

**WASCO COUNTY BOARD OF COMMISSIONERS**  
**SPECIAL SESSION / AGENDA WEDNESDAY, MAY 25, 2011**

LOCATION: Wasco County Courthouse, Deschutes Basement Meeting Room  
511 Washington Street, The Dalles, Oregon

**NOTE:** This Agenda is subject to last minute changes.

12:00 p.m.     **CALL TO ORDER**

The Board of Commissioners will be interviewing candidates today for the Columbia River Gorge Commission Position as Wasco County's Representative.

12:00 p.m.     Debby Jones

12:30 p.m.     Meredith Van Valkenburgh

1:30 p.m.     Bid Opening and Award for Guard Rail Installation on Seven Mile Hill Road.

2:00 p.m.     Doug Crow

2:30 p.m.     Joan Silver

**ADJOURN**

Meetings are ADA accessible. If special accommodations are needed please contact the Commission Office in advance, (541) 506-2520. TDD 1-800-735-2900. Wasco County does not discriminate against individuals with disabilities.

**BID DOCUMENTS**  
**FOR**  
**GUARD RAIL INSTALLATION**  
**7 MILE HILL ROAD**  
**THE DALLES, OREGON**

WASCO COUNTY  
STATE OF OREGON

BOARD OF COUNTY COMMISSIONERS:

SHERRY HOLIDAY, BOARD CHAIR  
SCOTT HEGE, COMMISSIONER  
ROD RUNYON, COMMISSIONER

## **INVITATION TO BID**

### **GUARD RAIL INSTALLATION**

#### **7 Mile Hill Road, The Dalles, Oregon**

Sealed bids will be received in the office of the Wasco County Clerk, Wasco County Courthouse, 511 Washington Street, The Dalles, Oregon 97058, until 1:30 p.m., Wednesday, May 25<sup>th</sup>, 2011 for the furnishing and installation of metal guard rail on 7 Mile Hill Road.

The work will consist of approximately the following:

Furnish and install 550 LF Guard Rail (see bid schedule for type); 2 Guard Rail End Pieces - Type C; and 2 Guard Rail Anchors - Type 1.

Together with all other appurtenant work, all according to the plans and specifications of Wasco County, Oregon.

The said bids will be opened and declared at the aforementioned time and date in room 202 of the Wasco County Courthouse.

Each proposal shall be enclosed in a sealed envelope and delivered to the aforementioned address. The outside of the envelope shall be plainly marked as follows:

**GUARD RAIL INSTALLATION  
7 Mile Hill Road  
To Be Opened  
1:30 p.m., Wednesday, May 25<sup>th</sup>, 2011**

The bids will be received on the county furnished proposal forms only, and each bid shall be accompanied by a certified or cashier's check, or bid bond for the amount of not less than 5% of the total amount of the bid, drawn payable to Wasco County, and no bid shall be considered without such surety.

Specifications may be examined and obtained at the office of the Wasco County Public Works 2705 East 2nd Street, The Dalles, Oregon 97058. (541) 506-2640.

Bidders will be required to prequalify as to equipment, financial responsibility, experience, and ability to furnish bond and insurance. The county accepts certification of current prequalification with the Oregon State Highway Commission as meeting prequalification requirements.

Prequalification application shall be submitted on State of Oregon Public Contract Review Board forms or equivalent.

Prequalification shall be made through the Wasco County Public Works office, and must be made prior to the bid opening.

No bid will be received or considered unless the bid contains a statement by the bidder as part of the bid that the provisions of ORS 279A.110 (nondiscrimination) and ORS 279A.120 (resident bidder) will be included in the contract. No bids will be considered unless the bidder is registered with the Construction Contractors Board.

No bid may be withdrawn after the hour set for bid opening, or before award of the contract, unless said award is delayed for a period exceeding thirty (30) days. The successful bidder will be required to furnish a 100% performance bond and satisfactory evidence of liability insurance.

Wasco County intends to award the bid to the lowest responsible bidder who complies with the bid requirements, but reserves the right to reject any bids not in compliance with all prescribed public bidding procedures and requirements.

Wasco County reserves the right to reject for good cause any or all bids, to waive any and all irregularities and informalities not affecting substantial rights, and to award the bid according to the public's best interest.

**PROPOSAL  
GUARD RAIL INSTALLATION**

**7 Mile Hill Road, The Dalles, Oregon**

It shall be assumed that all companies submitting proposals have checked all plans and specifications, visited the site of work, and are thoroughly familiar with the work to be performed, the materials and equipment to be furnished, and the conditions that exist.

All work shall be performed according to good engineering and construction standards, all to the satisfaction of Wasco County for the following prices:

**BID SCHEDULE - A**

<u>ITEM</u>	<u>ITEM DESCRIPTION</u>	<u>QNTY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
(1)	Guard Rail, Type 2A (Furnish & install)	550 LF	\$ _____	\$ _____
(2)	Guard Rail End Pieces, Type C (Furnish & install)	2 EA	\$ _____	\$ _____
(3)	Guard Rail Anchors, Type 1 (Furnish & install)	2 EA	\$ _____	\$ _____
(4)	Traffic Control	All	Lump Sum	\$ _____

**TOTAL AMOUNT OF BID: \$ \_\_\_\_\_**

**BID SCHEDULE - B**

<u>ITEM</u>	<u>ITEM DESCRIPTION</u>	<u>QNTY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
(1)	Guard Rail, Type 4 (Corten) (Furnish & install)	550 LF	\$ _____	\$ _____
(2)	Guard Rail End Pieces, Type C (Furnish & install)	2 EA	\$ _____	\$ _____
(3)	Guard Rail Anchors, Type 1 (Furnish & install)	2 EA	\$ _____	\$ _____
(4)	Traffic Control	All	Lump Sum	\$ _____

**TOTAL AMOUNT OF BID:** \$ \_\_\_\_\_

End pieces and hardware provided under this bid schedule shall be weathering steel.

\*Wasco County reserves the right to award the bid based on either Bid Schedule – A or Bid Schedule – B.

Under provisions of ORS 279A.110 we certify that our company has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

I/We \_\_\_\_\_ (are, are not) a resident bidder.

I/We are registered with the Construction Contractors Board.

It is understood that Wasco County reserves the right to reject any and all bids, to waive any and all irregularities and informalities not affecting substantial rights, and to award the bid according to its best interests.

Accompanying this proposal is \_\_\_\_\_, (proposal bond, cash, or certified check), in the amount of \_\_\_\_\_, which amount is not less than 5% of the total amount of the proposal.

Notice of award of contract shall be mailed, telegraphed, or delivered to the undersigned at the following address:

Contractor \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

City & State \_\_\_\_\_

By/Title \_\_\_\_\_

Date \_\_\_\_\_

Telephone \_\_\_\_\_

# **SPECIFICATIONS**

## **SECTION I - INFORMATION FOR BIDDERS**

### **1.01 INTERPRETATION OF PROPOSED CONTRACT DOCUMENTS**

If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, he may submit to the owner a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretations of the proposed documents will be made only by addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. Neither the County, nor any employees or officials of the County, will be responsible for any other explanations of the proposed documents.

### **1.02 EXAMINATION OF PLANS, SPECIFICATIONS, SITE, ETC.**

Bidders shall examine the plans, specifications, contract form, information for bidders, and other forms, and shall visit the site and satisfy themselves by personal investigation as to the work to be done and all the conditions to be encountered. Failure of a bidder to visit the site or to thoroughly familiarize himself with the labor, equipment, and material required, or the difficult conditions involved, shall not relieve the bidder of his obligation under his bid.

### **1.03 FILLING IN PROPOSAL FORMS**

The bidder shall submit his bid on the proposal schedule furnished herein. All blank spaces in the proposal shall be properly filled. If the proposal is made by a partnership, it shall contain the name of each partner and shall be signed in ink in the firm name, followed by the signature of the person signing. If the proposal is made by a corporation, it shall be signed by the name of the corporation followed by the written signature of the officer signing and the printed or typewritten designation of the office he holds in the corporation. The address of the bidder shall be typed or printed on the proposal.

### **1.04 SUBMISSION OF PROPOSAL**

Each proposal, intact and bound with the specifications shall be completely sealed in a separate package, properly addressed to the owner as indicated in the official advertisement at the address named in the advertisement, with the name of the bidder, bid opening date and time, and the name of the project plainly written on the outside of the package. Bids will be received at the time and place in the advertisement for bids.

#### **1.05 MODIFICATION OF PROPOSAL**

Modification of proposals already received will be considered only if the request for the privilege of making such modifications is made with the County as indicated in the official advertisement at the address named in the advertisement, and the modification filed prior to the scheduled closing time for receipt of the proposals. No verbal or telephoned modifications will be considered.

