KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS

AGENDA STAFF REPORT

AGENDA DATE:	February 22, 2012
ACTION REQUESTED:	Consider a Resolution to Surplus the Bowers Field Airport Beacon and Approve a Conveyance of the Beacon to the Kittitas County Historical Museum.

BACKGROUND:	In October of 2011, the Bowers Field Airport beacon ceased to function. In determining a repair we found that it could not be repaired without a considerable cost. It was determined that the FAA would pay 95% of the cost to replace with a new beacon so this was the direction that was decided. On December 22, 2011, we received a letter from the Kittitas County Historical Museum requesting the BOCC surplus the beacon and convey to the museum due to its historical value (70+ years old). Per Kittitas County Code 2.81.090 the BOCC is allowed to dispose of said surplus property in this manner to a not for profit agency.
INTERACTION:	Public Works; Suzanne Becker; Kittitas County Historical Museum
RECOMMENDATION:	Move to Approve & Sign Resolution to Surplus the Bowers Field Airport Beacon and Approve a Conveyance of the Beacon to the Kittitas County Historical Museum.
HANDLING:	Return 2 originals to Public Works
ATTACHMENTS:	Resolution; Conveyance; Historical Museum Letter; IRS 501(c) (3) Status.
LEAD STAFF:	Kirk Holmes Director of Public Works

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

RESOLUTION NO. _____

TO SURPLUS THE BOWERS FIELD AIRPORT BEACON AND APPROVE A CONVEYANCE OF THE BEACON TO THE KITTITAS COUNTY HISTORICAL MUSEUM

WHEREAS: The Bowers Field Airport Beacon will be replaced in February, 2012, due to age and non-functuality; and

WHEREAS: Kittitas County received a request from the Kittitas County Historical Museum for the County to surplus and convey the beacon to the museum; and

WHEREAS: The beacon is approximately 70+ years old and it would be a benefit to the citizens of Kittitas County if we were to surplus to the museum; and

WHEREAS: Pursuant to K.C.C. section 2.81.090 regarding the disposition of County surplus property the Board of County Commissioner have the authority.

NOW, THEREFORE BE IT RESOLVED the Kittitas County Board of County Commissioners declares it be in the best interest of the public to declare the Bowers Field Airport beacon surplus and approve the conveyance of said beacon to the Kittitas County Historical Museum per attached agreement.

DATED this 22nd day of February, 2012, at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

_____
Alan Crankovich, Chair

_____
Obie O'Brien, Vice-Chair

_____
Paul Jewell, Commissioner

ATTEST:

_____
Clerk of the Board

CONVEYANCE OF COUNTY PERSONAL PROPERTY (BOWERS FIELD AIRPORT BEACON) TO KITTITAS COUNTY HISTORICAL MUSEUM

THIS AGREEMENT is made and entered into by and between Kittitas County (hereinafter "the County") and Kittitas County Historical Museum (hereinafter "the Museum") pursuant to the authority granted by Section 2.81.090 of the Kittitas County Code regarding the disposition of County surplus personal property.

RECITALS

WHEREAS, the Kittitas County Board of Commissioners has declared the Bowers Field Airport beacon to be surplus property per Section 2.81.050 KCC; and

WHEREAS, Section 2.81.090(15) of the Kittitas County Code permits Kittitas County to convey personal property to nonprofit organizations in order to further a county purpose; and

WHEREAS, the Kittitas County Historical Museum, a nonprofit organization, wishes to acquire the airport beacon for display in the museum; and

WHEREAS, the Kittitas County Board of Commissioners, having considered the matter, have determined that the conveyance of the airport beacon to the Historical Museum furthers a county purpose and goal of preservation, promotion and education of the county's history; and

NOW THEREFORE, for and in consideration of the mutual benefits, covenants and agreement contained herein, Kittitas County Historical Museum and Kittitas County agree as follows:

ARTICLE I
PURPOSE

1.01 The purpose of this Agreement is to transfer the surplus airport beacon of the County to the Museum in order to better preserve, promote and educate the public regarding the county's history.

