibility of installing fish ladders at existing dams of the Storage Division to improve the anadromous fishery of the Yakima basin. Currently the feasibility of installing fish ladders at Cle Elum Dam on the Cle Elum River (a tributary of the Yakima River) and at Bumping Lake Dam on the Bumping River (a tributary of

the Naches River) is being investigated by the Secretary. With completion of Planning Reports and Environmental Impact Statements and a determination by the Secretary that fish ladders are feasible, will improve the anadromous fishery production of the Yakima basin, and will not negatively impact the purposes of the Yakima Project including water rights and the capability to meet contractual commitments, the Secretary is authorized to construct and operate and maintain fish ladders at Cle Elum Dam and Bumping Lake Dam. Construction of fish ladders at the other dams of the Storage Division may be undertaken by the Secretary upon similar investigations and determinations.

Yakima River Basin Restoration Act Funding Plan

This Act will benefit Kittitas, Yakima, and Benton Counties by increasing the total water storage available in the watershed by 1.6 million acre-feet. This water will be allocated by the Bureau of Reclamation following guidelines set by a governing committee to ensure adequate irrigation supplies and to enhance fishery habitat in the Columbia River Basin.

Objectives:

1. Increase storage capacity in the Yakima Basin to ensure a more reliable supply of water for irrigation and normalization of stream flow.
2. Restore Basin watersheds to improve habitat for anadromous fish (salmon and steelhead).
3. Modernize and improve irrigation delivery systems to decrease energy use and water loss.

Cost of water transfer system from Columbia River to Black Rock Reservoir, including pumping plants, generating plants, pipelines, storage reservoir construction, and delivery system to Roza and Sunnyside Irrigation

Districts.....	\$2,253,409,200
Miscellaneous Expenses.....	\$2,246,590,800
Including: Mobilization costs \$115,000,000, Unlisted Items \$231,590,800, Contingencies \$700,000,000, Non-contract Costs \$1,200,000,000.	

Interest During Construction (Based on 10 Year construction period).....\$1,096,000,000

Bureau of Reclamation Estimate of Total Cost to Complete the Project...\$5,515,800,000

Upgrade and improve Irrigation systems. (The scope and cost of this project is to be determined and shall be utilized in conjunction with existing legislative programs).....**\$TBD**
Restore and enhance fishery habitat in the Yakima River Basin. The committee will outline the desired changes. They may include conversion of Bumping Reservoir to a permanent lake with fish ladder access, fish passage systems at all existing dams, restoration of reaches deemed critical to fish habitat, and normalization of stream flows to facilitate fish migration..**\$TBD**

Construction Funding Sources

1. The primary objective of the Act is to restore the Yakima River Basin as the main salmon habitat of the Columbia River Basin. Restoring normal flows and removing obstacles to fish passage will allow biologists to successfully complete this objective. The **Federal Government** will pay 65%.
2. **Irrigators.** BOR estimates that the benefit of this Act to irrigators is \$4.16 million annually. They will be assessed this entire amount prorated among junior water rights holders on a per acre assessment. (\$4.16 million divided by 225,000 acres = \$18 per acre of irrigated land).
3. **State** Funds will provide 17.5% of costs based on Title XII.
4. **Counties** assess property taxes in each of the 3 counties to pay the local share of construction.
5. **Power generation** rights and the ability to adapt the system to store hydroelectric energy is an additional revenue production option. The top 12 inches of the reservoir based on a 1000 foot drop in elevation has the same potential power capacity as Priest Rapids Dam for a 6 hour period. Use of this capacity to increase peak demand power generation and also to replace wind energy when the wind is not blowing are saleable assets that will not hinder the main function of the reservoir. Further research is needed to set a firm value.

Operating Fund Sources

1. The **Bonneville Power Administration** shall provide the power to operate the pumping plants as part of the salmon restoration activity (as in the Umatilla Project). The BOR shall coordinate the use of the pumping plants to maximize the efficiency of the system and normalize streamflows in the Columbia River. The secondary use of the pumping plant to store energy in additional reservoirs shall be permitted if deemed cost-effective.
2. **Power use fees.** The power storage system will pay usage fees to be applied to operations.
3. **Recreational Use Fees.** Recreational use fees may be assessed.
4. **Irrigators** may purchase additional water if available. (throughout the River Basin).
5. **Downstream Seepage.** Sale of seepage water rights downstream from the dam will offset operating costs.
6. **Efficiency Benefits.** 50% of net savings from improvements in irrigation systems may be assessed to pay operating costs.
7. **Department of Ecology.** DOE will pay operating costs from usage and discharge fees in the

Basin

8. **Municipal Funding.** Water sales to municipalities will generate revenue.

PH 10:00

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY BUDGETS RE: SUPPLEMENTAL APPROPRIATION TO THE 2008 CURRENT EXPENSE FUND NO. 0000-101, PROSECUTOR'S OFFICE, DEPT. 117, BUDGET IN THE AMOUNT OF \$41,001

WHEREAS, the Prosecutor's Office has requested a supplemental appropriation to the Current Expense Fund No. 0000-101, Dept. 117, in the amount of \$41,001 for witness fees on a murder case that was moved to Asotin County; and

WHEREAS, a public hearing was held on Monday, August 18, 2008, at 10:00 AM at which time the public was given an opportunity to speak in favor or in opposition to the proposed supplement; and,

WHEREAS, the Board finds said supplement to be in the best interest of the citizens of Benton County; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of Benton County Commissioners that a supplemental appropriation to the 2008 Current Expense Fund No. 0000-101, Prosecutor's Office, Dept. 117, in the amount of \$41,001 be approved per the attached request.

Dated this day of, 2008

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

Commissioners' Date Stamp:

**TRANSMITTAL
REQUEST FOR SUPPLEMENTAL APPROPRIATION**

Fund Name: Current Expense	Fund Number: 0000-101
Dept Name: Prosecutor's Office	Dept Number: 117

Request Summary

Expenditure		Supplement	Revised
BARS Number	Item Name	Amount	Budget
515.100.4109	Witness Fees	22,376	35,814
515.100.4127	Evidence and Briefing	3,457	19,457
515.100.4301	Travel	15,168	18,168
Total Supplement		\$41,001	

Revenue		
Fund Number	Item Name	Amount
	Beginning Fund Balance	41,001
Total Revenue		\$41,001

Basis for Supplement:
 Kevin Hilton was charged with two counts of Aggravated Murder and found guilty in 2003. The Court of Appeals overturned the conviction and granted a new trial. The Judges in Benton County recused themselves and a Judge was brought in from Asotin County. A motion for change of venue was granted and trial was moved to Asotin County for trial in January/February 2008.

