

March 10, 2008

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

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
February 25, 2008, 9:00 a.m.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

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

County Employees Present: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Sustainable Development; Finance Manager Linda Ivey; Facilities Manager Roy Rogers; Personnel Manager Melina Wenner; Public Works Director Ross Dunfee; Planning Director Terry Marden; Rafael Gonzales, Office of Public Defense; DPA Ryan Brown; Mike Shuttleworth, Planning; Sue Schuetze, Public Works; Lisa Small, Commissioners' Office; Clerk Josie Delvin; and Deputy Clerk Jackie Hill.

Approval of Minutes

The Minutes of February 11, 2008 were approved.

Other Business

Cancellation of Meeting

The Board agreed to cancel the meeting of March 3, 2008 since Commissioner Bowman would be in Washington D.C.

Consent Agenda

Commissioner Bowman discussed item "f" (Contract with MRP) and his concern about the company being located in Portland. Roy Rogers and Lisa Small explained the contract was a "blanket" contract so the County was prepared in case of a plumbing emergency and that MRP had a contractor in this area.

Chairman Oliver requested item "y" (Federal Annual Certificate Report) be pulled until he could speak to the Sheriff.

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

Commissioners

- a. Line Item Transfer, Fund No. 0305101, Dept. 000
- b. Ben Franklin Transit Letter of Support
- c. Quit Claim Deed – Parcel 1-1680-100-0009-000 “Chemical Pit”
- d. Quit Claim Deed – Parcel 1-1488-100-0006-000 “Clodfelter Pit”

Facilities

- e. Contract w/Sound Solutions Northwest
- f. Contract w/MRP Services

Juvenile

- g. Establishing Bi-County Non-Bargaining Employment for Judge Pro-Tempore

Office of Public Defense

- h. Defense Service Contract w/P Younesi
- i. Defense Service Contract w/D Kathren
- j. Defense Service Contract w/M Poland
- k. Defense Service Contract w/D Hickman
- l. Defense Service Contract w/D Chuang
- m. Defense Service Contract w/D Hickman
- n. Defense Service Contract w/M Poland
- o. Defense Service Contract w/G Ochoa Lawrence
- p. Authority to Appoint Expert Witnesses & Professional Services
- q. Line Item Transfer, Fund No. 0000101, Dept. 136

Personnel

- r. Personal Services Contract for Security Services @ Prosser Courthouse
- s. Establishing Salary Grade for Benefit/Recruitment Specialist Position
- t. Line Item Transfer, Fund No. 0000101, Dept. 127
- u. UEBT Acceptance of Trust Agreement for Deputy Sheriff’s Guild, Rescind Res. 08-017

Road/Engineer

- v. Supplement Agreement No. 3 to Agreement w/HDR Engineering, Inc.
- w. Authorization to Schedule Request for Bids for ER&R Purchase of Metal Traffic Signs
- x. Order & Agreement for Nonexclusive Franchise to Roy E. Clifford

Superior Court

- z. Line Item Transfer, Fund No. 0000101, Dept. 123
- aa. Establishing Bi-County Non-Bargaining Employment for Judge Pro-Tempore
- bb. Establishing Bi-County Non-Bargaining Employment for Arbitrator

Public Hearing – B.C. Water Co., LLC Franchise

Sue Schuetze presented a Petition by B.C. Water Company, LLC to continue a franchise to place water lines within County road right of way in the Cottonwood vicinity in Benton County. She said that based upon current franchise requirements, her office recommended approval subject to the listed conditions.

As there was no one present to testify, public hearing was closed.

MOTION: Commissioner Benitz moved to approve the application for franchise by B.C. Water Company, LLC to place water lines within County road right of way in the Cottonwood vicinity. Commissioner Bowman seconded and upon vote, the motion carried.

Public Hearing – Appeal of Administrator Decision - SHPA 08-01

Mike Shuttleworth presented the appeal by Mabel Crouch to the Short Plat Administrator's decision that a 40-foot access easement provided to serve this plat. He said Ms. Crouch was asking for approval with only a 30-foot access easement. Mr. Shuttleworth said this request was unusual, only that there was a vacant nursing home on the property that someone was attempting to sell. Mr. Shuttleworth said the Planning Staff did not have a problem granting the appeal.

Proponents

Dan Churchill and Mabel Crouch spoke in favor of the appeal and said that requiring the additional 10 feet would require moving utility poles and utility lines and that currently only 10 or 15 feet of the current 30-foot access was being used.

Nancy Rubero said she wanted to know how the issue would affect her property. Mike Shuttleworth said there was an existing easement and the roadway would stay the same and not affect her property.

As there was no one else present to testify, public testimony was closed.

MOTION: Commissioner Bowman moved to approve Mabel Crouch's appeal to the short plat administrator's decision and remand the application with instructions to approve the short plat application with the existing 30-foot access easement. Commissioner Benitz seconded and upon vote, the motion carried.