#### **1.06 WITHDRAWAL OF PROPOSAL**

Any time prior to the scheduled closing time for receipt of proposals, any bidder may withdraw his proposal either personally, or by facsimile or written request, by application to the County as indicated in the official advertisement at the address named in the advertisement. If withdrawal is made personally, proper receipt shall be given therefor.

After the scheduled closing time for the receipt of proposals or before award of contract, no bidder will be allowed to withdraw his proposal unless said award is delayed for a period exceeding thirty (30) days. Any bids received after the scheduled closing time for receipt of bids shall be returned to the bidders unopened.

#### **1.07 SECURITY TO BE FURNISHED BY EACH BIDDER**

A certified check, cash, or bid bond made payable to the County for an amount equal to at least 5% of the total amount bid shall accompany each bid as evidence of good faith and as a guarantee that, if awarded the contract, the bidder will execute the contract and give performance bond as required. The successful bidder's check or bid bond will be retained until he has entered into a satisfactory contract and furnished a 100% performance bond. The County reserves the right to hold the certified checks, cash, or bid bonds of the three lowest bidders until the successful bidder has entered into a contract and furnished a 100% performance bond.

#### **1.08 OPENING OF PROPOSAL**

At the time and place set for the opening and reading of proposals, each proposal (except those that may have been withdrawn in accordance with above "Withdrawal of Proposal") received prior to the scheduled closing time for receipt of proposals will be publicly opened and read aloud, irrespective of any irregularities or informalities in such proposals.

**1.09 INTERPRETATION OF PROPOSAL**

Should there be a discrepancy between the words and figures in the proposal, the words hold. Should there be a discrepancy between unit prices and extensions, total, etc., the unit prices hold.

**1.10 REJECTION OF PROPOSALS**

The County reserves the right to reject any or all proposals. It also reserves the right to waive any informalities in connection with said proposals or bids.

**1.11 ACCEPTANCE OF THE PROPOSAL**

Within thirty (30) days after the opening of the proposals, the County will act upon them.

The acceptance of a proposal will be a notice in writing by a duly authorized representative of the County, and no other act of the County shall constitute the acceptance of a proposal. The acceptance of a proposal shall bind the successful bidder to furnish liability insurance and a performance bond as required, to execute the contract and be responsible for liquidated damages as provided below.

**1.12 SUCCESSFUL BIDDER TO FILE PERFORMANCE BOND**

The successful bidder will be required to file a performance bond in the full amount of the contract price, and the bond shall be furnished by a surety company acceptable to the County.

**1.13 EXECUTION OF CONTRACT**

The successful bidder will be required within ten (10) days after receiving from the County the contract documents, to execute said contract in triplicate and to furnish performance and other required bonds. In lieu of posting the foregoing performance bond, the successful bidder may deposit cash in the full amount of the contract price.

Before commencing work, the contractor shall furnish the attorney for the County with satisfactory proof of the carriage of insurance in a company acceptable to the attorney, covering all hazards as follows:

**PUBLIC LIABILITY -** Not less than **\$1,000,000.00** for injuries to any one person including accidental death; not less than **\$1,000,000.00** for any one accident.

**PROPERTY DAMAGE -** Not less than **\$250,000.00**

This applies to all work under this contract, including work performed by subcontractors.

**1.14 FAILURE TO EXECUTE CONTRACT**

In the event the successful bidder fails to execute the contract or furnish performance bond and insurance as required, within the allotted time after receiving the contract documents, the bid bond or deposit will **BE FORFEITED TO THE COUNTY** as liquidated damages for time delay not to exceed five (5%) percent of the amount of the bid, and the County may then negotiate the contract with the bidder of the next best proposal or re-advertise for bids, or obtain a construction contract by any other lawful means.

**1.15 LAWS AND REGULATIONS**

The bidder's attention is directed to the fact that all applicable state, county, and local laws and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

**1.16 TIME OF COMPLETION**

Upon execution of the contract and filing of the satisfactory bond and certificate of insurance, the successful contractor will be issued a written notice to proceed. The contractor will start work upon receipt of such notice and fully complete the project within **45 days**, weather permitting.

**1.17 LIQUIDATED DAMAGES**

Liquidated damages in the amount of \$500.00 per day for each and every calendar day by which the completion of the work or the performance of this contract is delayed beyond the time fixed for completion thereof, or the extension thereof, shall be deducted from the monies then due or to become due under this contract. Should such money not be sufficient to cover such damages, the County shall have the right to recover the balance from the contractor or his surety.

## SECTION II - GENERAL PROVISIONS

### 2.01 DEFINITIONS

ACCEPTANCE TESTING - Testing of in-place materials and products in their finished state to determine acceptability for payment.

ADDENDUM - A modification to the bid documents issued by the County prior to the opening of the proposal.

AGENCY - The Wasco County Public Works Department, its employees and assigns, representing Wasco County.

ASSURANCE TESTING – Any process control sampling, testing, measurement, and inspection needed to insure that the finished work complies with specifications.

AWARD OF CONTRACT - Written notification to a bidder that their proposal has been accepted by the County and the bidder has been awarded the project subject to the execution of the contract.

BID SCHEDULE - The list of bid items, units of measurement, quantities, and prices included with the proposal or contract.

BIDDER - Any individual or legal entity submitting a proposal.

CHANGE ORDER - A written order, approved by the County, and issued to the contractor, covering changes in the plans, specifications, or quantities within the scope of the contract.

CONTRACT - The agreement between the County and the contractor describing the work to be done and defining the obligations of the County and the contractor.

CONTRACT DOCUMENTS - All documents covering the performance of work and the furnishing of labor, materials and equipment under the contract. The contents of a contract may include but not be limited to the agreement, standard specifications, special provisions, standard drawings, plans, and proposals, method of payment, and performance and payment bond.

CONTRACTOR - Any individual or legal entity which has entered into a construction contract with the County.

COUNTY - Wasco County, a political subdivision of the State of Oregon, acting by and through its Public Works Department.

EQUIPMENT - All machinery, tools, and apparatus necessary for completion of the contract.

EXTRA WORK - Work not provided for in the contract but determined by the County as essential to the completion of the contract. Extra work may be paid for as a price agreement, force account, or change order.

INCIDENTAL WORK - Work necessary for fulfillment of the contract but which is not listed as a pay item in the contract and for which no separate payment will be made.

INVITATION TO BIDDERS - Written public announcement inviting proposals for work to be performed.

INSPECTOR - The authorized representative of the County assigned to inspect and report on contract performance and work.

INSTALL - Assembling, placing, erecting, and/or, constructing complete in place any item, equipment, or material.

MATERIALS - Any substances specified for use in the completion of the project.

NOTICE TO PROCEED - A written notice from the County to the contractor designating the date the contract time is to begin.

PERFORMANCE BOND - The form of security approved by the County, furnished by the contractor and contractor's surety, guaranteeing the complete and faithful performance of all the work and payment of all obligations of the contract.

PLANS - The drawings which show the location, type, dimensions, and details of the work to be done under the contract.

PROPOSAL - A written offer by a proposer on forms furnished by the County to perform the work at the quoted prices.

PROPOSAL GUARANTY - The security furnished with a proposal to assure that the bidder will enter into the contract if the proposal is accepted by the County.

RETAINAGE - The difference between the amount earned by the contractor on a public contract and the amount paid on the contract by the County, unless the context otherwise requires.

RIGHT OF WAY - A general term denoting land or property, or interest therein, designated for public use.

ROAD - The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means, or that provides travel between places by means of vehicles.

ROADMASTER – The head of the Wasco County Public Works, acting either directly or through his authorized representatives.

SPECIAL PROVISIONS - The special directions or requirements identified as special provisions or special specifications, peculiar to the project and modifying the standard specifications.

STANDARD DRAWINGS - The typical details of structures or devices, or other information shown in the standard drawings included with these specifications, as supplemented and modified by the County and referred to in the contract documents.

STANDARD SPECIFICATIONS - The terms, directions, provisions, and requirements of this document, together with all subsequent addenda and supplements.

SUBCONTRACTOR - An individual or legal entity with whom the contractor, with the consent of the County, contracts to perform a portion of the work.

SURETY - The corporate body which is bound with and for the contractor for the acceptable performance of the work and the payment of all obligations of the contract. When applied to the proposal guaranty, surety refers to the corporate body which engages to be responsible for the bidder's execution of a satisfactory contract when and if the bid is accepted by the County.

