

**FIRST AMENDMENT
TO
BALLOT DROP BOX USE AGREEMENT
(Pierce County Auditor)**

This First Amendment to Ballot Drop Box Use Agreement ("First Amendment") is made and entered into by and between the CITY OF FIFE, a municipal corporation and a Washington Non-charter code city ("City of Fife") and Pierce County, a municipal corporation and political subdivision of the state of Washington ("Pierce County"). City of Fife and Pierce County may hereinafter be referred to collectively as "Parties" or individually as a "Party."

RECITALS

WHEREAS City of Fife and Pierce County have entered into that certain Ballot Drop Box Property Use Agreement ("Agreement") dated June 17, 2011 pursuant to which City of Fife granted to Pierce County and Pierce County accepted from City of Fife, the right to use that certain parcel of real property commonly known as City of Fife Police Department/Municipal Court, 3737 Pacific Highway East, Fife, WA 98424; and

WHEREAS City of Fife and Pierce County now desire to amend the terms of the Agreement in accordance with this First Amendment.

NOW, THEREFORE, for and in consideration the terms, covenants and conditions set forth below, City of Fife and Pierce County hereby agree as follows:

A G R E E M E N T

1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.
2. **Amendment to Exhibit A (Legal Description of Subject Property).** The Parties desire to move the Ballot Drop Box from the City of Fife's Police Department and Municipal Court property and relocate it to Fife City Hall, 5411 23rd Street East, Fife, WA 98424. Accordingly, Exhibit A to the Agreement is hereby replaced with the revised Exhibit A attached hereto and by this reference incorporated herein.
3. **Amendment to Exhibit C (Depiction of Premises).** Exhibit C to the Agreement is hereby replaced with the revised Exhibit C attached hereto and by this reference incorporated herein.
4. **Amendment to Paragraph 6 (Pierce County's Responsibilities).** Paragraph 6 of the Agreement shall be deleted in its entirety and the following substituted therefor:

6. Pierce County's Responsibilities.

6.1 Installation. Pierce County shall, at its sole cost and expense, install the Drop Box in good and workmanlike manner in accordance with the

manufacturer's specifications and with all laws, rules, regulations, ordinances, permits and requirements of all governmental agencies having jurisdiction.

6.2. Maintenance. Pierce County shall, at its sole cost and expense, maintain the Drop Box throughout the Use Period in good repair and in a neat, clean, safe, sanitary and graffiti-free condition. If the Drop Box is breached, damaged, vandalized or defaced in any way, Pierce County shall re-secure, repair or replace the Drop Box as soon as practicable after receiving notice thereof.

6.3 Security. Pierce County shall be solely responsible for the security of the Drop Box and its contents. If any threat is made with respect to the Drop Box, such as an incendiary or other device, Pierce County shall be solely responsible for dealing with and resolving that threat at Pierce County's sole expense.

5. Amendment to Paragraph 7 (City of Fife's Responsibilities). Paragraph 7 of the Agreement shall be deleted in its entirety and the following substituted therefor:

7. City of Fife's Responsibilities.

7.1 Removal and Installation. City of Fife shall at its sole cost and expense, remove the ballot drop box at City of Fife Police Department/Municipal Court move to its new location at Fife City Hall, install the Drop Box in good and workmanlike manner in accordance with the manufacturer's specifications and with all laws, rules, regulations, ordinances, permits and requirements of all governmental agencies having jurisdiction.

7.2. Other Responsibilities. City of Fife shall: (a) exercise due care and caution with respect to the Drop Box while conducting its business operations in and about the Subject Property and shall, at its sole cost and expense, repair any and all damage to the Drop Box caused by the negligent or willful conduct of its elected or appointed officials, contractors, servants, agents or employees; and (b) notify Pierce County immediately if City of Fife becomes aware that: (i) the Drop Box is breached, damaged, vandalized or defaced in any way; and/or (ii) any threat is made with respect to the Drop Box.