Review Comments

Commissioners: _____

 Auditor's Office: _____

Commissioners

Charles L. Olson
 CHAIRMAN
Mar E. Bennett
 COMMISSIONER
Geo M. Bouemon
 COMMISSIONER

Approved for Hearing
 Denied

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY BUDGETS RE: SUPPLEMENTAL APPROPRIATION TO THE 2008 CRIME/VICTIM FUND NO. 0120-101, IN THE AMOUNT OF \$18,241

WHEREAS, the Prosecutor's Office has requested a supplemental appropriation to the Crime/Victim Fund No. 0120-101, Dept. 000, in the amount of \$18,241 to add money for an additional .5FTE to current line item to make it a full time position in the Juvenile Division; and

WHEREAS, a public hearing was held on Monday, August 18, 2008, at 10:00 AM at which time the public was given an opportunity to speak in favor or in opposition to the proposed supplement; and,

WHEREAS, the Board finds said supplement to be in the best interest of the citizens of Benton County; **NOW THEREFORE,**

BE IT RESOLVED, by the Board of Benton County Commissioners that a supplemental appropriation to the 2008 Crime/Victim Fund No. 0120-101, in the amount of \$18,241 be approved per the attached request.

Dated this day of, 2008

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

Commissioners' Date Stamp:

TRANSMITTAL

REQUEST FOR SUPPLEMENTAL APPROPRIATION

Fund Name: CRIME/VICTIM FUND	Fund Number: 0120-101
Dept Name: Prosecutor's Office	Dept Number: 000

Request Summary

Expenditure		Supplement	Revised
BARS Number	Item Name	Amount	Budget
515.700.1684	Legal Secretary II - Salary	13,273	27,996
515.700.2101	FIC/ Social Security	1,018	11,519
515.700.2103	Medical	2,967	38,686
515.700.2104	Retirement	983	10,785
Total Supplement		\$18,241	

Revenue

Fund Number	Item Name	Amount
334-04-2004	CTED - Crime Victim Advocacy	17,212
	Beginning Fund Balance	1,029
Total Revenue		\$18,241

Basis for Supplement:

The last legislature budgeted money to fund additional Victim/Witness activities in County Prosecuting Attorney Offices. This includes supporting Victim/Witness personnel to assist victims and witnesses during the criminal justice process. This support includes providing information about the criminal justice process and status of criminal cases, accompanying victims to criminal court proceedings and providing support during legal processes including assistance with impact statements and restitution. Our proposal is to add the money for an additional .5FTE to current line-item 515.700.1684 and make it a full-time position in the Juvenile Division. This money is available July 1, 2008. To the extent that the additional .5FTE position is not completely reimbursed by the additional State funding, it will be covered by existing revenues in the Crime/Victim Fund.

Review Comments

Commissioners: _____

 Auditor's Office: _____

Commissioners

Claude R. Olson
 CHAIRMAN
Mae E. Benitez
 COMMISSIONER
Do M. Boeman
 COMMISSIONER

Approved for Hearing

Denied

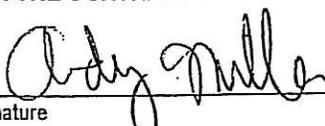
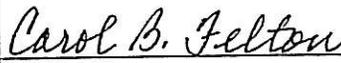
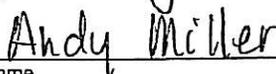
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MAY 22 2008

CTED Intergovernmental Agreement Face Sheet
v. 1.3-4/21/2004

Intergovernmental Agreement Number S09-31100-703

Washington State Department of Community, Trade and Economic Development
Community Services Division
Office of Crime Victims Advocacy
SFY 2009 VictimWitness Units

1. Contractor Benton County Prosecuting Attorney's Office 7122 West Okanogan Place Kennewick, Washington 99336		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative Margaret Ault Administrator Phone: 509.735.3591 Fax: 509.736.3066 margaret.ault@co_benton.wa.us		4. CTED Representative Chris Fenno PO Box 48304 Program Coordinator 906 Columbia Street SW Phone: 360.725.2896 Olympia, WA 98504-8304 Fax: 360.586.7176 christinef@cted.wa.gov	
5. Contract Amount \$ 35,468.00	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date 7/1/2008	8. End Date 6/30/2009
9. Federal Funds (as applicable) N/A		Federal Agency N/A	CFDA Number: N/A
10. Tax ID# 91-6001296	11. SWV# N/A	12. UBI# N/A	13. DUNS# N/A
14. Contract Purpose: To fund Victim/Witness activities in county Prosecuting Attorney's Offices.			
The DEPARTMENT and CONTRACTOR acknowledge and accept the terms of this CONTRACT and attachments and have executed this CONTRACT on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this CONTRACT are governed by this CONTRACT and the following other documents incorporated by reference: INTERGOVERNMENTAL AGREEMENT including CONTRACTOR'S Application for Funding, as accepted and amended by the DEPARTMENT.			
FOR THE CONTRACTOR		FOR THE DEPARTMENT	
			
Signature		Carol B. Felton	
		Interim Assistant Director	
Name		5/23/08	
Benton Co. Prosecutor		Date	
Title		APPROVED AS TO FORM ONLY	
5/20/08		Sandra Adix	
Date		Assistant Attorney General	
		4/1/2008	
		Date	

From: Andy Miller
To: Margaret Ault
Date: 4/2/2008 10:46:54 AM
Subject: Fwd: Victim/Witness Funding Pre-application Survey

>>> "Gipson, Pearl (CTED)" <PearlG@CTED.WA.GOV> 4/2/2008 10:26:56 AM >>>
April 2, 2008

Dear County Prosecutor:

The Washington State Legislature has approved an additional allocation to be distributed (July 1, 2008) throughout the state to ensure that each county prosecutor's office will have at least one full time victim/witness staff position. County offices that currently have less than one full time victim/witness staff position will receive the additional funding needed to increase that staff position to a full time equivalency. In order for us to determine the base amount needed to support counties with less than one full time victim/witness position, please provide us with the information requested below.

Each county will continue to receive the \$18,256 currently allotted. An additional allocation will be added to this amount to further support victim/witness activities in each county. The add-on amount will be determined when a review is completed of the resources needed to fund counties with less than one full time victim/witness staff position.

Please return the information requested on the enclosed Pre-Application Survey to our office by fax or email no later than Friday, April 11, 2008. The application for funding is scheduled to be released on or before April 18, 2008. It is our intent to distribute contracts for signature the week of May 27th with an effective date of July 1, 2008.

Thank you for your continued support to victims of crime in Washington State.

Sincerely,

Pearl

<<pre application survey.doc>>
Pearl Gipson-Collier
Associate Director
Office of Crime Victims Advocacy
<<http://www.cted.wa.gov/site/244/default.aspx>>
Post Office Box 48304
Olympia, WA 98504-8304
866.857.9889/toll free
360.725.2891/direct line
360.586.7176/fax line
pearlg@cted.wa.gov

Every Victim, Everywhere. No Exceptions.