UTILITY - The tracks, overhead or underground wires, pipelines, conduits, ducts, or other structures owned, operated, or maintained in or across a public right of way or easement.

WORK - The furnishing of labor, materials, equipment, and other incidentals required for the fulfillment of all of the contractor's duties and obligations under the contract.

## **2.02 SCOPE OF WORK**

The product to be supplied under this agreement consists of the furnishing of all labor, equipment, material, supplies, tools, plans, power, fuel, water, insurance and bonds, and performing all work required, in strict accordance with the plans, specifications, and other documents, all of which are by reference made a part hereof, including any detail or other drawings as may be furnished by the County and those required to be furnished by the contractor.

By entering into this agreement, the contractor acknowledges the foregoing and agrees that the terms of the contract agreement are just, legal, and fair.

### **2.03 PLANS AND SPECIFICATIONS**

The plans and specifications are intended to be cooperative and explanatory of each other, and anything shown or called for in one and omitted in the other is as binding as though called for in both. Should there be any discrepancy or misunderstanding concerning anything in either, the decision of the County shall be considered final in every detail, notwithstanding that every item necessarily involved is not particularly mentioned as the construction of this work has been described as much as considered necessary by the plans, specifications, and the different items of the bid. It is the intent and meaning of these plans and specifications that all labor, materials, equipment, tools, insurance, public protection, and every other item, all incidentals and actions required to construct a complete and finished product shall be included and performed by the contractor for the price bid in the proposal, including all other work and material as may seem to have been omitted, but should be furnished to make a completely satisfactory finished job. Wherever special provisions are incorporated in the contract documents or attached to the plans, they take precedence over these general provisions and govern in that particular operation mentioned.

### **2.04 EXAMINATION OF GROUND**

Bidders must examine and judge for themselves as to the location of the proposed work, existing structures and conditions, and the work to be done to supply the product. The plans and other drawings will show conditions as they are or as near to the actual conditions as the existing records and other available information permits. The contractor shall identify to the County any error in plans or difference in conditions. Failure to do so shall make the contractor liable to repair, change, or otherwise correct the work at no expense to the County.

Neither the County nor any of its agents will be liable for any loss sustained by the contractor because of any variance between conditions revealed during the progress of the work.

### **2.05 CHANGES AND OMISSIONS**

The County reserves the right to make any reasonable changes to grade, location, or other part of the improvement to meet unusual conditions.

### **2.06 EXTRA WORK**

Extra work is that which is necessary to make a complete job, and not included in the intent and meaning of the plans and specifications for the particular piece of work to be done.

The contractor shall not be entitled to demand payment for extra work or for any work where there is no bid, unless ordered in writing by the County to do such work, and at a price fixed by him previous to its commencement. Providing no price is fixed, all extra work will be paid for at actual cost of labor and material plus 15%.

## **2.07 CARE OF PUBLIC OR PRIVATE PROPERTY**

The contractor shall, at his own expense, carefully protect from injury adjoining property and structures, utilities, trees, buildings, telephone or light poles, water or gas pipe, conduits, or any other structures, public or private, which are encountered or affected by the work, shall repair any damage done to said works and/or structures, leaving them in as good conditions as they were prior to this interference, and the contractor shall be liable for any damages or claim arising from his interference with the operation, care or maintenance of any such works and/or structures encountered during the progress of the work.

The contractor shall, at his own expense, except as otherwise provided in this contract, carefully replace and repair any damage to sidewalks, curbs, gutters, roadways, paved or graded streets, other private or public access ways, leaving the same in as good condition as they were prior to the commencement of the work.

## **2.08 INSPECTION**

- a. **General:** The Contractor shall not begin work on this contract agreement until he has notified the County (at least 48 hours in advance of any work to be done) and an inspector has been placed in charge of the work. The County's duly authorized representative shall at all times have access to all parts of the work and to the shops in which the work is in preparation, for the purpose of inspection, and the contractor shall at all times maintain proper facilities and provide safe access for such inspection. The contractor shall furnish at his own expense such labor as may be required to enable the County to make a thorough inspection and culling of the materials. Any decision made by the County shall be final and binding on all parties to this contract.
  
- a. **Material and Workmanship:** The County shall have the right to reject materials and workmanship that are defective, or to require their correction. Rejected workmanship shall be satisfactorily corrected, and rejected materials shall be removed from the work without charge. If the contractor does not correct such rejected work within a reasonable time, fixed by written notice, the County may correct the same and charge the expense to the contractor. No material of any kind shall be used on any part of this work until inspected or approved by the County and all rejected or condemned material shall be removed from the work at once.

- c. **Instructions:** Instructions given by the inspector shall be respected and executed by the contractor, but no inspector shall have the power to waive the obligation of the contractor to furnish good material or to perform sound and reliable work as herein specified; and failure or omission of the inspector to condemn any defective material or work shall not release the contractor of the obligation to at once tear out, remove and properly reconstruct the same at his own cost at any time upon the discovery of the defect, and upon receipt of the notice of the County to do so.
  
- d. **Access to Completed Work:** Should it be considered necessary or advisable by the County at any time before final acceptance of the entire work to make an examination of the work already completed by removing or tearing out any portion thereof, the contractor shall on request promptly furnish all necessary facilities, labor, and materials. If such work is found to be defective in any respect he shall defray all the expense of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the additional cost of labor and materials necessarily involved in such examination and replacement, and 15% for overhead and profit, shall be allowed to the contractor.
  
- e. **Rebuilding Work:** Upon the failure of the contractor to reconstruct work rejected by the County within 24 hours after the receipt of written notice, the same may be removed and reconstructed under the direction of the County at the expense of the contractor.

## 2.09 **PARTIAL PAYMENTS AND RETAINED AMOUNTS**

At a regular period each month, the County will make an estimate of the amount of work completed and of the value of such completed work. An estimate of the amount and value of acceptable material to be incorporated in the completed work will also be made. The sum of these values will after this be collectively referred to in this subsection as the "value of the completed work." With these estimates as a base, a partial payment will be made to the contractor, which partial payment shall be equal to the value of completed work, less such amounts as may have been previously paid, less such other amounts as may be deductible or as may be owing and due to the County for any cause, and less an amount to be retained in protection of the County's interests.

The amount to be retained in protection of the County's interest is not to include any percentage of the value of force account work, it being understood that partial payments to the contractor are to include the full amounts earned under force account work performed during the period covered by the respective partial payments.

The amount to be retained from any given partial payment will be such that when added to the sum of amounts previously retained will bring the total of amounts retained to an amount equal to 5% of the value of completed work, except that upon substantial completion of the work under the contract which shall be understood to be not less than 97-1/2% of the work, the County may, at its discretion, reduce the retained amount to an amount equivalent to not less than 200% of the contract value or estimated value, or estimated cost, whichever is greater, of the work remaining to be done.

The amount to be retained in protection of the County's interest as above set forth will be reduced in conformance with the following:

1. If the contractor deposits with the County, or an approved depository, bonds and securities of a value equal to at least 5% of the amount of the contract at the time he signs a contract for the project, no amount will be retained from partial payments.
2. If the contractor deposits bonds and securities with the County, or an approved depository, during the life of the contract, any retained amount will be reduced by an amount equal to the value of the bonds and securities. This reduction in retainage will be made in the partial payment subsequent to the time the contractor deposits the bonds and securities with the county.
3. The value of the bonds and securities will be periodically determined by the County and the amount retained on partial payments will be adjusted accordingly.

The bonds and securities deposited by the contractor shall be of a kind approved by the state treasurer and including, but not limited to the following:

1. Bills, certificates, notes or bonds of the United States
2. Other obligations of the United States or its agencies
3. Obligations of any corporation wholly owned by the Federal Government
4. Indebtedness of the Federal National Mortgage Association
5. Time certificates of deposit issued by an Oregon bank
6. Corporation bonds rated A or better by a recognized rating service

At the time the determination that all requirements for the protection of the County's interest have been fulfilled all bonds and securities deposited with the county as above provided will be returned to the contractor.

If the amount due the contractor under the estimate for any given month is less than \$500.00, no payment will be made for that month.

Partial payments shall not be construed as an acceptance or approval of any part of the work covered thereby, and they shall in no manner relieve the contractor of responsibility for defective workmanship or material.

The estimates upon which partial payments are based are not represented to be accurate estimates, and all quantities shown herein are subject to correction in the final estimate. If the contractor uses such estimates as a basis for making payments to subcontractors, he does so at his own risk, and he shall bear all losses that may result.