6. Amendment to Paragraph 11 (Notices). Paragraph 11 of the Agreement shall be deleted in its entirety and the following substituted therefor:

11. Notices. Any notices required or desired to be given shall be by telephone, electronic mail and U.S. mail to the person(s) set forth below:

To: City of Fife
Attn: Dave Zabell, City Manager
Fife City Hall
5411 - 23rd Street East
Fife, WA 98424
Telephone: 253-922-2489 (City Hall)

Telephone: 253-896-8602 (Direct Line)
Email: dzabell@cityoffife.org

Copy to: Loren Combs, Attorney at Law
VSI Law Group, PLLC
3600 Port of Tacoma Road, Suite 311
Tacoma, WA 98424
Telephone: 253.922.5464
Email: ldc@vsilawgroup.com

To: Pierce County Auditor - Elections Division
Attn: Julie Colacurcio/Mike Rooney
2501 South 35th Street, Suite C
Tacoma, WA 98409-7284
Telephone: 253-798-6587 (Colacurcio)
253-798-2148 (Rooney)
Email: jcolacu@co.pierce.wa.us (Colacurcio)
mrooney@co.pierce.wa.us (Rooney)

Copy to: Pierce County Prosecuting Attorney/Civil Division
Attn: David H. Prather, Deputy Prosecuting Attorney
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Telephone: 253-798-4168
Email: dprathe@co.pierce.wa.us

Copy to: Pierce County Facilities Management
Attn: Real Property Management Specialist
1102 Broadway, Suite 302
Tacoma, WA 98402-2160
Telephone: 253-798-7223
Email: rtacket@co.pierce.wa.us

6. Construction. This First Amendment was negotiated under circumstances in which each party had the opportunity to seek the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either party.

7. Authority. The Parties each represent and warrant to the other that it has the power and authority to execute this First Amendment and that there are no third party approvals required to execute this First Amendment or to comply with the terms and conditions set forth herein.

8. Ratification and Confirmation. The Agreement, except as amended by the First Amendment, is hereby ratified and confirmed and shall remain in full force and effect in accordance with its original terms and conditions.

9. **Effective Date of First Amendment.** The Effective Date of this First Amendment shall be the date the Pierce County Executive (who shall be the last person to sign) shall have executed this First Amendment as indicated opposite her name below.

CITY OF FIFE, a municipal corporation and Washington non-charter code city:

By:  4/28/14
David K. Zahell Date
City Manager

ATTEST:  4/28/14
Carol Etgen Date
City Clerk

PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington:

APPROVED AS TO LEGAL FORM ONLY:

By:  2/12/14
Deputy Prosecuting Attorney Date

RECOMMENDED:

By:  2/18/14
Director, Budget and Finance Date

By:  02.20.14
Pierce County Auditor Date

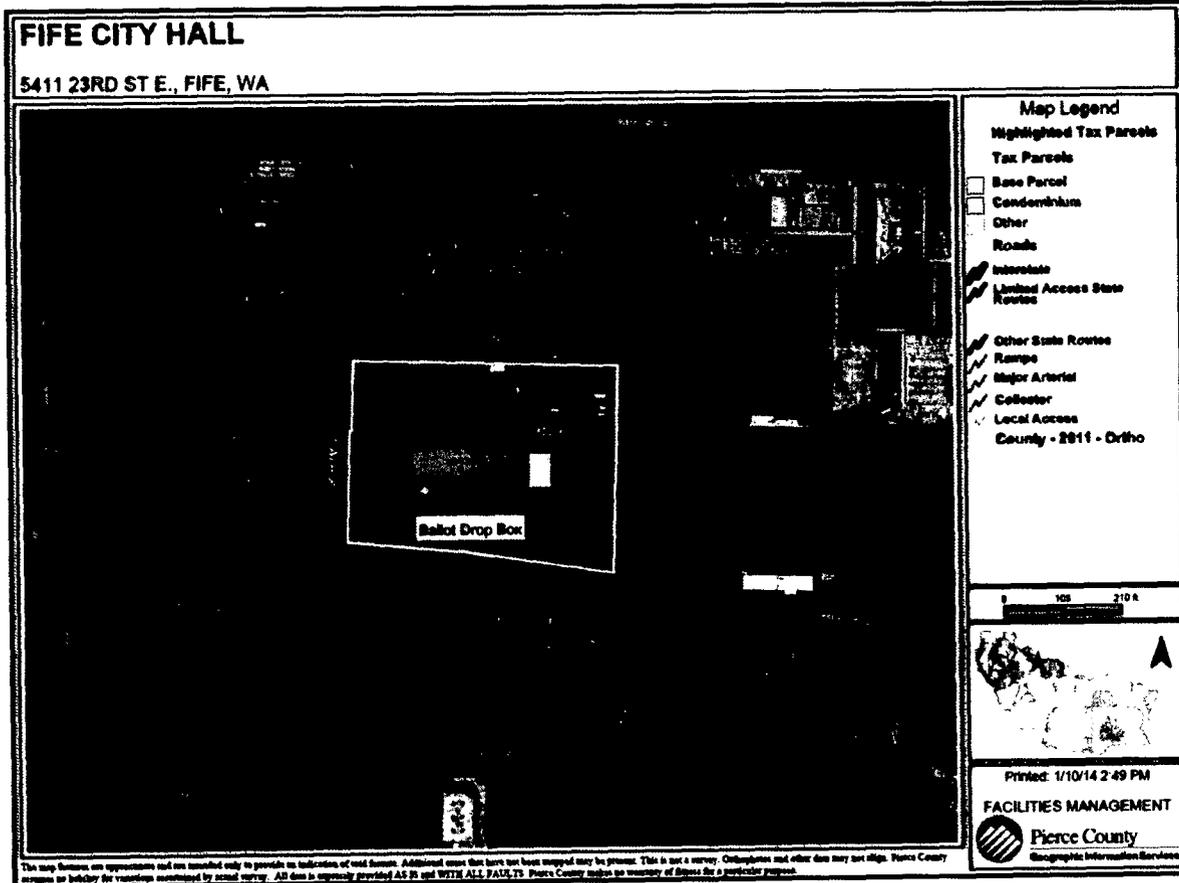
FINAL ACTION:

By:  3-3-14
Pierce County Executive
Deputy Executive

EXHIBIT A
(Legal Description of Subject Property)

Section 07 Township 20 Range 04 Quarter 23 DBLR 96-09-10-0247 DESC AS FOLL BEG
572.46 FT S 2 DEG 00 MIN 50 SEC W OF NW COR OF GOVT LOT 2 ON W LI OF SEC TH
S 88 DEG 21 MIN 15 SEC E PAR TO N LI SD LOT 469.12 FT TH S 2 DEG 00 MIN 50 SEC
W PAR TO SD W LI 274.44 FT TH N 8 DEG 53 MIN 20 SEC W 270.45 FT TH N 83 DEG 35
MIN 20 SEC W 206.63 FT M/L TO E R/W LI OF 54TH AV E TH N 2 DEG 21 MIN 15 SEC E
ALG SD R/W LI 222.15 FT TH S 88 DEG 21 MIN 15 SEC E 3.97 FT TO POB EXC S 30 FT
DED TO CY OF FIFE FOR R/W TOG/W FOLL BEG 444.29 FT S OF NW COR OF GOVT
LOT 2 TH E 469.5 FT TO W LI OF SD #88 TR TH S 128.16 FT TH W 469.5 FT TO W LI SD
LOT 2 TH N 128.16 FT TO POB TOG/W STRIP OF LAND APPROX 6 FT WIDE & 148.16
FT LONG ABUTT ON W LY IN SE OF NE 12-20-03E EXC THAT POR CYD TO CY OF
FIFE PER ETN 106872 EASE OF RECORD APPROVED COMB BY CY OF FIFE COMM
DEV DEPT 2/3/12 OUT OF 2-122 & 2-129 SEG 2013-0052 BB 8/16/12 BB

**EXHIBIT C
(Depiction of Premises)**



BALLOT DROP BOX PROPERTY USE AGREEMENT (Pierce County Auditor)

This Ballot Drop Box Property Use Agreement (hereinafter "Agreement") is made and entered into as of the Effective Date (defined in Section 21 below) by and between the CITY OF FIFE, a municipal corporation and a Washington non-charter code city (hereinafter "City of Fife") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington (hereinafter "Pierce County"). City of Fife and Pierce County may hereinafter be referred to collectively as "Parties" or individually as a "Party."