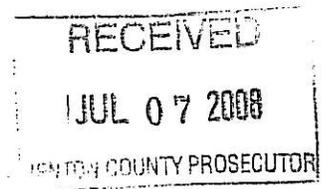
<<Picture (Metafile)>>

✓

RUN DATE: 07/03/08
Run Time: 10:29

BENTON COUNTY TREASURER
Duane A. Davidson
Financial Statement
6/1/2008 through 6/30/2008

Report
Page: 23



0120-101 CRIME VICTIM COMPENSATION
CASH ACCOUNT

Beginning Balance		\$123,207.08
Taxes Collected	\$0.00	
General Receipts	20,119.68	
Transfer of Funds(+)	0.00	
Miscellaneous Collections	0.00	
Total Receipts		20,119.68
Warrants Issued	11,070.53	
Warrants Redeemed	0.00	
Bond Redeemed	0.00	
Coupon Interest Paid	0.00	
Transfer of Funds(-)	0.00	
Remittances	8,159.88	
Less: Total Disbursements		19,230.41
Ending Balance		\$124,096.35

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>	
Meeting Date:	<u>8/4/08</u>	Execute Contract	_____
Subject:	<u>Supplemental</u>	Pass Resolution	_____
	<u>Budget</u>	Pass Ordinance	_____
Prepared by:	<u>M.Ault</u>	Pass Motion	_____
Reviewed by:	<u>Andy Miller</u>	Other	<u>X</u>
		Consent Agenda	_____
		Public Hearing	_____
		1st Discussion	_____
		2nd Discussion	_____
		Other	<u>X</u>

BACKGROUND INFORMATION

The last legislature budgeted money to fund additional Victim/Witness activities in County Prosecuting Attorney Offices. This includes supporting Victim/Witness personnel to assist victims and witnesses during the criminal justice process. This support includes providing information about the criminal justice process and status of criminal cases, accompanying victims to criminal court proceedings and providing support during legal processes including assistance with impact statements and restitution. Our proposal is to add the money for an additional .5FTE to current line-item 515.700.1684 and make it a full-time position in the Juvenile Division. This money is available July 1, 2008. To the extent that the additional .5FTE position is not completely reimbursed by the additional State funding, it will be covered by existing revenues in the Crime/Victim Fund.

SUMMARY

Our proposal is to add the money for an additional .5FTE to current line-item 515.700.1684 and make it a full-time position in the Juvenile Division.

RECOMMENDATION

Schedule a public hearing to consider a supplement to our 2008 budget in the amount of \$18,241.

FISCAL IMPACT

None for Current Expense.
This money is for the Crimes/Victims Budget

MOTION

Move to schedule a public hearing for as soon as possible after appropriate notice is given.

10:30

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 18 Aug 2008	Execute Contract	Consent Agenda
Subject: Badger Mountain	Pass Resolution X	Public Hearing
Memo Date: 13 Aug 2008	Pass Ordinance	1st Discussion X
Prepared By: AJF	Pass Motion	2nd Discussion
Reviewed By: LSK	Other	Other

SUMMARY & BACKGROUND

For Board consideration is the proposal from the Friends of Badger Mountain (FOBM), requesting that Benton County accept up to three additional parcels of property as a donation from FOBM when and if the organization is able to acquire the properties from their current owners. Staff has learned that FOBM has been in detailed discussions with one of the owners and is prepared to make that owner an offer pending the decision of Benton County. FOBM's vision is that these three parcels be fully-integrated into the existing Badger Mountain Centennial Preserve.

The Park Board supports this proposal.

Staff sees no problems with the proposal and does not believe it would create any new hardships.

If Commissioners accept the proposal, staff has prepared a resolution that reflects the provisions of the original Badger Mountain proposal (Resolution 05-279), and that would lay the foundation for accepting the donated properties into the existing Preserve.

FISCAL IMPACT

No direct costs. Per the letter from FOBM, I have specifically asked them about any and all costs associated with the acquisition of the properties (title search, environmental report, closing, escrow, etc). FOBM states that they will handle all costs. Addition of these properties to the existing Preserve would be benign in terms of budget and would not affect Parks costs in any significant way. There would be some modest expenditure of staff time dealing with paperwork and other clerical matters of property transfers and such.

ATTACHMENTS

- Draft of new possible resolution for Commissioner consideration
- Original Badger Mountain Centennial Preserve resolution
- Packet, with cover letter, received from FOBM in June.

#

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF BADGER MOUNTAIN CENTENNIAL PRESERVE –
ACCEPTANCE OF ADDITIONAL DONATED PROPERTIES

WHEREAS, Benton County created the "Badger Mountain Centennial Preserve" (Preserve) in 2005 (Resolution 05 273) to provide for passive recreation, habitat preservation, aesthetic values, and a "bank" for mitigation of future shrub-steppe habitat disturbance; and,

WHEREAS, the Preserve was designated as a Benton County park, to be managed with and by the budgets and personnel of the Facilities and Parks Department; and,

WHEREAS, Benton County has been approached by the "Friends of Badger Mountain" organization and asked to accept the donation of three additional properties that are adjacent to the existing Preserve that Friends of Badger Mountain will procure entirely at their expense; and,

WHEREAS, the terms of said donation of properties are that the three donated parcels will be combined into and managed as a part of the existing Badger Mountain Centennial Preserve, and that Benton County will incur no additional expenses related to the acquisition or transfer of these properties; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of Benton County Commissioners that the donation of three parcels of property totaling approximately 73 acres in combined area, on the south face of Badger Mountain and adjacent to the existing Badger Mountain Centennial Preserve, is approved; and,

BE IT FURTHER RESOLVED, that when received by Benton County, the three new parcels will be combined into the Badger Mountain Centennial Preserve and administered by the Benton County Facilities and Parks Department in their "natural condition" as part of the Preserve. The additional acreage will be "banked" by Benton County for use as possible mitigation for future shrub-steppe disturbance, bringing the total banked acreage of the Preserve to 647 acres.