Public Hearing – Surplus Simple Fee Property

Chairman Oliver recused himself from this issue.

Lisa Small said the purpose of the public hearing was to declare the property as surplus and to proceed with selling property parcel 1-1880-400-0013-002.

As there was no one present to testify, public testimony was closed.

MOTION: Commissioner Bowman moved to approve the resolution declaring the property as surplus and authorizing the sale of such property. Chairman Pro Tem Benitz seconded and upon vote, the motion carried.

The Board briefly recessed, reconvening at 9:25 a.m.

Public Hearing – Supplemental Appropriations

Linda Ivey presented supplemental appropriations for the 2008 Juvenile Center Fund budget.

As there was no one present to testify, public testimony was closed.

Commissioner Benitz said he was not in favor of using these funds for enhancements.

MOTION: Commissioner Bowman moved to approve the supplemental appropriation to the 2008 Juvenile Center Fund 0115-101, Dept. 172 in the amount of \$399,040. Chairman Oliver seconded and upon vote, the motion carried with Commissioner Benitz opposing.

MOTION: Commissioner Bowman moved to approve the supplemental appropriation to the 2008 Juvenile Center Fund 0115-101, Dept. 172 in the amount of \$43,976. Chairman Oliver seconded and upon vote, the motion carried with Commissioner Benitz opposing.

MOTION: Commissioner Bowman moved to approve the supplemental appropriation to the 2008 Juvenile Center Fund 0115-101, Dept. 172 in the amount of \$88,505. Chairman Oliver seconded and upon vote, the motion carried with Commissioner Benitz opposing.

MOTION: Commissioner Bowman moved to approve the supplemental appropriation to the 2008 Juvenile Center Fund 0115-101, Dept. 172 in the amount of \$10,250. Chairman Oliver seconded and upon vote, the motion carried with Commissioner Benitz opposing.

Legislative Update

Commissioner Bowman briefly discussed the following legislative issues:

Senate Bill 5599: He said it was out of the Senate and in the House and he had written all the legislators and requested the Board members to call or write the legislators voicing their opposition to the bill. Chairman Oliver requested staff work up a memo to all affected school districts indicating concern about the revenue base being diluted. Commissioner Benitz said timeliness was more of an issue and he recommended making some phone calls to those entities. The Board agreed to copy the school districts and entities with letters to the legislators so the concerns were on record.

Commissioner Bowman provided a copy of the draft minutes from the WSAC meeting and discussed legislative action prohibiting discrimination for athletic activities at county facilities. He indicated he would give a copy to Ryan Brown for his review. He also provided information on the following issues: Senate Transportation budget; public works bills; rural meeting info; WSAC priority legislation; WSAC hot list; exemption from building requirements for specialty agriculture structures; Red Mountain pictures and funding issues for Red Mountain; and Thurston County lawsuit regarding GMA update. Ryan Brown said he was aware of the case and the issue.

Executive Session – Potential Litigation – CC 08-02

The Board went into executive session with Melina Wenner and DPA Eric Hsu at 9:47 a.m. for approximately 15 minutes to discuss potential litigation on Claim CC 08-02. Also present were Ryan Brown, Loretta Smith Kelty, David Sparks, and Cami McKenzie. The Board came out of executive session at 9:54 a.m. Mr. Hsu said the Board made no decision but direction was given regarding settlement.

The Board briefly recessed, reconvening at 10:00 a.m.

Property Proposal

Chairman Oliver recused himself from this issue.

Lisa Small said the parcel was declared surplus and recommended the Board sell Property Parcel 1-1880-400-0013-002 to James and Caroline Katzaroff.

MOTION: Commissioner Bowman moved to approve the Quiet Claim Deed Selling Property Parcel 1-1880-400-0013-002 to James and Caroline Katzaroff. Chairman Pro Tem Benitz seconded and upon vote, the motion carried.

The Board briefly recessed, reconvening at 10:05 a.m.

Other Business

Video Conference TV

Commissioner Bowman suggested the Board consider purchasing a flat panel television so the audience could see what was going on, in addition to recording copies of the meeting. Commissioner Benitz agreed that David Sparks could look at the costs and time required for the project and bring back a recommendation. Chairman Oliver also agreed.

ECA Conference

Chairman Oliver reported on his Energy Communities Alliance conference in Washington, D.C. He stated the Hanford site was doing extremely well with cleanup efforts when compared to other sites.

The Board briefly recessed, reconvening at 10:30 a.m.

Bid Opening – BST 2008

The following bids were received:

Granite Northwest, Inc., Yakima, WA:	\$1,018,018.00
Central Washington Asphalt, Inc., Moses Lake, WA:	\$1,097,872.40

Engineer's Estimate:

\$1,007,787.70

Larry Moser said he would review the bids and bring back a recommendation.

Justice Center Cafeteria Discussion

Loretta Smith Kelty indicated the present owner of the café had indicated she could not make the business successful, even with only paying \$1.00 per month, plus utilities. Additionally, the County did not receive any bids on the request for proposal.