## **2.10 FINAL PAYMENT**

Within thirty (30) days after satisfactory completion of the project to the satisfaction of the County, the contractor shall submit a satisfactory release of liens against the project by all persons who furnished labor or material for the project, in order to receive final payment for the work. The acceptance of final payment by the contractor constitutes his full waiver of claims against the owner under this contract.

## **2.11 TERMINATION OF CONTRACT**

In the event that the contract is terminated as provided therein, then the County may take over the work under the contract and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the contractor, and his surety shall be liable to the County for any excess cost or other damages occasioned the owner thereby, and in such events, the County may, without liability for so doing, take possession of and use in completing the contract, such materials, appliances, plant, and other property belonging to the contractor as may be on the site of the project and necessary therefor.

The foregoing provisions are in addition to, and not in limitation of, any other rights or remedies available to the County.

**2.12 COUNTY'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF**

In addition to the amount that the County may otherwise retain under this contract, the County may also withhold a sufficient amount or amounts of any payment or payments otherwise due to the contractor, as in its judgement may be necessary to cover defective work not remedied.

**2.13 ASSIGNMENT OF CONTRACT**

Neither party to the contract shall assign the contract nor sublet it as a whole without the written consent of the other, nor shall the contractor assign any moneys due or to become due to him hereunder without the previous written consent of the County.

**2.14 SUBCONTRACTORS**

Specialty subcontractors shall be used for the performance of such parts of the work under this contract as, under normal contract practices, are performed by specialty subcontractors, unless the County determines that the contractor has heretofore customarily performed such specialty work with his own organization and is equipped to do so, or unless the County determines that performance of the specialty work by specialty subcontractors will result in increasing costs or inordinate delays.

The County's consent to, or approval of, any subcontract under this contract shall not in any way relieve the General Contractor of his obligations under this contract and no such consent or approval shall be deemed to waive any provision of this contract. The contractor shall bind the subcontractor to the terms and conditions of the contract documents insofar as the terms thereof may control the work included in this subcontract.

No award of a subcontract to any subcontractor who, in the judgement of the County, is incompetent or unfit, will be approved.

**2.15 TESTS AND MATERIALS**

The County shall have the right to inspect and test all material used on the project. As a yardstick for such inspection and testing, when not otherwise provided for in the contract documents, the owner will use the Standard and Tentative Standards of the American Society for Testing Materials (A.S.T.M.), or the standards as promulgated by the American Association of State Highway Officials (AASHO). The County shall have the right to repeat such inspections and tests as frequently as may be necessary to insure the rejection of all materials that fail to comply with the aforesaid yardstick. The cost of any inspections and test of materials made by or at the request of the County will be borne by the County.

In all cases not specifically covered in the specifications, materials furnished by the contractor shall be of the highest-grade commercial material or product. Any and all materials shall be of new, unused stock, free from excessive rust or scale or other objectionable defects. Substitution of size of sections and materials for that shown on the drawings or required in the specifications shall not be made except on written approval of the County, and provided that no additional cost to the County will result from the substitution.

**2.16 SUPERINTENDENCE**

The contractor shall provide at all times during the progress of the work, competent and necessary supervision. During the contractor's absence, the contractor shall have a competent representative on the work at all times authorized to receive and execute orders of the County. Orders for changes in the work will not be valid unless confirmed in writing to the contractor.

**2.17 GENERAL GUARANTEE**

Neither the final certificate of payment nor any provision in the contract nor partial or entire use of occupancy of the premises by the County shall constitute an acceptance of work not done in accordance with the contract or relieve the contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The contractor shall remedy any defects in the work and pay for any damage to other work resulting from this appearing within a period of one (1) year from the date of final acceptance of the work.

**2.18 PATENTS**

The contractor shall hold and save harmless the County, its agents and employees from liability of any nature or kind, including all costs and legal expenses, for or on account of any patented or un-patented invention, process, article, or appliance, manufactured for or used in the performance of the contract, including its use unless otherwise specifically stipulated in the contract.

**2.19 MATERIALS, SERVICES, AND FACILITIES**

It is understood that except as otherwise specifically stated in the contract, the contractor shall provide and pay for all materials, labor, tools, paint, equipment, superintendence, temporary construction of every nature, and all other services and facilities of every nature, necessary to execute and complete the contract within the specified time.

## **2.20 WARRANTY OF TITLE**

No material, supplies, or equipment for the work under this contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The contractor warrants good title to all materials, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by him, to the County free from any claims, liens, or charges, and further agrees that neither he nor any person, firm or corporation furnishing any materials or labor for any work covered by this contract shall have any right to a lien upon the premises or any improvements or appurtenances thereon. The provisions of this article shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials.

## **2.21 CARE OF WORK**

The contractor shall be responsible for all damages to persons or properties that occur in connection with the prosecution of the contract, and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the County.

The contractor shall provide such heat, covering, and enclosures as are necessary to protect all work and materials against damage by weather conditions.

In an emergency affecting the safety of life or property, including adjoining property, the contractor, without special instructions or authorization from the County, is authorized to act at his discretion to prevent such threatened loss or injury, and he shall so act, if instructed to do so by the County.

## **2.22 INSURANCE**

The contractor shall hold and save harmless the County, its agents, and employees from liability of any nature or kind, including all costs and legal expenses, for or on account of any act, process or action by the contractor, or lack of the same, to provide adequate protection during the performance of the contract.

In addition to such insurance that may be required under this contract, the contractor shall provide adequate workmen's compensation insurance for all employees employed under this contract on the project who may come within the protection of workmen's compensation laws, and shall provide, where practicable, employers' general liability insurance for the benefit of his employees not protected by such compensation laws, and proof of such insurance shall be given to the County.

All insurance required to be carried under this contract shall be written with such company as may be acceptable to the attorney for the County. Satisfactory certificates of said insurance shall be filed with the County in triplicate prior to the commencement of operations by the contractor.

The contractor will be charged with the responsibility for proper and adequate workmen's compensation coverage for all subcontract operations, and in the event the contractor's insurance issued on policies by companies that may be acceptable to the County covering each and every subcontractor shall be filed with the County prior to the commencement of such subcontract operations.

**Public Liability and Property Damage Insurance.** The contractor shall take out and maintain during the life of his contract such public liability and property damage insurance as shall protect him and any subcontractor performing work covered by this contract from claims for damages for personal injury or property damage that may arise from operations under this contract, whether such operations are by himself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall be public liability and property damage in the amounts stipulated in Paragraph 1.13 of the Information for Bidders.

**Cancellation.** The policy or certificate of insurance shall include a statement that the amount of the insurance shall not be subject to cancellation or reduction until the County has received written notice then (10) days in advance of the date of cancellation.

## **2.23 ACCIDENT PREVENTION**

Precaution shall be exercised at all times for the protection of persons (including employees) and property, and hazardous conditions shall be guarded against or eliminated.

The contractor shall erect and maintain sufficient guards, barricades and flares, at all unsafe places at or near the work, and shall in all cases maintain safe passageways at all road crossings, highways, driveways, crosswalks, existing stands, street intersections, etc. The contractor shall comply with all pertinent provisions of the "Manual of Accident Prevention in Construction," prepared by the Associated General Contractors of America, and shall comply with city, county and state codes to the extent that they are applicable.

## **2.24 SANITATION**

The County may establish sanitary and policy rules and regulations for all persons employed under this contract, and if the contractor fails to enforce these rules, the County may enforce them at the expense of the contractor. Buildings for the sanitary necessities of all persons employed shall be constructed and maintained by the contractor in the number, manner, and places approved or ordered by the County. The sanitation laws of the state and any applicable city or county laws or ordinances shall be complied with.

## **2.25 QUALIFICATIONS FOR EMPLOYMENT**

Preference shall be given to qualified local residents in the employment of laborers and mechanics for work on the project under this contract. No person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health or safety of others shall be employed on the project under this contract, provided that this shall not operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform. No person currently serving sentence in a penal or correctional institution and no inmate of an institution for mental defectives shall be employed on the project under this contract.

## **2.26 DECISION OF COUNTY COMMISSIONERS FINAL**

Any question of difference of controversies that may arise between the County and the contractor with reference to the performance or nonperformance of the work, or with reference to delays or penalties or relating to plans, profile specifications, or technical sufficiency of material furnished, or the work done under his contract shall be referred to the County Commissioners whose decision shall be final and binding on both parties.

The County Commissioners shall have authority to stop work whenever such stoppage may be necessary to insure the proper execution of the contract.

## **2.27 CLAIMS FOR DAMAGES AND EXTENSIONS OF TIME**

The contractor will not be entitled to any claim for damages because of hindrances or delays but he will not be charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond his control and without his fault or negligence, including but not restricted to acts of God, or of the public enemy, acts of another contractor in the performance of a contract with the owner, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes, provided that the contractor shall give notice in writing of the causes of any such act, hindrance or delay within ten (10) days after its occurrence.