Dated this _____ day of _____, 2008.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

original: file
cc: Auditor, Parks, Prosecutor (Ozuna)

Prepared by: A.J. Fyall

RESOLUTION 05 279

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON IN THE MATTER OF CREATION OF "BADGER MOUNTAIN CENTENNIAL PRESERVE"

WHEREAS, the landscape of Benton County is defined as much by its ridges and buttes as any other physical feature; and,

WHEREAS, citizens and the community have long used these ridges for passive recreation, appreciation of the natural environment, solitude, and as a visual beacon; and,

WHEREAS, the success and subsequent economic and population growth of the Tri-City area is having a consequence of expanding residential growth that is putting pressure on the landscape, manifested by encroachment of residential development onto ridges and buttes such as Badger Mountain; and,

WHEREAS, Badger Mountain, as the most prominent ridge in the metro area, is a popular exercise area for hikers, an important refuge for shrub-steppe flora and upland birds, and the best vantage point in the Tri-Cities to see the extent and impacts of the "ice age floods" on a landscape scale; drew the attention of concerned citizens who mounted a campaign to purchase a portion of the mountain for permanent preservation as public property; to preserve recreational, ecological, and aesthetic values of the mountain; and,

WHEREAS, this effort to preserve Badger Mountain has been praised and endorsed throughout the Tri-City community by business and economic development interests, the tourism industry, local governments, recreation groups, and the media; and,

WHEREAS, the community organization known as "Friends of Badger Mountain" developed a plan for purchase of 574 acres of property held by Badger, Incorporated. Said acreage encompasses most of the slopes and ridgelines of Badger Mountain and is comprised of all of the property described in the following eight tax parcel numbers:

- 1-2998-201-1930-001
- 1-2998-201-1930-002
- 1-2998-201-1930-003
- 1-2998-201-1930-004
- 1-2998-100-0002-001
- 1-2998-100-0001-000
- 1-2898-200-0002-002
- 1-2898-400-0000-000; and,

WHEREAS, Friends of Badger Mountain coordinated with The Trust for Public Land to develop funding of said purchase and subsequent transfer of then-acquired properties to Benton County to be held permanently in the public trust. The Trust for Public Land purchased an option on the 574 acres from Badger, Incorporated to secure the properties for later execution of the sale as described in this resolution. Said funding scheme included state and local governments, as well as private fundraising conducted by Friends of Badger Mountain; and,

WHEREAS, all needed monies for said purchase from Badger, Incorporated have been raised and authorized as of the time of this resolution, including:

- \$485,000.00 from the Energy Facility Site Evaluation Council,
- \$100,000.00 from the City of Richland,
- \$75,000.00 from the Friends of Badger Mountain,
- \$25,000.00 from Benton County, via the Park Development Fund,

for a total of \$685,000.00 total purchase price for the subject properties; and,

orig: Fcl

cc: Adam Fjall, Auditor, R. Ozuna

WHEREAS, all necessary conditions have been met so that the buyer, Benton County, may acquire the subject properties, including:

- an approved independent "Member Appraisal Institute" appraisal of the subject properties; as well as a review of the appraisal;
- an approved "Phase One" environmental site assessment of the subject properties;
- an approved "grant agreement" with the Energy Facility Site Evaluation Council, whereby the Energy Facility Site Evaluation Council will contribute \$485,000.00 toward the purchase price of the subject properties;
- an approved "purchase and sale agreement" with The Trust for Public Land that establishes the terms and mechanisms for the actual transfer of fee title for the subject properties; and,

WHEREAS, the Benton County Park Board has endorsed this project from the beginning and has demonstrated its enthusiasm in receiving the 574 acres of Badger Mountain properties into the Benton County Parks System, and in allocating \$25,000.00 from the Park Development Fund for said purchase; NOW THEREFORE,

BE IT RESOLVED, by the Board of Benton County Commissioners that the purchase and retention of the 574 acres of real property known commonly as "Badger Mountain" by Benton County is approved and authorized per terms of the "purchase and sale agreement", attached hereto, which the Chair is authorized to execute; and,

BE IT FURTHER RESOLVED, Benton County accepts the grant from the Energy Facility Site Evaluation Council in the amount of \$485,000.00, which will be placed into the escrow account; and that the Chair is authorized to sign such "grant agreement" to accept the grant; and

BE IT FURTHER RESOLVED, that Benton County's share (\$25,000.00) of the purchase price for said properties shall be paid into an escrow account administered by Chicago Title Company per the terms of the "purchase and sale agreement", and shall be paid from the Park Development Fund #0110-102;

BE IT FURTHER RESOLVED, that when received by Benton County, the said properties will be administered by the Benton County Facilities and Parks Department in its "natural condition" as to adhere to the intent of the community preservation effort, with no imposition of user fees and with only the most minor and modest improvements made to the properties. These 574 acres will be "banked" by Benton County as use for possible mitigation for future shrub-steppe disturbance. To recognize Benton County's centennial that is occurring in 2005, to honor the preservation intent of the acquisition, and to help avoid confusion with the nearby City of Richland facility know as "Badger Mountain Park"; the subject property will be known formally as "Badger Mountain Centennial Preserve".

Dated this 1st day of June, 2005.



Chairman of the Board
MAX E. BENTZ, JR. - OPPOSED

Member

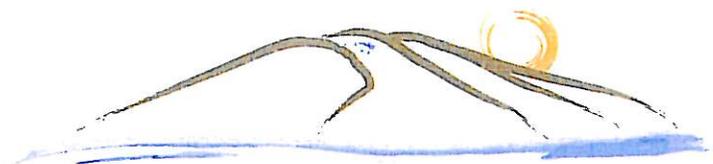
Member

Constituting the Board of County
Commissioners of Benton County
Washington.

Attest.....
Clerk of the Board

Advisory Council

Frank Armijo
Bob Ferguson
Bill Lampson
Mike Lawrence
Sandy Matheson
Kris Watkins



Friends of
BADGER MOUNTAIN

— For Today...For Our Future —

RECEIVED

JUN 12 2008

BENTON COUNTY
COMMISSIONERS

Max	<input checked="" type="checkbox"/>
Léo	<input checked="" type="checkbox"/>
Claude	<input checked="" type="checkbox"/>
David	<input checked="" type="checkbox"/>
Loretta	<input checked="" type="checkbox"/>
Other	A Fjall

Dear Commissioners:

The Friends of Badger Mountain are pleased to announce, with the approval of our Board of Directors, that we have opened discussions with Mr. Tyler Wagner on the possibility of purchasing 25 acres Mr. Wagner owns adjacent to the Badger Mountain Centennial Preserve. Mr. Wagner's property is one of a trio of nearly identical parcels at this location.

FOBM's long-term plan is to eventually purchase all three 25-acre parcels adjacent to the south side of the Preserve that the previous owner of Preserve property, Sheldon Shore, sold off a few years prior to the sale of the remaining larger parcels to Benton County. Mr. Wagner's property is the middle parcel of this three-parcel set and directly borders both of the other parcels (see attached Preserve and Adjacent Lands map).

Acquisition of these properties will expand the Preserve along its natural mountain boundary and further help Benton County and the surrounding communities preserve our scenic ridgelines. It will also afford us the opportunity to expand our trail system, which has become very popular with Benton County and Tri-City residents (see attached SkyLine Trail Hiker Count for April and May).