Commissioner Benitz suggested the Board look at a different kind of service, possibly a latte stand. Additionally, he recommended terminating the lease once the extension was up and research retaining the assets that were located at the café.

Mr. Sparks said the County received a letter from the Country Gentlemen, outlining its concerns with the potential business. He suggested the Board try to address some of his concerns since the County had a significant investment in the café.

Commissioner Bowman agreed he wanted to review the concerns of the Country Gentleman and see if there was another option. He also agreed the café needed to be shut down once the lease extension was up.

Chairman Oliver requested the Board offer \$2,500.00 per month to The Beat Café owner for providing a service to the employees and general public and extend the lease for an additional 30 days. Additionally, he requested the original committee to reconvene and look at other options.

Commissioner Bowman said he didn't have a problem with the committee reconvening, but still believed the café needed to be shut down.

The Board briefly recessed, reconvening at 11:00 a.m.

Offsite Storage Proposal

Josie Delvin presented her records storage proposal as submitted by the Records Management Services, Inc., projected out 10 years. Ms. Delvin discussed her present concerns with records and indicated she was not the only department that had an issue with storage, safety concerns and L & I issues.

The Board indicated it would be discussing facilities and storage issues on March 10 and 12 and would try to address Ms. Delvin's concerns at that time.

Other Business

Benton City – Gravel Pit Update

Commissioner Benitz and Phil Mees reported on the meeting with Benton City and BLM regarding the proposed gravel pit in Benton City. Mr. Mees said that BLM stated it was in the process of responding to the County's letter, they were willing to address all concerns, and that a decision had not yet been made.

Additionally, BLM wants to establish a committee to see if they can move ahead with the project and still satisfy the concerns. Mr. Mees indicated the County would probably suggest that BLM also complete an environmental impact statement.

The Board concurred with moving forward with the process.

Public Meeting – Tri Cities Animal Control Authority

Chairman Oliver said he had met with the Tri-Cities Animal Control and discussed a letter from the City of Pasco regarding the Tri-Cities Animal Control Authority. He said he called this public meeting to get information to the Board and ask for concurrence to move ahead with some possible solution to the animal control issue.

Mr. Stokes said he had been involved with animal issues for many years, either through animal control or adoption of strays. He discussed the concerns of himself and the community and that there was a relative gap in the County. He said he had been actively trying to promote a treatment and/or housing process to get some kind of program to deal with the gap in the County. He encouraged the commissioners to find some mechanism for a program or facilities and look at combined efforts with Animal Control. Additionally, he said there were other groups that wanted to participate and if the community was given the opportunity to develop a fund, he believed there would be contributions.

Angela Zillar, Director for Animal Control, spoke about new processes she was trying to implement, including a three-day business hold, vaccination policy, microchip program, and insurance policy for adopted animals. She said there was a desperate need for county involvement and discussed a regional, centrally located facility.

Anne Guizzo, Chair of Animal Control Task Force, said there was still a passion in the community for the animals and animal control. She stated it would be an excellent first step to look at a regional facility.

Mr. Dawson, Benton-Franklin Humane Society, said his group did not want to conflict with stray or lost animals and only took animals surrendered by owners. He indicated that last year they adopted out over 800 animals and were dedicated to problems that were cropping up. He also indicated they were in the process of looking at expanding their facility and would be asking the public for funding.

Chairman Oliver recommended the Board continue the discussion until after unscheduled visitors.

Unscheduled Visitors

Roy Springer said he had a claim against the County and asked the Board for help in concluding his issue.

Chairman Oliver said that staff was moving forward at this time to conclude the issue and would be contacting him.

Continued Discussion – Animal Control

Nicole Rodriguez and Amber David, volunteers with Out West Pet Rescue, said their main objective was to spay and neuter the animals and felt a low-cost spay and neuter clinic would help the issue tremendously.

Barbara Crocker, county resident, said that education and spay and neuter was at the core of the problem.

Catherine Shadox, director of Columbia Animal Rescue, said she was in favor of more licensing restrictions and breeder restrictions regarding spaying and neutering.

Gail Matsmara, owner of a cattle operation in the County, said that stray dogs were a huge problem. She indicated the difference between a stray dog and an aggressive stray dog was about 72 hours without food.

Commissioner Bowman said the Board had been trying to find a solution and believed the County needed to do something. He said that staff had been working with West Richland to take care of the dangerous animals and that West Richland was currently trying to move their facility. He suggested maybe the County could look at helping them increase the size of their facility. Also, he said he was not opposed to working with other agencies, possibly through an agreement with Tri-City Animal Control.

Commissioner Benitz recommended the public get in touch with the Animal Control Task Force committee to address nuisance and stray animals and that the Committee should talk to the PA's office regarding drafting an ordinance. He said there was a good outline available to work from. He said he was not going to promise to build a facility but wanted to look at contracting with an entity to provide services.