## **2.28 CLEANING UP**

From time to time or as may be ordered by the County, and in any event, immediately after completion of the work, the contractor shall at his own expense, clean up and remove all refuse and unused materials of any kind resulting from the work, and upon failure to do so within twenty-four (24) hours after having been notified by the County, the work may be done by the County and the cost thereof charged to the contractor. The contractor shall remove all equipment provided for the work, leave the structures and premises in a neat and clean condition, and perform all clean up and washing required to complete the work in a competent manner ready for use.

## **2.29 ORDER OF EXECUTING WORK**

The contractor shall commence work at such points as the County may direct and shall conform to his directions as to the time and order in which various parts of the work shall be done.

## **2.30 NOTICE AND SERVICE THEREOF**

Any notice from one party to the other under the contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party.

Any such notice shall not be effective for any purpose whatsoever unless served in the following manner, namely: (a) If the notice is given to the County, by personal delivery thereof to the individual duly authorized to direct and supervise the project for the County or be depositing the same in the United States mails enclosed in a sealed envelope address to the County for the attention of said individual, postage prepaid and registered; (b) If the notice is given to the contractor, by personal delivery thereof to said contractor or to his foremen or superintendent at the site of the project, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to the contractor at his regular place of business, or at such other address as may have been established for the conduct of the work under this contract, postage prepaid and registered, or (c) If the notice is given to the Surety or any other person, by personal delivery to such Surety or other person, or by depositing the same in the United States mails, enclosed in a sealed envelope, addressed to such Surety or other person, at the address of such Surety or other person last communicated by him to the party giving the notice, postage prepaid and registered.

### **2.31 APPROVED EQUALS**

Whenever a material or article required is specified or shown on the plans by using the name of the proprietary product or of a particular manufacturer or vendor, any material or article that will perform adequately the duties imposed by the general design will be considered equal and satisfactory providing the material or article so proposed is of equal substance and function in the County's opinion. It shall not be purchased or installed without written approval.

## SECTION III - GENERAL SPECIFICATIONS

### 3.01 STANDARDS

Wherever the specifications of this contract concern the installation of metal guard rail, they shall be considered as including the provisions of the Oregon Standard Specifications for Construction, 2002 - Sections 00810, 02110, and 02820.

### 3.02 SITES OF WORK

The work to be performed for this project is located at the following site:

7 Mile Hill Road – located on the West end of The Dalles. Beginning at the intersection of Chenoweth Creek Road and 7 Mile Hill Road, travel Northwesterly on 7 Mile Hill Road for approximately 1.75 miles. The beginning of the project is located on the right hand side of the road, about 200 feet past the entrance to a private rock quarry. The site is marked with stakes, flagging and white paint. Township 2 North, Range 12 East, Section 24. (See site work map)

### 3.03 GUARD RAIL

**Bid Schedule – A:** Metal beam rail shall be galvanized steel. The effective length of rail members shall be 12'- 6". Galvanized steel beam rail shall conform to the requirements for Class A rail. The zinc coating shall conform to the requirements for Type 2.

**Bid Schedule – B:** Metal beam rail shall be Corten / Weathering steel. The effective length of rail members shall be 12'- 6". Steel beam rail shall conform to the requirements for Type 4.

### 3.04 GUARD RAIL HARDWARE

All bolts, nuts, washers, and other fittings for beam-type guard rail shall be galvanized steel – Bid Schedule A or weathering steel – Bid Schedule B. All bolts, nuts and washers, shall be as detailed on the plans with nuts tapped oversize not to exceed 1/32 inch.

### 3.05 GUARD RAIL POSTS AND BLOCKS

The posts for guardrail shall be 6"x8"x 6'-0" wood posts.

Guardrail blocks shall be 6"x8"x14" wood blocks or recycled plastic blocks.

Treated wood posts and blocks shall show evidence of reasonable amount of seasoning and/or conditioning having occurred. The intent of these provisions that further wood shrinkage of treated blocks will not create checking which would expose untreated wood.

Wood posts and blocks shall be structurally sound, treated, and free from damages which would affect their strength and durability. No damaged posts or blocks shall be incorporated into the work. Any material that show a check, shake or split exceeding 1/2 inch in width on any surface will be rejected.

Recycled plastic blocks must be listed in the ODOT construction/materials “Qualified Products List”.

### **3.06 MEASUREMENT AND PAYMENT**

The quantities of Metal Guard Rail accepted for payment will be the number of linear feet, to the nearest foot, of each respective kind or type complete and in place as specified. Measurement will be from center to center of end posts, or as otherwise shown, along the line and grade of each run of each type to the nearest 0.5 foot.

Guard Rail End Pieces will be measured for payment on a per unit basis, per each, by actual count of units in place as specified.

Guard Rail Anchors will be measured for payment on a unit basis, per each, as completed and accepted.

Traffic Control will be paid for on a lump sum basis.

Payment for the above items will be payment in full for furnishing and placing the materials, all necessary excavation and backfill work, and including all equipment, tools, labor, and incidentals necessary to complete the work, as specified.

### **3.07 TRAFFIC CONTROL**

This work consists of providing all temporary signs, barricades, cones, flaggers, pilot cars and any other such traffic control required to warn, safeguard, protect, guide and inform the public and workmen during the life of this contract.

The contractor shall also submit to the County, a detailed Traffic Control Plan. The Traffic Plan shall be approved prior to any work.

### **3.08 UTILITIES**

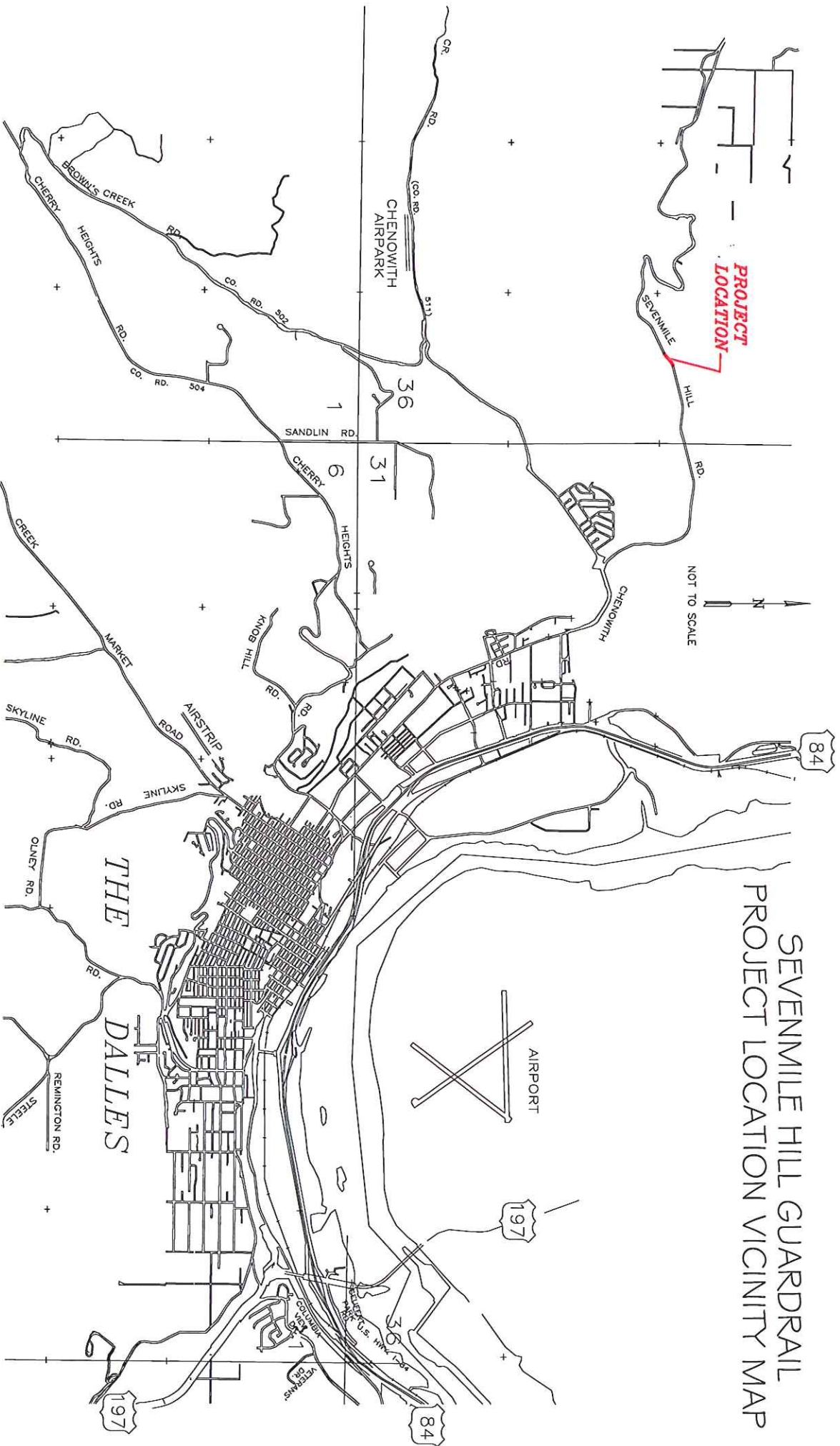
Any arrangements for removing, relocation, or adjusting of utilities on this project will be the responsibility of Wasco County. The contractor shall contact the County for information regarding these arrangements.