FOBM's immediate plan is to negotiate a final purchase price with Mr. Wagner in the form of a sales agreement by the end of June 2008. We expect the purchase price range will be \$1000 - \$1200 per acre, which is comparable to the price per acre Benton County paid Mr. Shore for the current Preserve property. FOBM currently has these funds available from the many generous donations we have received from the public over the past few years. For the other two adjacent properties, FOBM is currently conducting a fund-raising campaign to raise money for the purchase of these properties. Depending on the success of this fund-raiser, we plan to approach the other two owners within the next six months.

Prior to purchase, FOBM will conduct a "Phase I Environmental Site Assessment", an appraisal, and a title search; all in accordance with Benton County property procurement standards, and all at FOBM's expense.

Once we purchase this property, we would like to donate it to the Benton County Centennial Preserve under the same provisions the County established when it bought the original property from Mr. Shore: to be held in perpetuity as a non-motorized access for the recreational use of the public.

FOBM will continue improvement projects on the Preserve, such as those we have done over the past several years to build and maintain trails, improve public access, and protect habitat (see attached Project Summary).

FOBM is pleased that the Benton County Parks Board resolved to support the acquisition of these three parcels in February of 2007 (see attached Resolution). We now need full concurrence from the County that it will accept these three properties as new additions to Badger Mountain Centennial Preserve if purchased and donated by Friends of Badger Mountain.

We respectfully request your acceptance of our offer.

Regards,

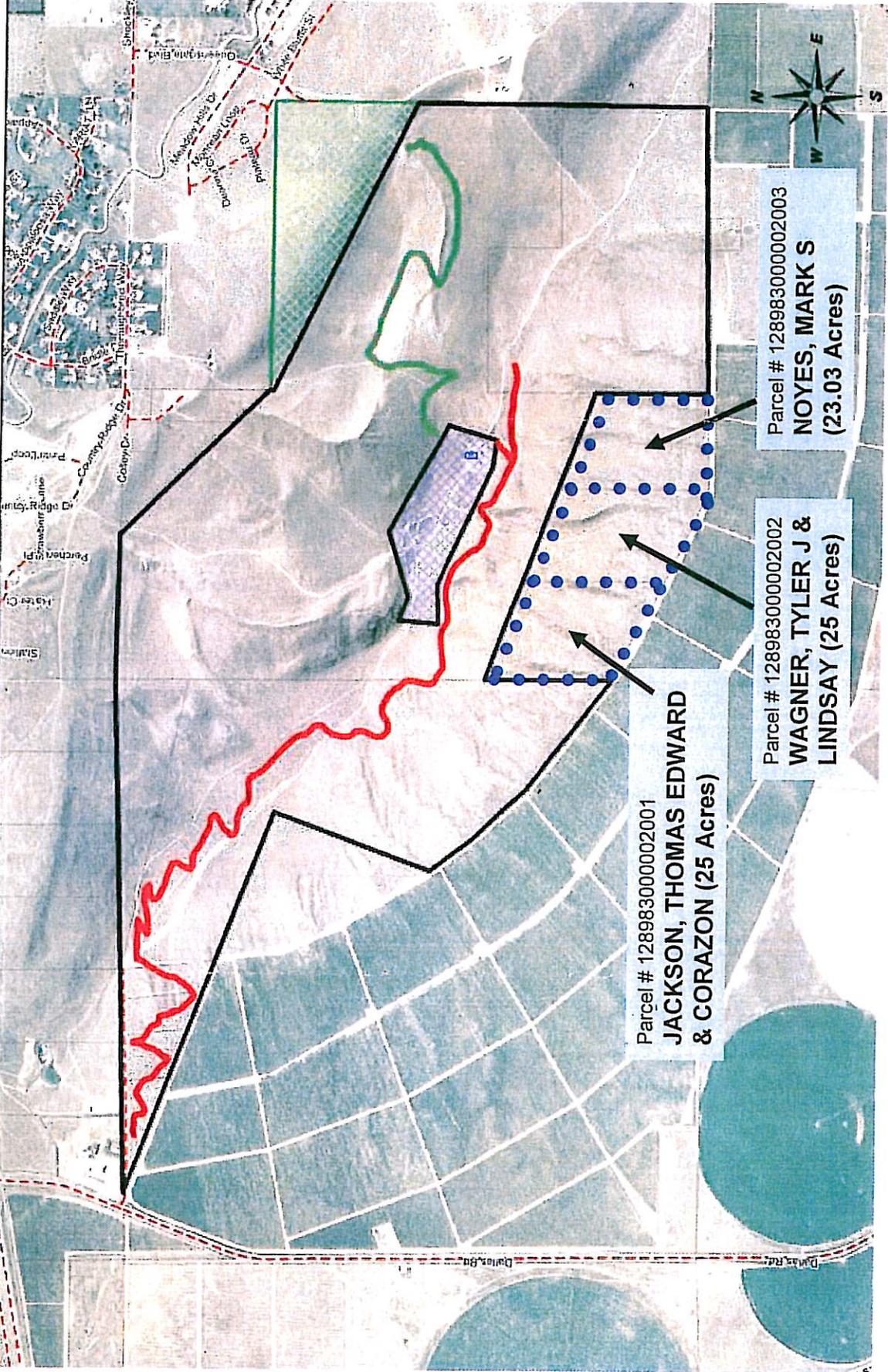


Sharon Grant
President
Friends of Badger Mountains

Legend

-  Budget Mountain Boundary
-  Interior Holding
-  City of Richland's Wetzelville Park
-  Parcels
-  Road

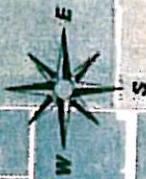
Cattigapho View in April 2004



Parcel # 128983000002001
**JACKSON, THOMAS EDWARD
& CORAZON (25 Acres)**

Parcel # 128983000002002
**WAGNER, TYLER J &
LINDSAY (25 Acres)**

Parcel # 128983000002003
**NOYES, MARK S
(23.03 Acres)**



Friends of Badger Mountain, Trail Work Accomplishment

- Canyon Trail, Design, Construction and Maintenance
- Skyline Trail, Design, Construction and Maintenance
- June '07: 35 Rock Steps in switchback at the beginning of the Canyon Trail completed
- Nov. '07: Gravel Hauler named the Badger Buggy (REI \$5000 Donation & FOBM \$2500)
- Spring '08: 1000 volunteer hours, 40 tons of rock to shore up the upper Canyon Trail edge (two Juvenile Justice crew work parties help with this work); gravel placed on both trails where needed

Not as much new gravel was needed this year which says that we are getting the trails in good long term shape – Jim Langdon, Spring 2008



BENTON COUNTY PARK BOARD
RESOLUTION

**IN THE MATTER OF BADGER MOUNTAIN CENTENNIAL PRESERVE,
DONATION OF ADDITIONAL PROPERTIES**

WHEREAS, Badger Mountain is a valuable recreational resource used by cyclists, equestrians, hikers, and naturalists as a way to experience the outdoors in the very heart of the rapidly urbanizing Tri-Cities metropolitan area; and,