Chairman Oliver said he wanted to talk with folks to see if the West Richland facility might fit into a regional facility. Chairman Oliver requested the Fairgrounds be researched as a possible site for a regional facility as well. He also asked the Task Force if it was willing to bring back a draft ordinance for the County to review. Anne Guizzo said she would be willing to work with County staff and look at the ordinance.

Commissioner Benitz said he was opposed to a facility at the Fairgrounds because it would not be compatible with the present uses at the Fairgrounds.

Claim for Damages

- CC 08-06: Received on February 14, 2008 from Anthony Wells for emotional damages sustained during an arrest.
- CC 08-07: Received on February 25, 2008 from Armando Calderon for physical damages sustained while in jail.

Vouchers

Check Date: 02/15/2008
Warrant # 890515-890799
Total all funds: \$1,171,651.28

Check Date: 02/15/2008
Warrant # 890800-891141
Total all funds: \$7,338.64

Check Date: 02/15/2008
Warrant #: 216843-217089
Total all funds: \$108,010.28

Check Date: 02/15/2008
Taxes #: 10108023-10108024
Total all funds: \$35,803.86

Check Date: 02/22/2008
Warrant#: 891234-891475
Total all funds: \$833,705.68

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

Resolutions

- 08-325 Line Item Transfer, Fund No. 0305101, Dept. 000
- 08-326 Quit Claim Deed – Parcel 1-1680-100-0009-000 “Chemical Pit”
- 08-327 Quit Claim Deed – Parcel 1-1488-100-0006-000 “Clodfelter Pit”
- 08-328 Contract w/Sound Solutions Northwest
- 08-329 Contract w/MRP Services
- 08-330 Establishing Bi-County Non-Bargaining Employment for Judge Pro-Tempore
- 08-331 Defense Service Contract w/P Younesi
- 08-332 Defense Service Contract w/D Kathren
- 08-333 Defense Service Contract w/M Poland
- 08-334 Defense Service Contract w/D Hickman
- 08-335 Defense Service Contract w/D Chuang
- 08-336 Defense Service Contract w/D Hickman

- 08-337 Defense Service Contract w/M Poland
- 08-338 Defense Service Contract w/G Ochoa Lawrence
- 08-339 Authority to Appoint Expert Witnesses & Professional Services
- 08-340 Line Item Transfer, Fund No. 0000101, Dept. 136
- 08-341 Personal Services Contract for Security Services @ Prosser Courthouse
- 08-342 Establishing Salary Grade for Benefit/Recruitment Specialist Position
- 08-343 Line Item Transfer, Fund No. 0000101, Dept. 127
- 08-344 UEBT Acceptance of Trust Agreement for Deputy Sheriff's Guild, Rescind Res. 08-017
- 08-345 Supplement Agreement No. 3 to Agreement w/HDR Engineering, Inc.
- 08-346 Authorization to Schedule Request for Bids for ER&R Purchase of Metal Traffic Signs
- 08-347 Order & Agreement for Nonexclusive Franchise to Roy E. Clifford
- 08-348 Line Item Transfer, Fund No. 0000101, Dept. 123
- 08-349 Establishing Bi-County Non-Bargaining Employment for Judge Pro-Tempore
- 08-350 Establishing Bi-County Non-Bargaining Employment for Arbitrator
- 08-351 Approval of Appeal to the Short Plat Administrator's Decision; SHPA 08-01 and SHP 07-40; Applicant: Mabel Crouch
- 03-352 Declaring Property Parcel 1-1880-400-0013-002 as surplus
- 03-353 Approval of Supplemental Appropriation, \$399,040
- 03-354 Approval of Supplemental Appropriation, \$43,976
- 03-355 Approval of Supplemental Appropriation, \$88,505
- 03-356 Approval of Supplemental Appropriation, \$10,250
- 03-357 Approval to Sell Property Parcel 1-1880-400-0013-002 to James and Caroline Katzaroff

The meeting adjourned at approximately 12:10 p.m.

Clerk of the Board

Chairman

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY POLICY RE: SURPLUS OF PERSONAL PROPERTY IN ACCORDANCE WITH RESOLUTION 07-752

WHEREAS, the County Sheriff has accumulated a large amount of surplus personal property (weapons) and can use these surplus weapons in trade-in for upgraded weapons and related equipment; and

WHEREAS, the Benton County Auditor is the Personal Property Manager and maintains an updated inventory listing of County personal property; and

WHEREAS, the Personal Property Manager has determined that the personal property on the attached Exhibit A is not desired by any other county department or office; and

WHEREAS, it is the recommendation of the Personal Property Manager that this potential surplus property is not desired by any County agency and should be declared surplus; and

WHEREAS, all the items listed on Exhibit A have an estimated combined value of less than \$4,750; and

WHEREAS, the Board finds it to be in the best interest of the citizens of Benton County to surplus antiquated and obsolete personal property: **NOW THEREFORE**,

BE IT RESOLVED, that, based upon the recommendation of the Personal Property Manager, all items included within Exhibit A are hereby declared surplus, and

BE IT FURTHER RESOLVED, that, the personal property listed in Exhibit A shall be used by the Sheriff in trade-in for upgraded weapons and related equipment.