The contractor shall, at least 48 hours in advance of performing any work in the vicinity of utility lines, contact the Oregon Utility Notification Center to request the location and marking of buried utilities. "Call Before You Dig" 1-800-332-2344.

Once underground utilities have been marked, the contractor shall maintain the locate marks during the excavation period to ensure that the original marks remain effective for the life of the project and can be re-established.

At all times, the contractor shall protect from damage or disturbance any and all utilities within the public right-of-way.

# SEVENMILE HILL GUARDRAIL PROJECT LOCATION VICINITY MAP



WASCO COUNTY PLANNING  
AND DEVELOPMENT  
Todd R. Cornett, Director  
2705 East Second Street  
The Dalles, Oregon 97058



received

5/9/11

Phone: (541) 506-2560  
Fax: (541) 506-2561  
Web Address: co.wasco.or.us

## NOTICE OF DECISION

FILE # PLAEXP-11-03-0003

DATE: May 4, 2011

**REQUEST:** Expedited review to install 550 linear feet of new guardrail 26" in height along the north side of Sevenmile Hill Road in the A-1 (160) zone of the NSA.

**DECISION:** Approval with conditions

**APPLICANT/OWNER INFORMATION:**

**Applicant(s)** Arthur Smith  
2705 E 2<sup>nd</sup> Street  
The Dalles, OR 97058  
**Property Owner(s):** Wasco County Public Works

**Contact:** Applicant

**PROPERTY INFORMATION:** Right of Way near the parcel described below

Township	Range	Section	Tax Lot No.(s)	Acres	Acct #	Zoning
2N	12E	0	1300	--	--	A-1 (160)GMA

**Address:** None

**Location:** Located on the north side of Sevenmile Hill Road approximately 1.75 miles west of its intersection with Chenowith Creek Road, in The Dalles, OR.

**ATTACHMENTS:**

- A. Conditions of Approval
- B. Time Limits & Appeal Information
- C. Vicinity Map
- D. Staff Report

**STAFF REVIEWER:** A. Gary Nychyk, Interim Director

After recording, return to:  
Wasco County Planning & Dev. Dept.

# ATTACHMENT A – CONDITIONS OF APPROVAL

A. **Compliance:** Current and future property owners shall comply with the approved Decision and this staff report. This report details the restrictions on aspects of the approved development including but not limited to location, dimensions, and use. This decision does not constitute tacit approval for any other development or use. A copy of this decision is available at the Wasco County Planning Department.

B. **Miscellaneous Conditions**

1. **Approved Colors:** The back side of the proposed guardrail shall be painted a dark brown color similar to B-13 of the SRIH. If alternative colors are proposed, they shall be submitted to, and approved by the Wasco County Planning Dept. prior to applying them to the proposed structures.
2. **Cultural Resource Protection:** The expedited review process shall cease and a full review will be conducted if an Indian tribe submits substantive written comments during the appeal period identifying how existing treaty rights would be affected or modified by the proposed development.
3. **Notification of Cultural Resources:** If cultural resources are discovered in the project area, the applicant is required to immediately notify the Wasco County Planning Office, Columbia River Gorge Commission, the State Historic Preservation Office, and affected tribes, of these findings.

If any finding, conclusion, or condition of this decision is held invalid, neither the remainder of this decision, nor the application of any other finding, conclusion or condition herein shall be affected thereby.

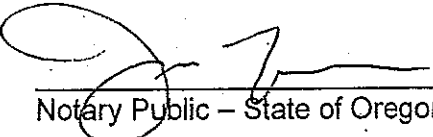
**NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER:** Oregon Revised Statutes, Chapter 215, requires that if you receive this notice, it must promptly be forwarded to the purchaser.

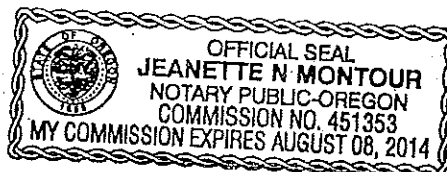
SIGNED THIS 4th day of May, 2011, at The Dalles, Oregon.

  
A. Gary Nychyk, Interim Director  
Wasco County Planning & Development Office

State of Oregon  
County of Wasco

Signed or attested before me on May 4, 2011, by A. Gary Nychyk.

  
Notary Public – State of Oregon



## ATTACHMENT B – TIME LIMITS & APPEAL INFORMATION

No development shall occur until all conditions of approval are met and all appeal periods have expired. Per Section 2.240 of the Wasco County National Scenic Area Land Use and Development Ordinance, this approval shall expire: (1) when construction has not commenced within two years of the date the land use approval was granted, or (2) when the structure has not been completed within two years of the date of commencement of construction. If the approval expires, a new application shall be made.

### Please Note!

No guarantee of extension or subsequent approval either expressed or implied can be made by the Wasco County Planning and Development Office. Please take care in implementing your proposal in a timely manner.

### APPEAL PROCESS:

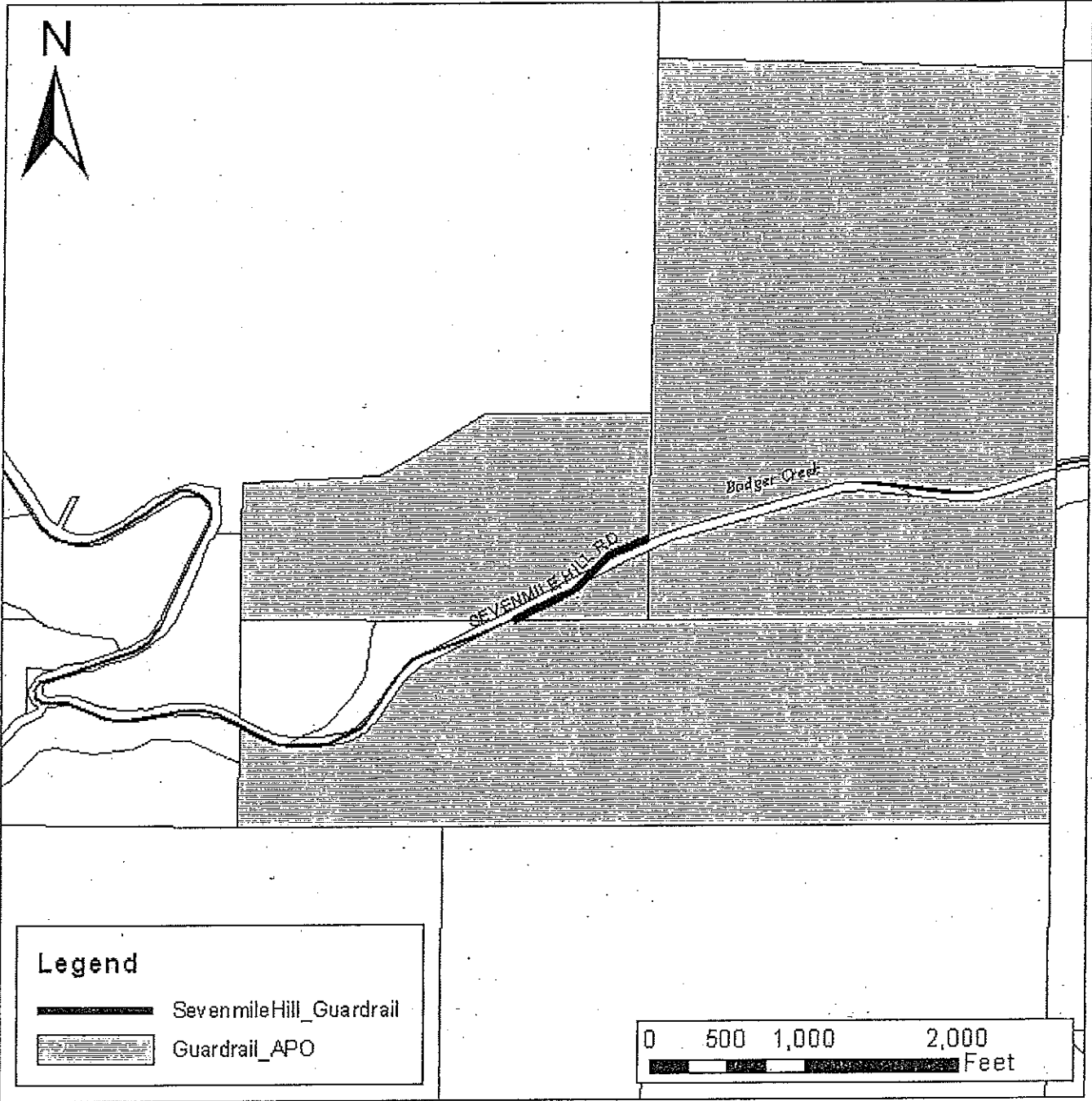
The decision date for this project is **May 4, 2011**. The decision of the Director shall be final unless comments or an appeal from an aggrieved party is received by the Director within twelve (12) days of the mailing date of this decision, **May 19, 2011, 4:00 p.m.**, or unless the Planning Commission or County Court on its own motion orders review within twelve (12) days of the date of decision. A complete record of the matter is available for review upon request during regular business hours or copies can be ordered at a reasonable price at the Wasco County Planning and Development Office. Notice of Appeal forms may also be obtained at the Wasco County Planning and Development Office. **The filing fee for an appeal is \$250.00. Fees are refunded if appellant prevails.**