RECITALS

WHEREAS City of Fife owns that certain parcel of real property consisting of the land and improvements commonly known as the Fife Police Department/Municipal Court, 3737 Pacific Highway East, Fife, WA 98424 and legally described in **Exhibit A** attached hereto and by this reference incorporated herein (hereinafter "Subject Property"); and

WHEREAS Pierce County has secured a federal "Help America Vote Act" grant through the Elections Division of the Washington Secretary of State to purchase, install, use and maintain a ballot drop box of the type and nature schematically depicted in **Exhibit B** attached hereto and by this reference incorporated herein (hereinafter "Drop Box") in various locations throughout Pierce County to collect ballots cast by voters in general and special elections conducted by the Auditor of Pierce County pursuant to Chapter 29A of the Revised Code of Washington; and

WHEREAS City of Fife desires to make available to Pierce County for the installation, use and maintenance of the Drop Box those certain portions of the Subject Property depicted and described in **Exhibit C** attached hereto and by this reference incorporated herein (hereinafter collectively the "Premises"); and

WHEREAS the Parties agree that it is in their mutual interest and in the best interest of the general public that ballot drop boxes be located throughout Pierce County so as to facilitate and encourage public interest in electoral participation by local residents.

NOW, THEREFORE, for in and consideration of the terms, covenants and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City of Fife and Pierce County hereby agree as follows:

A G R E E M E N T

1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.

2. Grant of Use Right. City of Fife hereby grants to Pierce County, and Pierce County hereby accepts from City of Fife, the right to use the Subject Property and Premises upon the terms, covenants and conditions set forth in this Agreement.

3. Use Period. This Agreement shall commence on the Effective Date and terminate at midnight on December 31, 2021 (hereinafter "Use Period"). This Agreement shall automatically renew for successive periods of one (1) year each beginning January 1 and ending December 31 (hereinafter "Renewal Period(s)"). Notwithstanding the foregoing, this Agreement may be terminated at any time by either Party upon ninety (90) calendar days prior written notice to the other.

4. Delivery of Use; Acceptance. Pierce County shall be entitled to use of the Premises as of the Effective Date. Pierce County has inspected the Premises and has determined to its complete satisfaction the same are suitable for the uses described in Section 5.1 below.

5. Use of Premises.

5.1 Permitted Uses. Pierce County shall use the Premises for the sole purposes of installing, using, maintaining and removing the Drop Box at the location identified in **Exhibit A** and for no other uses or purposes without the prior written consent of the City of Fife, which consent may be granted, withheld, conditioned or delayed by the City of Fife in its sole and absolute judgment and discretion.

5.2 Prohibited Uses. Pierce County shall not use the Premises in violation of any statute, rule, ordinance, permit, order, regulation or code in effect and applicable to any part thereof, nor shall it do or suffer to be done in or about the Premises, or bring into, keep, or suffer to be brought into or kept in or about the Premises, anything that may constitute a waste, hazard, nuisance or unreasonable annoyance to City of Fife or its customers. Separate and apart from this Agreement, Pierce County shall be solely and exclusively responsible for obtaining any regulatory approvals necessary to install the Drop Box.

6. Pierce County's Responsibilities.

6.1 Installation. Pierce County shall, at its sole cost and expense, install the Drop Box in good and workmanlike manner in accordance with the

manufacturer's specifications and with all laws, rules, regulations, ordinances, permits and requirements of all governmental agencies having jurisdiction.

6.2. Maintenance. Pierce County shall, at its sole cost and expense, maintain the Drop Box throughout the Use Period in good repair and in a neat, clean, safe, sanitary and graffiti-free condition. If the Drop Box is breached, damaged, vandalized or defaced in any way, Pierce County shall re-secure, repair or replace the Drop Box as soon as practicable after receiving notice thereof.

6.3 Security. Pierce County shall be solely responsible for the security of the Drop Box and its contents. If any threat is made with respect to the Drop Box, such as an incendiary or other device, Pierce County shall be solely responsible for dealing with and resolving that threat at Pierce County's sole expense.

7. City of Fife's Responsibilities. City of Fife shall: (a) exercise due care and caution with respect to the Drop Box while conducting its business operations in and about the Subject Property and shall, at its sole cost and expense, repair any and all damage to the Drop Box caused by the negligent or willful conduct of its elected or appointed officials, contractors, servants, agents or employees; and (b) notify Pierce County immediately if City of Fife becomes aware that: (i) the Drop Box is breached, damaged, vandalized or defaced in any way; and/or (ii) any threat is made with respect to the Drop Box.