Dated this _____ day of _____, 20__.

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

Resolution Authorizing
Surplus and trade-in of obsolete
weapons

MAKE	MODEL	CAL.	S/N
H&K	MP5	9mm	62-366466
H&K	MP5	9mm	62-366465
H&K	MP5	9mm	62-366381
H&K	MP5	9mm	62-366464
Ruger	M77	0.308	75-51690
Ruger	M77	0.308	75-59857
Ruger	GP100	357 mag	L70-60115
S&W	Model59	9mm	A250153
S&W	Model19	357 mag	69009
Colt	Mustang	0.25	OD65159
Colt	Cobra	0.38	M81373
Colt	Cobra	0.38	M80980
Colt	Cobra	0.38	F95539
Colt	Cobra	0.38	M80296
Glock	34	9mm	FTS501
Glock	34	9mm	FTS502
Glock	34	9mm	FTS503
Glock	34	9mm	FBR746
Glock	34	9mm	FTS500
Glock	34	9mm	FBR745

b.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000101, DEPARTMENT NUMBER 107.

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

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

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BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Commissioners Dept Nbr: 107
 Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM: _____ TRANSFER TO: _____

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
594.110.	6401	Capital Outlay	\$2,327	511.100.	1905	Temporary Help	\$2,327
TOTAL			\$2,327	TOTAL			\$2,327

Explanation:

Transfer needed to hire temporary help for 2 hours a day, 5 days a week, through year end to help with increased responsibilities for contract compliance, board meeting documentation copying and filing, and special short term projects.

Prepared by: Loretta Smith Kely Date: 03-Mar-2008

Approved Denied

Date: _____

Chairman

Member

Member

C.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, DEPARTMENT NUMBER 111.

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

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File, LSK

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Dept Nbr:
 Fund Name: Fund Nbr:

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.400	4111	Judge Pro Tem	\$5,550	512.400	2102	Social Security (FICA)	\$5,550
512.400	4111	Judge Pro Tem	\$66,450	512.400	1922	Pro Tem Judge	\$66,450
TOTAL			\$72,000	TOTAL			\$72,000

TRANSFER TO:

Explanation: Per resolution Pro Tem Judges will be paid through Payroll

Prepared by: Date:

Approved Denied Date: _____

Chairman

Member

Member

RESOLUTION

ds

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

**IN THE MATTER OF APPROVING A LEASE AND MAINTENANCE AGREEMENT FOR
A DIGITAL COPIER FOR THE BENTON COUNTY FACILITIES DEPARTMENT,
LOCATED AT THE BENTON COUNTY JUSTICE CENTER**

WHEREAS, Washington State Contract No. 03706 allows for the lease and maintenance of certain multifunctional document devices, including the Ricoh Aficio MP C2500; and

WHEREAS, the Facilities Manager researched the needs of the Benton County Facilities Department and believes the Ricoh Aficio MP C2500 meets the needs of the Facilities Department and provides the highest value and quality to the County;

NOW, THEREFORE, BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached lease and maintenance agreement with Pacific Office Automation in the amount of \$351.35 per month, for a term of 60 months, inclusive of service, supplies, parts, labor, and toner for the full term of the lease; and

BE IT FURTHER RESOLVED that the Chairman is authorized to sign the attached lease and maintenance agreement with Pacific Office Automation.

Dated this _____ day of _____, 2008.

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board



PACIFIC OFFICE AUTOMATION

The Northwest's own, the nationally recognized copier company

TOTAL IMAGE MANAGEMENT SM

Agreement # _____

EQUIPMENT

Equipment Model & Description

Serial Number

Accessories

Ricoh MPC2500spf

SR3000 Finisher, PB3000 Paper Bank

See attached schedule for additional Equipment / Accessories

Equipment Location (if different from Billing Address) _____

SUPPLIER

Pacific Office Automation, Inc.

Name
7913 W. Grandridge Blvd.