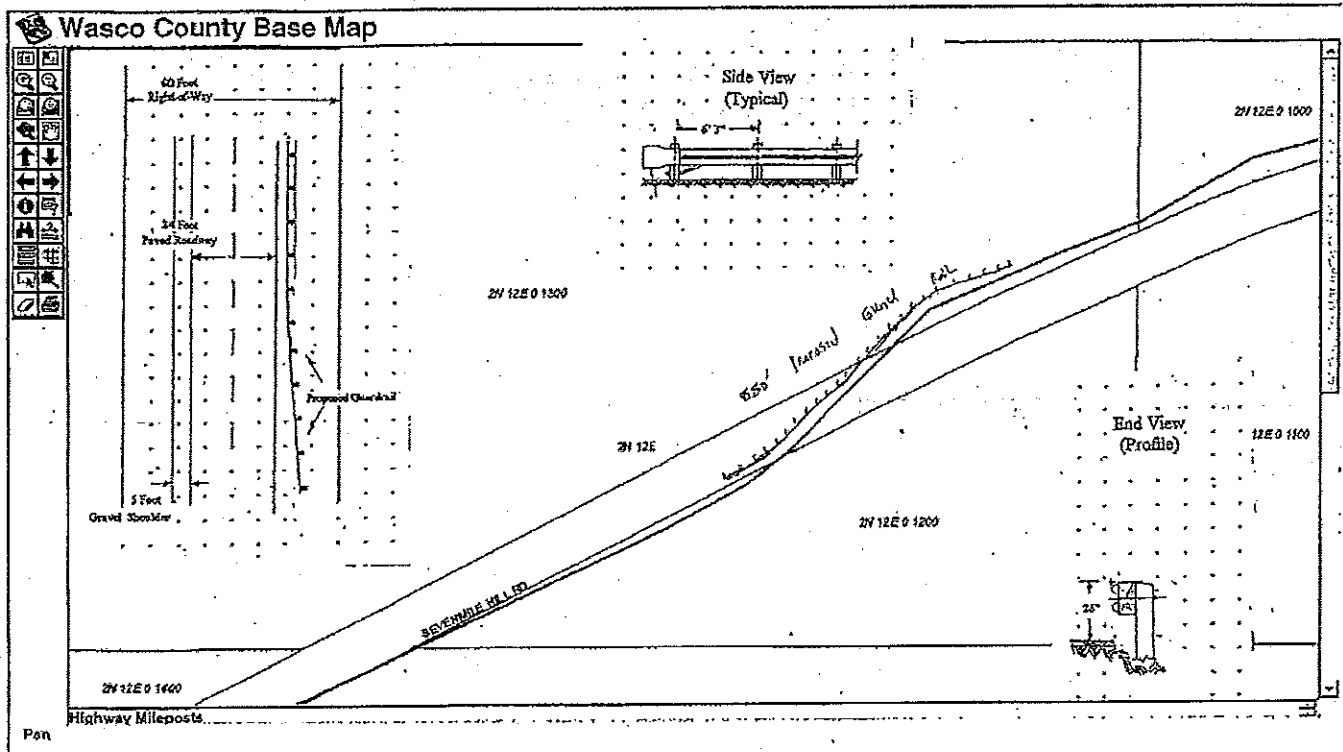
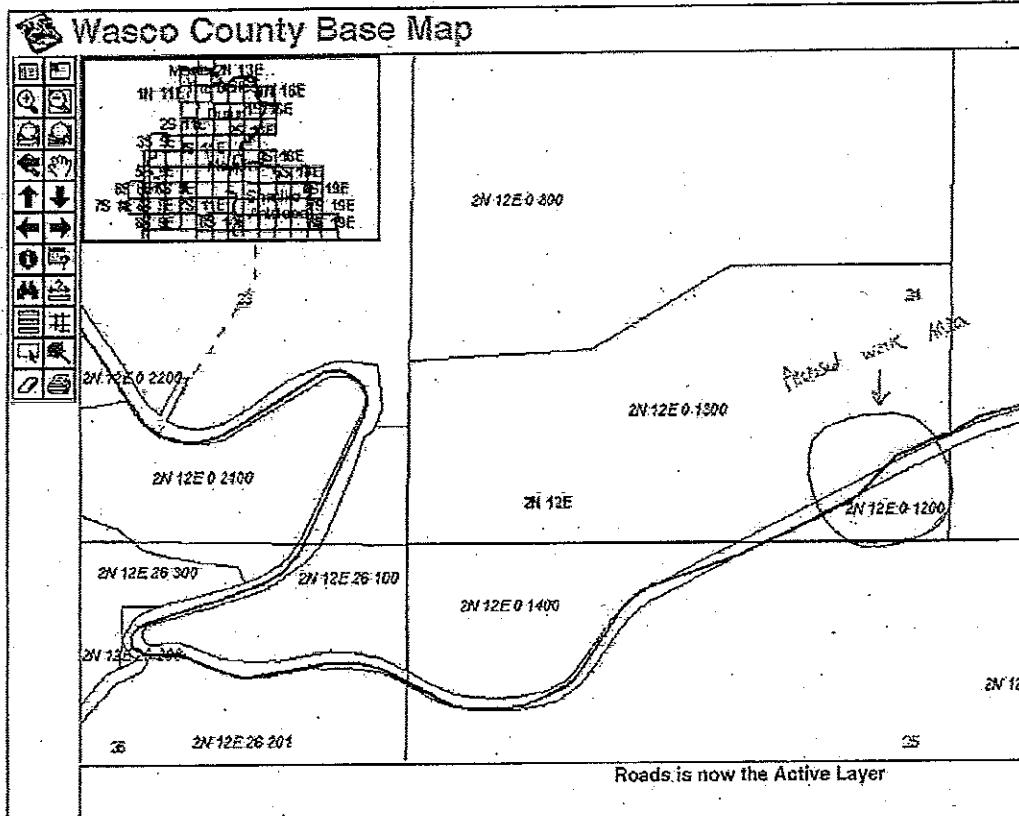
### FINDINGS OF FACT:

Findings of fact approving this request may be reviewed at the Wasco County Planning & Development Office, 2705 East Second Street, The Dalles, Oregon, 97058, or are available for purchase at the cost of \$0.25 per page. These documents are also available online at: [www.co.wasco.or.us/planning/planhome.html](http://www.co.wasco.or.us/planning/planhome.html), click on Current Land Use Actions. There is a table for National Scenic Area applications and a table for regular County applications. Each table is sorted alphabetically by the name of the applicant. The information will be available until the end of the appeal period.

**WE NEED YOUR HELP!** Our goal is to provide excellent customer service for the people of Wasco County. Please participate in the **public Service Evaluation Survey** found on our website: <http://co.wasco.or.us/planning/planhome.html>. If you cannot access this link please contact us at (541) 506-2560. Thank You.