WHEREAS, the creation of the Preserve was almost entirely through the donation of non-County monies used to purchase the original 574 acres of property for "natural park purposes; and,

WHEREAS, the community-recognized volunteer steward of Badger Mountain Centennial Preserve – the "Friends of Badger Mountain" (Friends) has continued to raise monies for the use of acquiring additional adjacent properties to the Preserve; and,

WHEREAS, the Park Board recognizes the value both recreationally and aesthetically of enlarging the Preserve from its existing 574 acres; and recognizes that Friends has been an excellent community partner in establishing the Preserve as one of the premiere recreational destinations in the Tri-Cities area; and,

WHEREAS, the Friends have approached Benton County in February of 2007 with the offer to purchase and donate to the County up to three additional properties on the south face of Badger Mountain to fill-in a "gap" in the park's boundary and make the entire south side of the Preserve more recreationally-accessible; and,

WHEREAS, the Benton County Park Board concurs that such a donation is in the best interest of the Preserve and of the entire County Parks program, and recognizes that Benton County will not be requested nor required to contribute any of its own funds to the acquisition of these additional properties; **NOW THEREFORE**,

BE IT RESOLVED, that the Benton County Park Board affirms its support of the Friends of Badger Mountain's efforts to acquire up to approximately 75 acres of privately-held property on the south face of Badger Mountain, with the expectation that said properties will be donated to Benton County for accretion to the existing Badger Mountain Centennial Preserve. Such donation will be contingent upon Friends' ability to complete the purchase with its own funds, and complete any environmental assessments, title logistics, or other due diligence at its own expense.

Dated this THIRTEENTH day of FEBRUARY 2007.


Chair
Representing the Park Board of
Benton County, Washington.

Attest.....

Clerk of the Board

cc: Parks, file
Commissioners

Fyall

10:40

10:40 AM

OPEN SPACE NETWORK – SCOTT WOODWARD

NO INFORMATION PROVIDED

11:00

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>8-18-2008</u> Subject: <u>CID</u> Prepared by: <u>LSK</u> Reviewed by: <u>LSK</u>	Execute Contract Pass Resolution Pass Ordinance Pass Motion Board Direction X	Consent Agenda Public Hearing 1st Discussion 2nd Discussion Workshop X

SUMMARY BACKGROUND INFORMATION

Communication on "Benton County Water Rights and Transfer Proposal" between Columbia Irrigation District 's attorney, Terry Miller, and Benton County's attorney, Kathleen Fitzgerald, had been going on for quite awhile. There were three outstanding issues to be resolved to close out these discussions.

1. Pay the outstanding irrigation assessments on specific parcels - finished.
2. Submit add land petitions for parcels into the Columbia Irrigation District's boundaries – approved by Columbia Irrigation District, next to be presented in August to the Boundary Review Board.
3. Submit applications to transfer water rights from parcels to parcels – in the review process by Columbia Irrigation District.

The next step (not the final step) is signing an Annual License Agreement with Columbia Irrigation District. The annual agreement fee will be either \$0.01 per square foot or a flat \$25.

RECOMMENDATION

Approve signing the Annual License Agreement.

ANNUAL LICENSE AGREEMENT

THIS ANNUAL LICENSE AGREEMENT entered into this 18th day of August, 2008, by and between the **BENTON COUNTY**, hereinafter referred to as "licensee", and the **COLUMBIA IRRIGATION DISTRICT**, hereinafter referred to as "licensor".

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. Grant of License; Description of Premises: Licensor grants to licensee a license to utilize the below-described property; and, further, grants a license to licensee for a pumphouse, on the below-described premises owned by the licensor:

see attachments "A" and "B"

2. Consideration: Licensee agrees to pay to the licensor an annual license fee as set by the Board of Directors of the licensor for each year. This license is an annually renewable license, renewable at the option of the licensor, and, with the consent of the licensor, renewable only upon the terms and conditions as set by the licensor and the payment of the annual fee as set by the licensor. The payment of the annual license fee shall be made no later than April 30th of each year and, once paid, shall be non-refundable. As additional consideration for this license, the licensee, at its sole cost and expense, agrees to remove trash and other debris from licensor's property, to keep the growth of grass and other vegetation, excepting lawn shrubs, under a height of six inches (6"), agrees to prevent waste and keep the premises free and clear of refuse and weeds, and agrees to abide by the terms and provisions of this license. In addition to the consideration paid to the licensor hereunder, additional benefit to the licensor is the preventing of accumulation of refuse and other debris and weeds upon licensor's property and to generally maintain the right of way in an attractive and aesthetically pleasing

condition. Additional benefit and consideration to the licensee is the security, care and preservation of the licensee's property and the other terms and provisions of this license.

3. Irrigation of Right of Way: Licensee acknowledges and agrees that the Columbia Irrigation District right of way identified above is non-irrigable and that the licensee will not irrigate the same with waters withdrawn from the Columbia Irrigation District System.

4. Amendments: Licensor reserves the right to amend any term or provision of this license upon written notice given by the licensor to the licensee. Provided, however, except in the case of emergency and except as otherwise provided in this Agreement, amendment to the terms and provisions of this Agreement shall occur no more often than annually, and the license fee, which once set by the Board of Directors, shall not change more often than annually.

5. Claims of Ownership: Licensee acknowledges the ownership of the above-described premises by the licensor and on behalf of the licensee, its heirs, successors and assigns, claims no interest in licensor's above-described real property except as specifically described in this License Agreement which is acknowledged to be revocable pursuant to the terms and conditions contained herein. Licensee specifically states that on behalf of itself, its heirs, successors and assigns that it has and claims no interest in said property by ownership, adverse possession or prescriptive rights, easement or otherwise, in or to the herein described real property owned by the licensor. Additionally, licensee acknowledges that the continued use of the premises by the licensee, pursuant to this License Agreement, shall not, in any manner create or be claimed as an ownership in the licensor's property or any interest therein.

6. Termination:

a. Either party may terminate this license at any time by giving written notice to the other specifying the date of termination.

b. This license may be terminated immediately by the licensor in

the case of emergencies within the Columbia Irrigation District facilities with notice being given in the most practicable manner possible, followed by written notice.

c. Upon termination of this license, licensee shall remove all improvements installed upon the licensed premises, shall further terminate use of licensor's property in all respects, including, but not limited to, ingress and egress to licensee's property, shall remove all debris and weeds from the licensed premises, leaving the same in a clean and clear condition, free of refuse and weeds, and further licensee shall make all repairs as are necessary to leave the premises in a safe condition and repairing any damages to the premises. All such removal shall be at the sole cost and expense of the licensee.

d. Failure of the licensee to pay the annual renewal fee charged by the licensor upon the licensor's approval of a renewal as provided for herein.