8. Indemnification. Pierce County shall indemnify, defend, and hold City of Fife, its officials, officers and employees harmless from all claims, liabilities, costs, attorney fees and expenses of any kind, type or nature whatsoever arising out of or in any way relating to: (a) Pierce County's use of the Subject Property and/or the Premises pursuant to this Agreement, specifically including, without limitation, any use of and/or entry onto the Subject Property by any member of the public in relation to the Drop Box; (b) any activity, work or thing done, permitted or suffered by Pierce County in or about the Subject Property and/or the Premises; (c) any breach or default in the performance of any obligation to be performed by Pierce County under this Agreement; or (d) any act or omission of Pierce County or of its elected or appointed officials, contractors, servants, agents or employees caused by negligence or willful misconduct and then only to the extent of its or their proportionate share of liability. Pierce County's obligation to indemnify City of Fife under this Section 8 includes an obligation to indemnify for losses resulting from death or injury to Pierce County's elected or appointed officials, contractors, servants, agents or employees, and Pierce County hereby waives any and all immunities it now has or hereafter may have under Title 51 RCW (Industrial Insurance), or other worker's compensation, disability benefit or other similar act that would otherwise be applicable in the case of such a claim and further acknowledges that such waiver was mutually negotiated by the Parties as required by RCW 4.24.115.

9. **Default; Remedies.** In the event of a default under this Agreement, either Party may pursue any remedy allowed by law.

10. **Waiver.** Failure by either Party to promptly enforce any right under this Agreement shall not operate as a waiver of such right with respect to any future default.

11. **Notices.** Any notices required or desired to be given shall be by telephone, electronic mail and U.S. mail to the person(s) set forth below:

To: City of Fife
Attn: Dave Zabell, City Manager
Fife City Hall
5411 - 23rd Street East
Fife, WA 98424
Telephone: 253-922-2489 (City Hall)
Telephone: 253-896-8602 (Direct Line)
Email: dzabell@cityoffife.org

Copy to: Fife Police Department/Municipal Court
3737 Pacific Highway East
Fife, WA 98424
Telephone: 253-922-6633 (Fife Police)
253-922-6635 (Fife Municipal Court)

Copy to: Loren Combs, Attorney at Law
VSI Law Group, PLLC
3600 Port of Tacoma Road, Suite 311
Tacoma, WA 98424
Telephone: 253.922.5464
Email: ldc@vsilawgroup.com

To Pierce County: Pierce County Auditor - Elections Division
Attn: Cindy Hartman/Mary Johnson-Hall/Mike Rooney
2501 South 35th Street, Suite C
Tacoma, WA 98409-7284
Telephone: 253-798-6587 (Hartman)
253-798-2146 (Johnson-Hall)
253-798-2148 (Rooney)
Email: chartm1@co.pierce.wa.us (Hartman)
mjohns6@co.pierce.wa.us (Johnson-Hall)
mrooney@co.pierce.wa.us (Rooney)

Copy to: Pierce County Prosecuting Attorney/Civil Division
Attn: David H. Prather, Deputy Prosecuting Attorney
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Telephone: 253-798-4168
Email: dprathe@co.pierce.wa.us

Copy to: Pierce County Facilities Management
Attn: Real Property Management Specialist
1102 Broadway, Suite 302
Tacoma, WA 98402-2160
Telephone: 253-798-7223
Email: hrogge@co.pierce.wa.us

Any Party, by written notice to the other in the manner herein provided, may designate contact information different from that set forth above. Any notices sent by a Party's attorney on behalf of such Party shall be deemed delivered by such Party.

12. Negotiation and Construction. This Agreement was negotiated by the Parties with the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either Party.

13. Time. Time is of the essence of this Agreement and of every term and provision hereof. If the date for any performance under this Agreement falls on a weekend or holiday, the time shall be extended to the next business day.

14. Counterparts. This Agreement may be signed in two or more counterparts, which taken together shall constitute the complete agreement between the Parties, and signatures to this Agreement by the Parties transmitted via facsimile shall be acceptable and binding.

15. Prior Agreements. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned herein and no prior agreement, letter of intent, negotiation or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to, except by an agreement in writing signed by the Parties or their respective successors in interest.

16. Attorney Fees and Costs. If either Party requires the services of an attorney in connection with enforcing the terms of this Agreement, whether or not suit is brought, or in the event suit is brought for the recovery of any sums due under this Agreement or for the breach of any term, covenant or condition hereof, the substantially prevailing Party shall be entitled to reasonable attorney fees and all costs incurred in

connection therewith, including, without limitation, the fees of experts and professionals, whether at trial, on appeal or without resort to suit.