ARTICLE II
CONSIDERATION AND PERFORMANCE

2.01 The County shall convey the airport beacon in "as is" condition to the Museum for the following consideration:

a. The Museum agrees to preserve the airport beacon to the best of its ability, and to display the beacon for public viewing in order to further the purpose as described in Article I above.

b. The conveyance is subject to the following conditions and limitations:

i. SALE OF BEACON. The Museum may sell the beacon only if all of the following conditions are satisfied:

1. Prior written approval shall first be obtained from the board of county commissioners;
2. All proceeds from said conveyance must be applied to the purchase of a different property of equal or greater value than the original;
3. Any new property must be used to advance the purpose of the same or another nonprofit organization that provides recognized social services beneficial to the county -- including, but not limited to, those purposes described in Article I above;
4. The new property must be available for use and accessible to county citizens within one year of the conveyance; and
5. If the nonprofit organization or its nonprofit organization successor later ceases to use the new property for the social services described, but not limited to, those purposes set forth in Article I above, then the nonprofit organization or its nonprofit organization successor must reimburse the county for the value of the original property at the time of conveyance.

ii. REVERSION. If the Museum ceases to exist as a nonprofit organization, then the beacon shall revert immediately to the County.

2.02 The Museum agrees to be responsible for all costs and expenses in transporting the beacon from its location at the County to the Museum property, and for the preservation and display of the beacon.

ARTICLE III
NONPROFIT CERTIFICATION

3.01 By signing below, the Museum certifies that it is a bona fide nonprofit organization with a 501(c)(3) tax status.

ARTICLE IV
RIGHT TO REVIEW

4.01 This Agreement is subject to review by any Federal or State auditor. Kittitas County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by Kittitas County. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which Kittitas County deems pertinent to the Agreement and its performance, and any and all communications with or evaluation by service recipients under this Agreement. The Museum shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 6 years after contract termination, and shall

make them available for such review, within Kittitas County, State of Washington, upon request.

ARTICLE V
DISPUTES, GOVERNING LAW, AND VENUE

5.01 GOVERNING LAW AND VENUE. This Agreement shall be governed exclusively by the laws of the State of Washington. The Kittitas Superior Court shall be the sole proper venue for any and all suits brought to enforce or interpret the provisions of this Agreement.

5.02 ATTORNEY'S FEES. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall pay its own attorney's fees incurred in that action, arbitration or proceeding.

ARTICLE VI
WARRANTIES, REPRESENTATIONS AND INDEMNIFICATION

6.01 The County makes no warranties or representations regarding the airport beacon or the beacon's condition upon transfer to the Museum. The airport beacon is to be conveyed in "as is" condition.

6.02 The Museum expressly agrees to indemnify and hold harmless the County and all of its officers, directors, employees, agents and representatives, from any and all liability, loss or damage including reasonable costs of defense that they may suffer as a result of claims, demands, actions or damages to any and all persons or property, costs or judgments against the County or any person which result from or arise out of the services to be performed by the Museum under this Agreement; provided, this section shall not apply to liability resulting exclusively from errors or omissions of the County, its officers, directors, employees, agents and representatives.

6.03 The County has no obligation to indemnify and hold harmless the Museum, including but not limited to, the Museum's officers, directors, employees, agents, and representatives, from any and all claims, including reasonable attorney's fees, which arise out of the Museum's actions or obligations under this Agreement.

ARTICLE VII
GENERAL PROVISIONS

7.01 TIME. Time is of the essence in the Agreement and each and every provision hereof.

7.02 NOTICE. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given in accordance with the terms of

this Section. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid, return receipt requested.

a. Notice by the Museum to the County for all purposes under this Agreement shall be given to:
    i. Kittitas County Commissioners,
        1. 205 W 5th Ave, Suite 108,
        2. Ellensburg, WA 98926.
b. Notice by the County to the Museum for all purposes under this Agreement shall be given to:
    i. Kittitas County Historical Museum
        1. 114 E. Third Ave
        2. Ellensburg, WA 98926

7.03 CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS. This Agreement can be reviewed and mutually amended in writing as needed by the county commissioners of the participating parties. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

7.04 ASSIGNMENT. Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

7.05 SEVERABILITY.

a. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.
b. If it should appear that any provision hereof is in conflict with a statute of the State of Washington, said provision which may conflict therewith shall be deemed modified to conform to such statutory provision.