7. Reserved Rights of Licensor: Licensor shall, at all times, have the right to enter over and across the above described property, and perform all necessary activities on behalf of the licensor in carrying out its primary functions of supplying irrigation water, and the maintenance of the facilities attendant thereto. The licensee acknowledges that the rights of the licensor in the operation of the irrigation facilities and all attendant structures, roads, fixtures and improvements, and the maintenance and operation thereof shall, at all times, remain and be paramount to the rights granted to the licensee hereunder. The licensee further acknowledges and agrees that the licensee shall have no claim whatsoever against the licensor as a result of any damages to licensee, licensee's agents, lessees, invitees, guests, successors, or assigns or to licensee's property or facilities placed upon the herein licensed property as a result of the operations of the licensor, including entry upon the above described property for such purposes by the licensor.

8. Indemnity and Hold Harmless: Licensee further covenants and agrees

to hold harmless, indemnify and defend the licensor with regard to all claims against the licensor, including claims asserted by licensee's employees that result or occur from this license, or upon the property covered by this license, or as a result of licensee's use, activities, operation or maintenance of or on the property described herein or the facilities located upon the property described herein. Such cost and indemnity shall include all costs with reference to any such claim, including, but not limited to, attorney's fees and court costs. Additionally, licensee specifically waives all rights of immunity under the provisions of the Washington State Industrial Insurance law, RCW 51.04.010, et.seq., for all claims, causes of actions and demand made by licensee or licensee's employees, agents, servants, contractors against the licensor and/or its employees, agents, servants, or contractors.

9. Governing Law: It is agreed that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Washington.

10. Entire Agreement: This License Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon any party, except to the extent incorporated in this Agreement.

11. Modification of Agreement: Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing, signed by each party or an authorized representative of each party.

12. Notices: Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail, if sent to the respective address of each party as set forth below.

13. Assignment: The parties agree that this Agreement is personal to the licensee and may not be assigned or transferred to any other party, firm, corporation or other entity without the prior express written consent of the licensor.

14. Binding Effect: The Agreement and terms and provisions as set forth
Annual License Agreement - Page 4

CONTRACT REPRESENTATIVES

The parties' representatives are as follows:

- a. For LICENSEE: Loretta Smith Kelty, Contract Manager
Benton County Commissioners
P.O. Box 190
Prosser, WA 99350
(509) 786-5600 Phone
(509) 786-5625 Fax

- b. For LICENSOR: Larry Fox, Manager
Columbia Irrigation District
10 East Kennewick Avenue
Kennewick, WA 99336
(509) 586-8118 Phone
(509) 586-0485 Fax

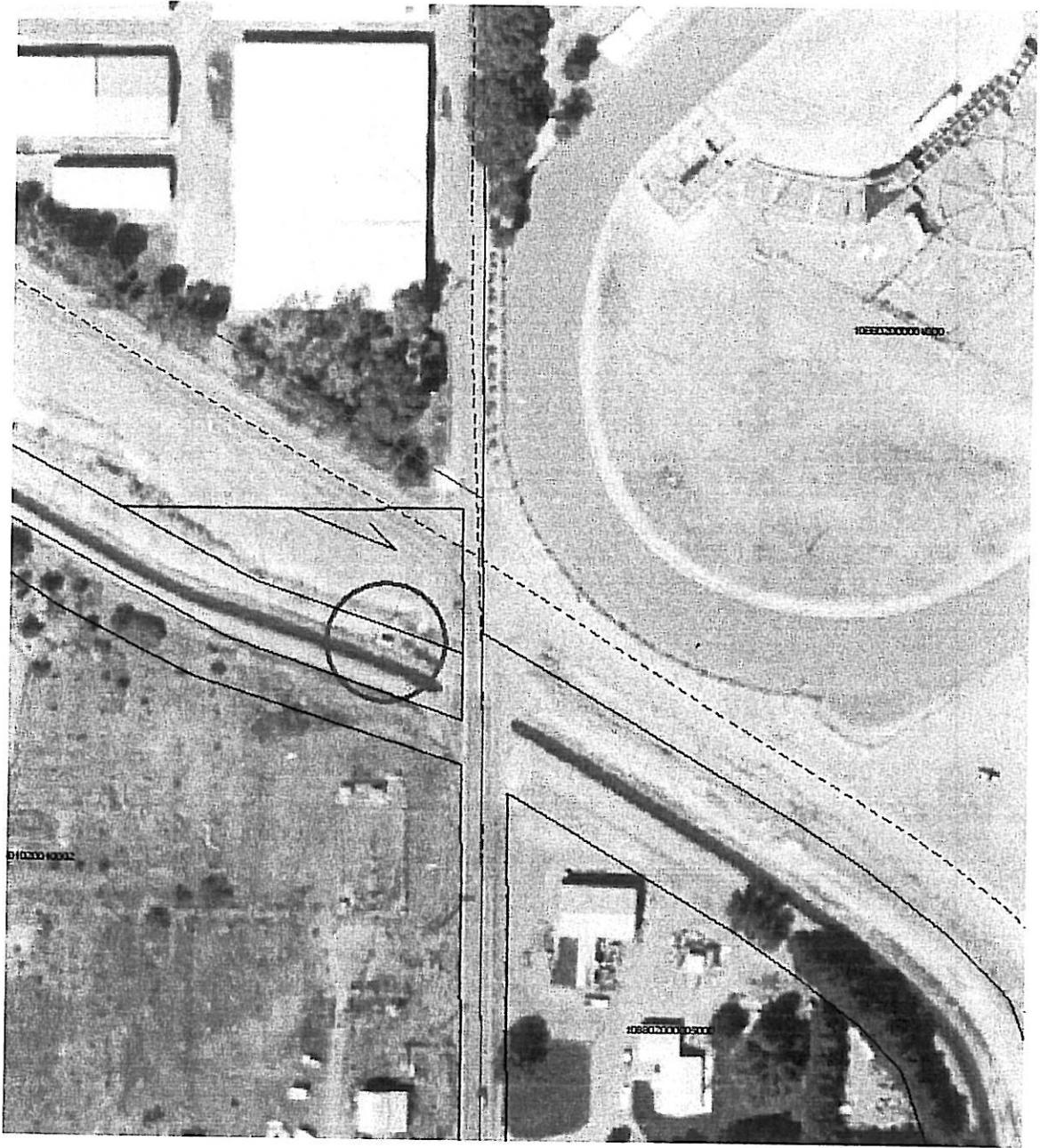
Each party must have a contract representative at all times this Annual License Agreement is in force. A party may change its representative by providing prompt written response to the other party.