Address
Kennewick WA 99336
City State Zip

TRANSACTION TERMS

Minimum Monthly Payment 351.35 Term 60 months
(plus applicable taxes)

Image Type	Minimum Number of Images	Excess Per Image Charge
Black & White Images	<u>4200/mo.</u>	<u>.012</u>
Color Images	_____	<u>.109</u>
Scanned Images	_____	_____
Faxed Images	_____	_____

Excess Per Image Billing Preference (monthly if not checked)

Monthly Quarterly Semi-Annually Annually

The following additional payments are due on the date this Agreement is signed by you:

SECURITY DEPOSIT \$ 0
ADVANCE PAYMENT *\$ 0 *Applied to: first last
(plus applicable taxes)

DOCUMENT FEE \$75.00 (included on first invoice)

CUSTOMER (You)

Benton County Of (Benton County Facilities)

Full Legal Name
7122 W. Okanogan Pl. Bldg.A

Billing Address
Kennewick WA 99336
City State Zip

Roy Rogers 509-222-3710
Contact Name Phone E-mail Address

By: X _____
Signature of Authorized Signer

Name: _____
Please Print

Title: _____

Date: _____ Fed Tax ID _____
Date of Signature

YOU HAVE SELECTED THE EQUIPMENT. THE SUPPLIER AND ITS REPRESENTATIVES ARE NOT OUR AGENTS AND ARE NOT AUTHORIZED TO MODIFY THE TERMS OF THIS AGREEMENT. YOU ARE AWARE OF THE NAME OF THE MANUFACTURER OF EACH ITEM OF EQUIPMENT AND YOU WILL CONTACT EACH MANUFACTURER FOR A DESCRIPTION OF YOUR WARRANTY RIGHTS. WE MAKE NO WARRANTIES TO YOU, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY OR OTHERWISE. WE PROVIDE THE EQUIPMENT TO YOU AS-IS. WE SHALL NOT BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES.

YOUR PAYMENT OBLIGATIONS ARE ABSOLUTE AND UNCONDITIONAL AND ARE NOT SUBJECT TO CANCELLATION, REDUCTION OR SETOFF FOR ANY REASON WHATSOEVER. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF OREGON. YOU CONSENT TO THE JURISDICTION AND VENUE OF FEDERAL AND STATE COURTS IN OREGON.

BY SIGNING THIS AGREEMENT, YOU ACKNOWLEDGE RECEIPT OF PAGE 2 OF THIS AGREEMENT, AND AGREE TO THE TERMS ON BOTH PAGES 1 AND 2. ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT YOU AND US FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.

BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL.

contract #03706

OWNER ("We", "Us")

Pacific Office Automation, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Unconditional Personal Guaranty

In consideration of Owner entering into this Agreement, the undersigned unconditionally and irrevocably guarantees to Owner, its successors and assigns, the prompt payment and performance of all existing and future obligations of Customer to Owner, including this Agreement. I agree that (a) this is a guaranty of payment and not of collection, and that Owner can proceed directly against me personally without resorting to any security or seeking to collect from Customer, (b) I waive all suretyship defenses including impairment of collateral, failure to properly perfect a security interest in the collateral, and all notices, including those of protest, presentment and demand, (c) Owner may, extend or otherwise change the terms of this Agreement without notice to me and I will be bound by such changes, and (d) I will pay all of Owner's costs of enforcement and collection, including reasonable attorneys' fees and costs. This guaranty survives the bankruptcy of Customer and binds my administrators, successors and assigns. My obligations under this guaranty continue even if Customer becomes insolvent or bankrupt or is discharged from bankruptcy and I agree not to seek to be repaid by Customer in the event I must pay Owner, until you have been paid all amounts owed. This guaranty shall be governed by the laws of Oregon. I consent to the personal jurisdiction and venue of federal and state courts in Oregon. Based on Owner's mutual agreement set forth above, I WAIVE ALL RIGHTS TO A JURY TRIAL.

Printed Name: _____ By: _____, Individually

ADDITIONAL TERMS AND CONDITIONS OF AGREEMENT

1. COMMENCEMENT OF AGREEMENT. Commencement of this Agreement and acceptance of the Equipment shall occur upon delivery of the Equipment to you. You agree to inspect the Equipment upon delivery and verify by telephone or in writing such information as we may require. If you signed a purchase order or similar agreement for the purchase of the Equipment, by signing this Agreement you assign to us all of your rights, but none of your obligations under it. All attachments, accessories, replacements, replacement parts, substitutions, additions and repairs to the Equipment shall form part of the Equipment under this Agreement.

2. SECURITY DEPOSIT. The Security Deposit will be held by us, without interest, and may be commingled (unless otherwise required by law), until all obligations under this Agreement are satisfied, and may be applied at our option against amounts due under this Agreement. The Security Deposit will be returned to you upon termination of the Agreement, provided you are not in default, or applied to the Minimum Monthly Payment due at the end of the Term, or to the amount we may quote for any purchase or upgrade of the Equipment.