17. Vacation of Premises. Upon expiration or earlier termination of the Agreement, Pierce County shall: (a) remove the Drop Box and any associated mounting hardware from the Premises; and (b) leave the Premises in a neat, clean, safe and sanitary condition. If Pierce County fails to complete the removal and/or site remediation required under this Section 17, City of Fife may cause such work to be completed and charge the documented, reasonable cost thereof to Pierce County.

18. Cost of Performance. Except as otherwise expressly provided in this Agreement, all covenants and agreements to be performed by Pierce County shall be performed at its sole cost and expense.

19. Severability. Any provision of this Agreement that proves to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

20. Governing Law; Venue. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the state of Washington. The venue of any action between the Parties relating to the subject matter of this Agreement shall be in the superior court for Pierce County, Washington.

21. Effective Date. "Effective Date" means the date the Pierce County Executive (who shall be the last person to sign) shall have signed this Agreement as indicated opposite her name below.

[SIGNATURES & ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]

EXHIBIT A
(Legal Description of Subject Property)

Section 02 Township 20 Range 03 Quarter 44 : THAT PART OF FOLL LY WITHIN
CORPORATE LIMITS OF TOWN OF FIFE NE OF SE OF SE ALSO N 3 AC OF N
1/2 OF SE OF SE OF SE & N 20 FT OF N 1/2 OF SW OF SE OF SE EXC CO RD
SUBJ TO PACIFIC TEL & TEL EASE

EXHIBIT B (Schematic Depiction of Drop Box)

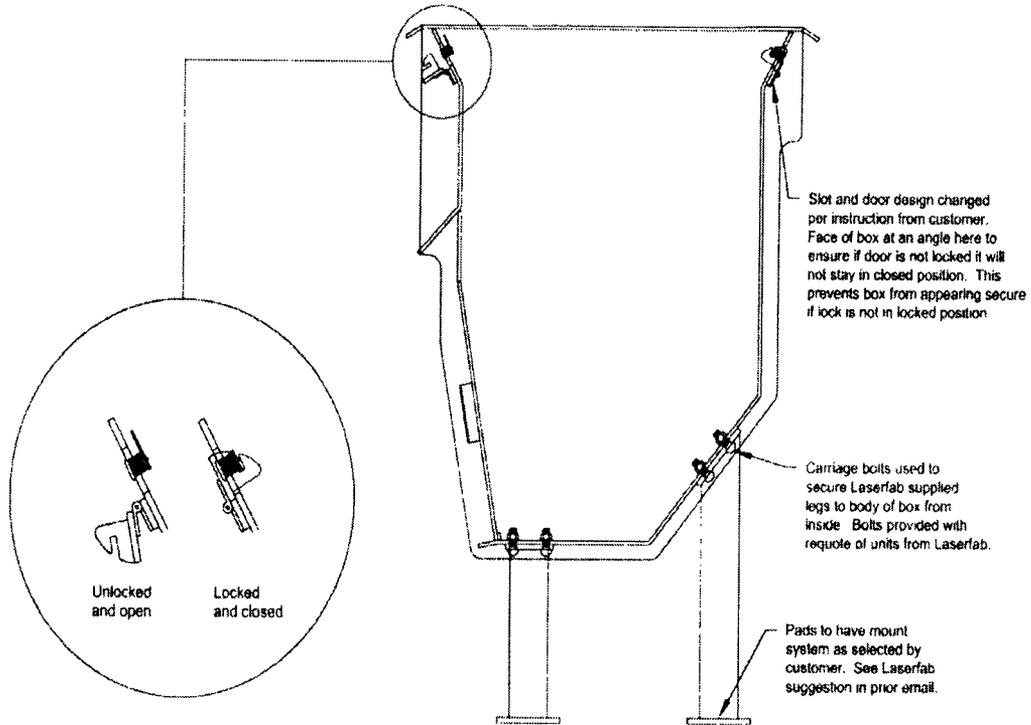
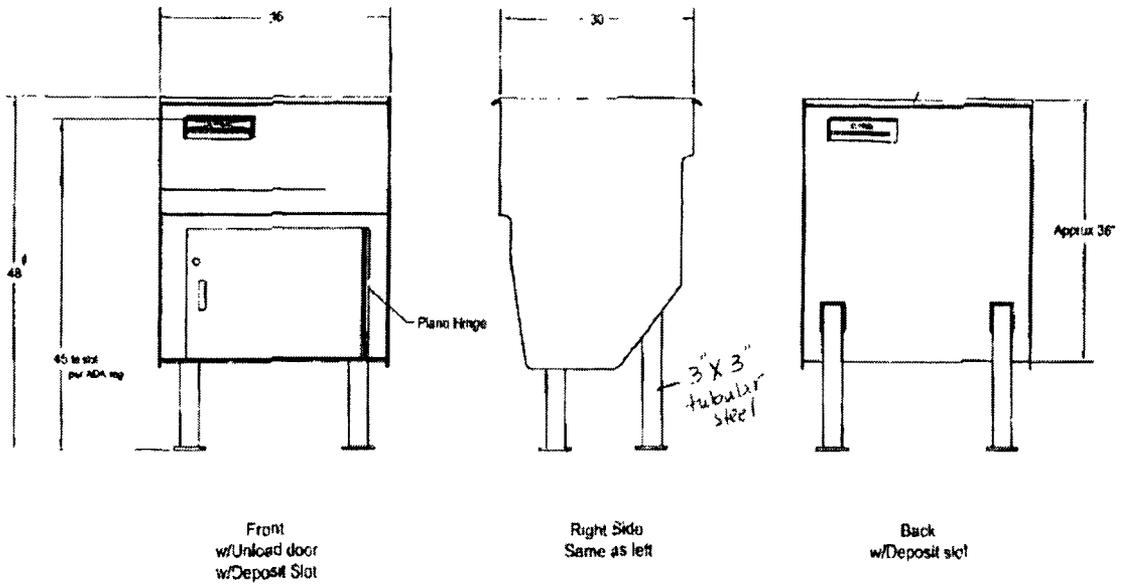