7.06 ENTIRE AGREEMENT. This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

7.07 HEADINGS. The Article and Section heading in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of this Agreement.

Dated this _____ day of _____, 2012.

Kittitas County Historical Museum

Sadie Thayer, Museum Curator

Kittitas County:

_____
Alan Crankovich, Chair

_____
Obie O'Brien, Vice-Chair

_____
Paul Jewell, Commissioner

RECEIVED
DEC 22 2011
KITTITAS COUNTY
DEPT OF PUBLIC WORKS

Kittitas County Historical Museum
114 E Third Ave
Ellensburg, WA 98926
509.925.3778 | www.kchm.org | kchm@kchm.org

12/21/2011
Board of Kittitas County Commissioners
205 W 5th Suite 205
Ellensburg WA 98926

Re: Old Airport Beacon Light

Dear Commissioners,
The Kittitas County Museum would like to request the Commissioners to declare the old nonfunctioning rotating beacon light recently removed from the water tower at Bowers Field surplus to the needs of Kittitas County. The Museum would like to purchase this surplus light for $1.00 and display it in our military exhibit room along with the other artifacts from Bowers Field.

The light served the US Army Air Corps pilots as well as civilian pilots since 1943. It has been in three different locations on Bowers Field over the years. It was converted from the original low powered incandescent lamp to a high powered metal halide lamp that had a much longer lamp life. It has been rotating virtually every night since it was installed 68 years ago signaling the location of Bowers Field to air traffic in all kinds of weather.

Over the years it has been repaired many times but it has finally succumbed to the ravages of the famous Kittitas Valley wind and will no longer rotate. We would like to care for it and display it for all to enjoy.

Thank You

Shan Rowbotham
President of the Board of Directors

Internal Revenue Service
Director, Exempt Organizations

Date: October 18, 2001

KITTITAS COUNTY HISTORICAL SOCIETY INC
G J R & W
PO BOX 460
ELLENSBURG WA 98926-0460

Department of the Treasury
P.O. Box 2508
Cincinnati, Ohio 45201

Person to Contact-ID#:31-07326
Agent William C Jarvi
Contact Telephone Numbers:
877-829-5500 Phone
513-263-3756 FAX
Federal Identification Number:
91-6037783

Dear Sir or Madam:

This is in reference to your letter of May 11, 2001, requesting a ruling regarding your qualification for status as an exempt operating foundation as defined in section 4940(d)(2) of the Internal Revenue Code.

Our records indicate you were recognized as exempt from federal income tax under section 501(c)(3) of the Code effective September of 1974. It was determined the organization was not a private foundation within the meaning of Section 509(a) of the Code because it is an organization described in Section 170(b)(1)(A)(vi) and 509(a). You have also been determined to be a private operating foundation within the meaning of section 4942(j)(3) of the Code as of January 1, 1996.

The information submitted indicates your governing body is broadly representative of the general public as evidenced by the large number of area residents of various occupations making up the Board. No Board Members are disqualified persons.

Section 4940(a) of the Code provides for the imposition on each exempt private foundation of an excise tax equal to 2 percent of the net investment income of such foundation for the taxable year.

Section 4940(d)(1) of the Code provides no tax shall be imposed under section 4940 on any private foundation which is an exempt operating foundation for the taxable year.

Section 4940(d) of the Code was enacted pursuant to the Tax Reform Act of 1984, 1984-3 C.B. (Vol. 1)1 (the "Act").

Section 4940(d)(2) of the Code provides the term "exempt operating foundation" means with respect to any taxable year, any private foundation if-

a. such foundation is an operating foundation (as defined in section 4942(j)(3);
b. such foundation has been publicly supported for at least 10 taxable years;