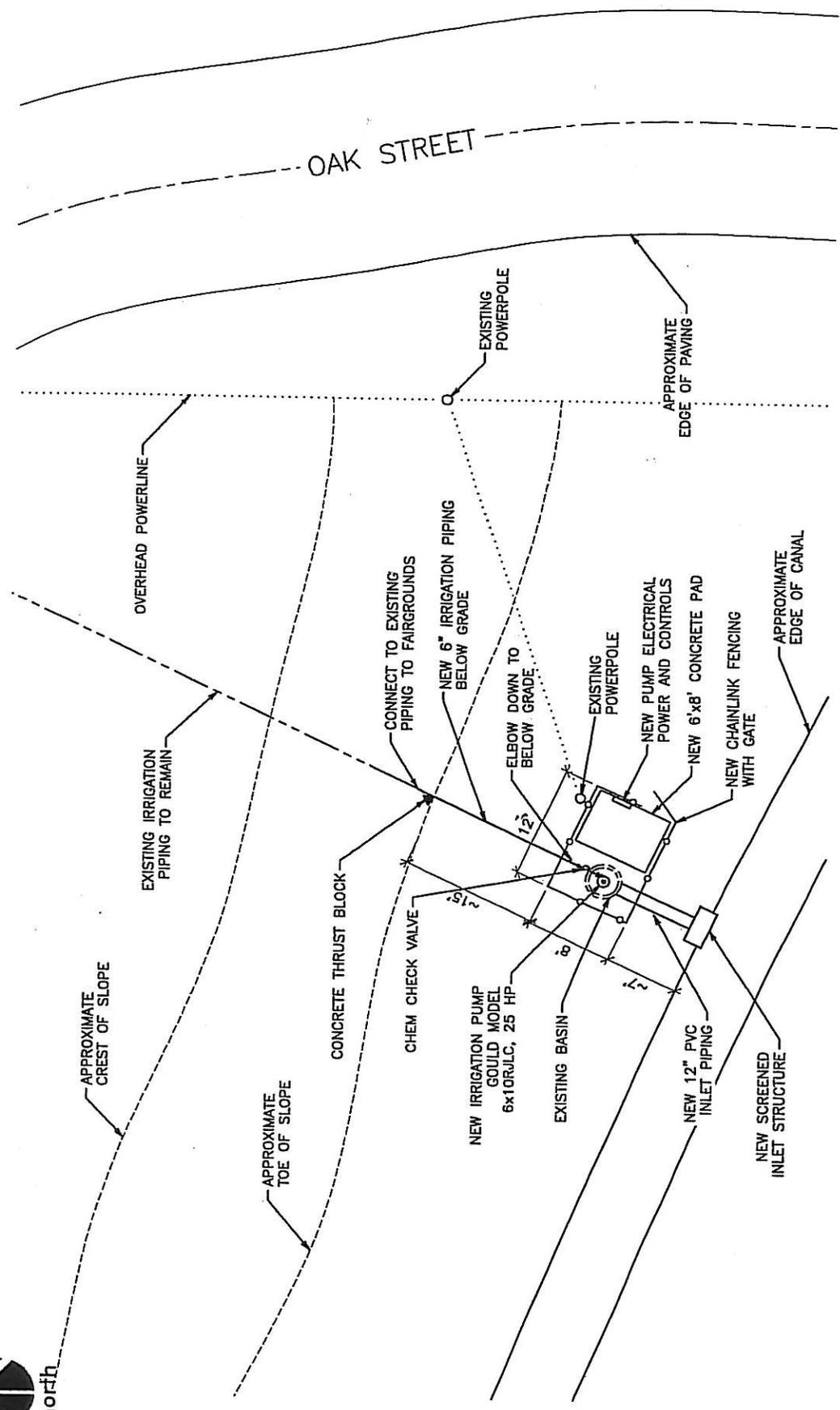
Approved as to form:

By: 
Kathleen Fitzgerald, DPA
Benton County

"A"

Lying approximately 600' North of the Southeast corner of the Southeast quarter of the Southeast quarter of the Northeast quarter of Section 7, Township 8 North, Range 30 EWM and approximately 80 feet east of the east Section line of Section 7, Township 8 North Range 30 EWM. And lying within the Columbia Irrigation District Right of Way also lying South and West of the Benton County Fairgrounds,





SKETCH: **M1**
 DATE: 7/30/08
 DRAWN: RDR
 SCALE: 1" = 1'
 PROJ NO: 031

**BENTON COUNTY FAIRGROUNDS
 IRRIGATION PUMP REPLACEMENT**

Routh Consulting Engineers, Inc.
 P.O. Box 3187
 Pasco, WA 99302
 509-542-0650 FAX
 547-9262



Ross B. Dunfee, P.E.
Public Works Director / County Engineer
Steven W. Becken
Asst. Director/Asst. County Engineer

11:30

Area Code 509
Prosser 786-5611
Tri-Cities 736-3084
Ext. 5664
Fax 786-5627

Benton County

Department of Public Works

Post Office Box 1001 - Courthouse
Prosser, Washington 99350-0954

MEMORANDUM

TO: Chairman Claude Oliver, Board of County Commissioners

RE: Bid Opening Procedures

DATE: August 13, 2008

Under our current practice of bid opening, Public Works has scheduled bid openings to be held by the Board of County Commissioners. The current process is: the Commissioners open the bids, verify that the required bond forms are included and public read the total bids twice.

Due to the periodic cancellation of Board meetings, Public Works has been required to reschedule advertised bid dates, causing a disruption to proposed construction schedules and impacting various contractors bidding on the projects.

We have reviewed the RCWs governing the opening of public bids and did not find that there was a requirement stating that the governing body must open the bids. RCW 36.77.030 states: "At the time and place fixed in the call for bids, such bids as have been submitted shall be publicly opened and read." We have reviewed this with counsel and there is concurrence that the governing body is not legally required to open the bids.

It is our recommendation that the practice of opening bids during a Board meeting be changed. We recommend that the Board continue to set the bid date with bids to be publicly opened and read at a specified location. Public Works staff would then open the bids and make recommendations to award or reject all bids would be brought before the Board at the next regularly scheduled Board meeting.

Changing to this practice would negate the requirement of scheduling time before the Board, would free up Board agenda time, would ensure that bids were opened on dates advertised and would help keep proposed construction schedules intact.

Should the Board agree to this change, we would recommend that it be implemented immediately. If for some reason there is no meeting on August 25, 2008, bids could still be opened as currently scheduled in the Commissioners Meeting Room.

We are asking that consideration to this requested change be given and direction given at the August 18, 2008 meeting.



Ross B. Dunfee
Public Works Director/ County Engineer



Steven W. Becken
Asst. Director/Asst. County Engineer

C: Commissioner Max Benitz
Commissioner Leo Bowman