EXHIBIT B
(Schematic Depiction of Drop Box - Continued)



All components are 1/4" Steel Construction
36" Dual Version Shown

EXHIBIT B
(Schematic Depiction of Drop Box - Continued)

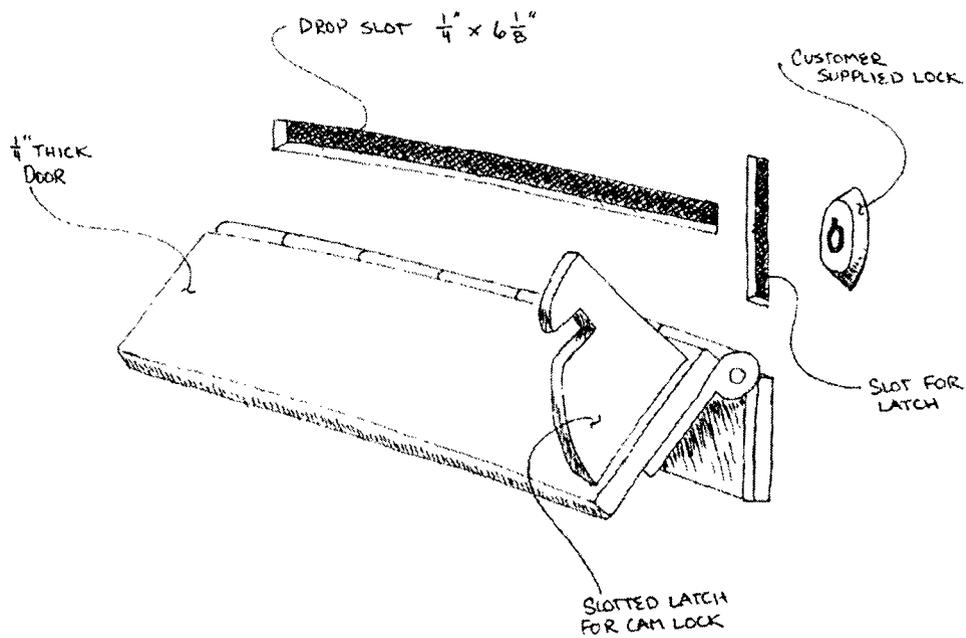


EXHIBIT C (Depiction of Premises)