ATTACHMENT C - MAPS





**WASCO COUNTY BOARD OF COMMISSIONERS  
SPECIAL SESSION  
May 25, 2011**

**CONSENT AGENDA**

1. Agreement for Equipment Demonstration on Agency Personnel between Bi Incorporated and Wasco County.
2. Amendment No. 1 to the Exacutrack at Service Agreement No 073106DY6 between Bi Incorporated and Wasco County Community Corrections.

AGREEMENT for EQUIPMENT DEMONSTRATION on AGENCY PERSONNEL

This Agreement ("Agreement") is made between BI INCORPORATED ("BI"), a Colorado corporation with its principal place of business at 6400 Lookout Road, Boulder, CO 80301, and

Agency Name (Please Print): Wasco County Community Corrections

Ship To (Please Print): Street: 421 E. 7th Street Annex B

City: The Dalles State: OR Zip: 97058

Contact Name (Please Print): Robert Martin Phone Number:

BI Account Executive Name (Please Print): Ty Gabby

DEMONSTRATION UNIT(S): The following selected Demonstration Units are for purposes of demonstration of electronic home detection monitoring, alcohol monitoring, and/or ExacuTrack services (FILL IN QUANTITY):

- BI SOBRIETOR BI HOMECCELL FOR SOBRIETOR
EXACUTRACK™ PASSIVE Unit(s) BI HOMEGUARD@ 200 Unit(s)
EXACUTRACK™ ACTIVE Unit(s) BI HOMEGUARD@ 206 Unit(s)
1 EXACUTRACK™ ONE Unit(s) BI TAD™ Unit(s)

CHECK ONE OF THE FOLLOWING: X UNIT(S) TO BE PROGRAMMED TO BI GUARDCENTER
UNIT(S) TO BE PROGRAMMED TO AGENCY'S HOST

DEMONSTRATION TERM: Fourteen ( 14 ) days commencing upon confirmation of the first Unit installed on an Officer, and terminating upon the expiration of the Demonstration Term. Upon expiration of the Demonstration Term, Agency shall immediately return all Demonstration Units and related equipment to BI.

COST OF SERVICES: No charge.

AVAILABILITY: The terms of this Agreement are conditioned upon and subject to the availability of BI's products and services. BI shall not be liable for any delay in performance due to limited availability of products and services.

OWNERSHIP: BI shall retain all ownership in all part of the Demonstration Units and services. All rights owned by BI that are not granted by this Agreement, including the right to derivative work, are reserved to BI.

LIMITATION OF LIABILITY: Agency will be responsible for the proper use, management and supervision of the Demonstration Units. Agency agrees that BI will not be liable for any damages caused by Agency's failure to fulfill these responsibilities.

DISCLAIMER OF WARRANTY: BI excludes the warranties of merchantability and fitness of the Demonstration Units or services for a particular purpose. BI expressly disclaims any warranty that the Demonstration Units or service is impervious to tampering.

AGENCY'S OBLIGATIONS: Under no circumstances shall Agency, under this Agreement, perform demonstrations on an offender, or otherwise use any of the Demonstration Units listed herein in connection with an offender.

BI Authorized Representative:

Signature:

Printed Name:

Title: Date:

Agency Authorized Representative:

Signature: Sherry Holliday

Printed Name: Sherry Holliday

Title: Chair of Board of Date: 5/19/11

AMENDMENT NO. 1

TO THE  
EXACUTRACK AT SERVICE AGREEMENT  
AGREEMENT NO. 073106DY6 ("Agreement")  
BETWEEN  
BI INCORPORATED ("BI")  
AND

WASCO COUNTY COMMUNITY CORRECTIONS ("Agency")

---

This Amendment is entered into by and between Agency and BI.

In consideration of the promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, desiring to be legally bound, hereby agree as follows:

The above-referenced Agreement is hereby amended to add the ExacuTrack One Unit as follows:

**1. AVAILABILITY:**

The parties agree and acknowledge that the terms of this Agreement are conditioned upon and subject to the availability of BI's ExacuTrack™ products and service. BI shall not be liable for any delay in performance due to limited availability of ExacuTrack products and service.

**2. Sections 1.5 and 1.6 of the Agreement are hereby deleted entirely and replaced with the following:**

**1.5 "Unit" or "Equipment" means:**

- (1) "ExacuTrack Equipment" consisting of (a) a transmitter, (b) an ExacuTrack Tracking Unit, and (c) a base station; and/or
- (2) "ExacuTrack AT Equipment" consisting of (a) a transmitter, (b) an ExacuTrack AT Tracking Unit, and (c) a base station; and/or
- (3) "ExacuTrack One Equipment" consisting of an ExacuTrack One Tracking Unit. The ExacuTrack One Equipment may include one ExacuTrack One Beacon in addition to the ExacuTrack One Tracking Unit.

**1.6 "ExacuTrack™" or "ExacuTrack™ Service" means the ExacuTrack Equipment and/or the ExacuTrack AT Equipment, and/or the ExacuTrack One Equipment, licensed software, Documentation and services described in Section 2.**

The above terms hereby replace the corresponding terms in the Agreement wherever they may occur throughout the Agreement.

**3. Exhibit A is hereby amended to add the ExacuTrack One Unit pricing as follows:**

**EXACUTRACK ONE CHARGES:**

**ExacuTrack One Tracker Component Rental:** \$4.10 per day per Unit provided from BI inventory.

**EXACUTRACK ONE WITH 1.720.A0 ZX SERVICE:**

Description: ET One - GPS Point Collection every 1 minute, Data Transmission every 720 minutes, no AFLT, with Zone Crossing Notification.

**ExacuTrack One 1.720.A0 ZX Service:** \$2.25 per day per Unit provided from BI inventory.

**ExacuTrack One 1.720.A0 ZX Total:** \$6.35 total of ExacuTrack One Components and ExacuTrack One 1.720.A0 ZX Service charges.

**EXACUTRACK ONE WITH 1.720.A0 NZ SERVICE:**

Description: ET One - GPS Point Collection every 1 minute, Data Transmission every 720 minutes, no AFLT, no Zone Crossing Notification.

ExacuTrack One 1.720.A0 NZ Service: \$1.90 per day per Unit provided from BI inventory.

ExacuTrack One 1.720.A0 NZ Total: \$6.00 total of ExacuTrack One Components and ExacuTrack One 1.720.A0 NZ Service charges.

**ADDITIONAL SERVICES:**

**Freight:** BI will pay for the cost of shipping Units and other Equipment, Supplies and Accessories to and from Agency via ground delivery. Agency may request shipping methods other than ground delivery, in which event Agency will pay for the additional cost of such alternative shipping method.

**10% No-charge ExacuTrack One Spares:** Each month hereunder, Agency is entitled to keep a quantity of ExacuTrack One Tracking units equal to 10% of that month's corresponding average number of actively used ExacuTrack One Tracking units per day, in its possession at no charge (i.e.; these units are not subject to the daily rental rate while not in use). For billing purposes, the monthly % No-charge ExacuTrack One Spares allowance will be calculated by multiplying 10% by the number of active ExacuTrack One days for the month. (An active day is defined as a Unit that is active for one day.) Any inactive ExacuTrack One days that exceed this allowance will incur a \$4.10 charge per inactive day. (An inactive day is defined a one Unit that is inactive for one day.) Following execution of this Amendment, Agency will be granted a sixty (60) day ramp-up period before billing of spares will commence.

**ExacuTrack One Loss or Damage:** Agency is not entitled to a loss or damage allowance. Agency will be responsible for all costs related to lost, stolen or damaged ExacuTrack One Equipment. Replacement costs for ExacuTrack One units are the following: ExacuTrack One Beacon \$250.00 each; ExacuTrack One Tracking Unit \$1,740.00 each; ExacuTrack One fiber optic Strap \$60.00 each; and ExacuTrack One wallcharger \$60.00.

**Additional remote training:** From 8:00 a.m. to 5:00 p.m. Mountain Standard Time, \$200 per hour. Minimum charge of one (1) hour; thereafter billed in fifteen minute increments.

**Additional on-site training:** \$1000 per day, 2 day minimum, plus actual out of pocket expenses for on-site training including one BI staff person's travel, room, board, and miscellaneous expenses.

Capitalized terms used herein, and not otherwise defined, shall have the meaning set forth in the Agreement and in this Amendment. All other terms and conditions of the Agreement, except as expressly amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, by signing below Agency and BI have caused this Amendment to be effective as of the latest date set forth below.

**BI INCORPORATED**

**WASCO COUNTY COMMUNITY CORRECTIONS**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Title: \_\_\_\_\_

Printed Title: \_\_\_\_\_