3. IMAGE CHARGES. Each month during the Term of this Agreement, you agree to remit to us the "Minimum Monthly Payment" and all other sums when due and payable at the address we provide to you from time to time. In return for the Minimum Monthly Payment, you are entitled to produce the Minimum Number of Images for each applicable Image Type each month. You also agree to pay us the applicable Excess Per Image Charge (plus applicable taxes) for each metered image that exceeds the applicable Minimum Number of Images. We may estimate the number of images produced if you do not provide us with meter readings within seven (7) days of request. We will adjust the estimated charge for excess images upon receipt of actual meter readings. Notwithstanding any adjustments, you will never pay us less than the Minimum Monthly Payment. You agree that we may increase the Minimum Monthly Payment and/or Excess Per Image Charge for each Image Type each year during the term of this Agreement by an amount not to exceed ten percent (10%) of the Minimum Monthly Payment and/or Excess Per Image Charge in effect at the end of the prior annual period, or the maximum percentage permitted by law, whichever is lower. At our option, you will (a) provide us by telephone or facsimile the actual meter readings when requested by us, (b) provide us (or our agent) access to the Equipment to obtain meter readings, or (c) allow us (or our agent) to attach an automatic meter reading device to the Equipment. We may audit any automatic meter reading device periodically. Minimum Monthly Payments are due whether or not you are invoiced. If you have a dispute with the Supplier regarding the Equipment, you shall continue to pay us all Minimum Monthly Payments and Excess Per Image Charges without deduction or withholding any amounts. You authorize us to adjust the Minimum Monthly Payments by not more than 15% to reflect any reconfiguration of the Equipment or adjustments to reflect applicable sales taxes or the cost of the Equipment by the manufacturer/supplier.

4. OTHER CHARGES. You agree to: (a) pay all premiums and other costs of insuring the Equipment, (b) reimburse us for all costs and expenses (including reasonable attorneys' fees and court costs) incurred in enforcing this Agreement; and (c) pay all other costs and expenses for which you are obligated under this Agreement. You agree, at our discretion, to either (1) reimburse us annually for all personal property and other similar taxes and governmental charges associated with the ownership, possession or use of the Equipment, or (2) remit to us each month our estimate of the pro-rated equivalent of such taxes and governmental charges. You agree to pay us an administrative fee for the processing of taxes, assessments or fees which may be due and payable under this Agreement. We take on your behalf any action required under this Agreement which you fail to take, and upon receipt of our notice you will promptly pay our costs (including insurance premiums and other payments to affiliates), plus reasonable processing fees. Restrictive endorsements on checks you send to us will not reduce your obligations to us. We may charge you a return check or non-sufficient funds charge of \$25.00 for any check which is returned by the bank for any reason (not to exceed the maximum amount permitted by law).

5. LATE CHARGES. For any payment which is not received by its due date, you agree to pay a late charge equal to the higher of 10% of the amount due or \$22.00 (not to exceed the maximum amount permitted by law) as reasonable collection costs.

6. MAINTENANCE AND SERVICE; OWNERSHIP AND USE. The Supplier identified on Page 1 of this Agreement has agreed to provide SERVICE MAINTENANCE DURING NORMAL BUSINESS HOURS, WHICH INCLUDES PARTS NECESSARY TO PRODUCE IMAGES. YOU MUST PURCHASE COPIER PAPER AND STAPLES SEPARATELY. You acknowledge that (a) we are not responsible for any service, repair or maintenance of the Equipment, and (b) we are not a party to any service maintenance agreement. You agree to pay for service maintenance outside of the Supplier's normal business hours for service required by your negligence or misuse of the Equipment at Supplier's customary rates. We reserve a security interest in the Equipment to secure all of your obligations under this Agreement. We own the Equipment and you have the right to use the Equipment under the terms of this Agreement. If this Agreement is deemed to be a secured transaction, you grant us a security interest in the Equipment to secure all of your obligations under this Agreement. You hereby assign to us all of your rights, but none of your obligations, under any purchase agreement for the Equipment. We hereby assign to you all our rights under any manufacturer or supplier warranties, so long as you are not in default hereunder. You must keep the Equipment free of liens. You may not remove the Equipment from the address indicated on the front of this Agreement without first obtaining our approval. If we grant permission to move the Equipment, the Minimum Monthly Payments and Excess Per Image Charges may be increased by us at our sole discretion to cover the additional costs of service, maintenance and supplies. You agree to: (a) keep the Equipment in your exclusive control and possession; (b) USE THE EQUIPMENT ONLY IN THE LAWFUL CONDUCT OF YOUR BUSINESS, AND NOT FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES; (c) use the Equipment in conformity with all insurance requirements, manufacturer's instructions and manuals; (d) keep the Equipment repaired and maintained in good working order and as required by the manufacturer's warranty and specifications; and (e) give us reasonable access to inspect the Equipment and its maintenance and other records.

If any Equipment is designated "Service Only", you acknowledge and agree that (1) we do not own such Equipment; (2) we are not providing such Equipment to you pursuant to the terms of this Agreement; (3) Supplier has agreed to provide full service maintenance of such Equipment pursuant to the terms outlined above; and (4) that portion of the Minimum Monthly Payment attributable to such Equipment includes only the full service maintenance of such Equipment and not the use or rental of the Equipment.

7. INDEMNITY. You are responsible for all losses, damage, claims, infringement claims, injuries and reasonable attorneys' fees and costs ("Claims"), incurred or asserted by any person, in any manner relating to the Equipment,

including its use, condition or possession. You agree to defend and indemnify us against all Claims, although we reserve the right to control the defense and to select or approve defense counsel. This indemnity continues beyond the termination of this Agreement, for acts or omissions which occurred during the Term of this Agreement. You also agree that this Agreement has been entered into on the assumption that we will be entitled to certain tax benefits available to the owner of the Equipment. You agree to indemnify us for the loss of any income tax benefits caused by your acts or omissions inconsistent with such assumption or this Agreement. In the event of any such loss, we may increase the Minimum Monthly Payments and other amounts due to offset any such adverse effect.

8. LOSS OR DAMAGE. If any item of Equipment is lost, stolen or damaged you will, at your option and cost, either: (a) repair the item or replace the item with a comparable item reasonably acceptable to us; or (b) pay us the sum of: (i) all past due and current Minimum Monthly Payments, Excess Per Image Charges and other charges, (ii) the present value of all remaining Minimum Monthly Payments and other charges for the item, discounted at the rate of 6% per annum (or the lowest rate permitted by law, whichever is higher), and (iii) the Fair Market Value of the Equipment. We will then transfer to you all our right, title and interest in the Equipment AS-IS AND WHERE-IS, WITHOUT ANY WARRANTY AS TO CONDITION, TITLE OR VALUE. Insurance proceeds shall be applied toward repair, replacement or payment hereunder, as applicable. In this Agreement, "Fair Market Value" of the Equipment means its fair market value at the end of the Term, assuming good order and condition (except for ordinary wear and tear from normal use), as estimated by us.

9. INSURANCE. You agree, at your cost, to: (a) keep the Equipment insured against all risks of physical loss or damage for its full replacement value, naming us as loss payee; and (b) maintain public liability insurance, covering personal injury and Equipment damage for not less than \$300,000 per occurrence, naming us as additional insured. The policy must be issued by an insurance carrier acceptable to Lessor, must provide us with not less than 15 days' prior written notice of cancellation, non-renewal or amendment, and must provide deductible amounts acceptable to us.

10. DEFAULT. You will be in default under this Agreement if: (a) you fail to remit to us any payment within ten (10) days of the due date or breach any other obligation under this Agreement; (b) a petition is filed by or against you or any Guarantor under any bankruptcy or insolvency law; or (c) you default under any other agreement with us.

11. REMEDIES. If you default, we may do one or more of the following: (a) recover from you, AS LIQUIDATED DAMAGES FOR LOSS OF BARGAIN AND NOT AS A PENALTY, the sum of: (i) all past due and current Minimum Monthly Payments, Excess Per Image Charges and other charges, (ii) the present value of all remaining Minimum Monthly Payments, Excess Per Image Charges and other charges, discounted at the rate of 6% per annum (or the lowest rate permitted by law, whichever is higher) and (iii) the Fair Market Value of the Equipment; (b) declare any other agreements between us in default; (c) require you to return all of the Equipment in the manner outlined in Section 12, or take possession of the Equipment, in which case we shall not be held responsible for any losses directly or indirectly arising out of, or by reason of the presence and/or use of any and all proprietary information residing on or within the Equipment, and to lease or sell the Equipment or any portion thereof, and to apply the proceeds, less reasonable selling and administrative expenses, to the amounts due hereunder; (d) charge you interest on all amounts due us from the due date until paid at the rate of 1-1/2% per month, but in no event more than the lawful maximum rate; (e) charge you for expenses incurred in connection with the enforcement of our remedies including, without limitation, repossession, repair and collection costs, reasonable attorneys' fees and court costs. These remedies are cumulative, are in addition to any other remedies provided for by law, and may be exercised concurrently or separately. Any failure or delay by us to exercise any right shall not operate as a waiver of any other right or future right.

12. END OF TERM OPTIONS; RETURN OF EQUIPMENT. If you are not in default, at least 60 days (but not more than 120 days) prior to the end of the Term (or the Renewal Term) you shall give us written notice of your intention at the end of the Term (or the Renewal Term) which election cannot be revoked, to return all of the Equipment. IF YOU FAIL TO PROVIDE US WITH SUCH 60 DAY PRIOR WRITTEN NOTICE, OR HAVING NOTIFIED US, YOU FAIL TO RETURN THE EQUIPMENT, THE TERM OF THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR ONE ADDITIONAL TERM OF TWELVE (12) MONTHS (the "Renewal Term") and all of the provisions of this Agreement shall continue to apply, including your obligation to remit Minimum Monthly Payments, Excess Per Image Charges and other charges. If you are in default, or at the end of the Term (or the Renewal Term), you shall return all of the Equipment, freight and insurance prepaid at your cost and risk, to wherever we indicate in the continental United States, in good order and condition (except for ordinary wear and tear from normal use), packed per the shipping company's specifications. You will pay us for any loss in value resulting from the failure to maintain the Equipment in accordance with this Agreement or for damages incurred in shipping and handling.

13. ASSIGNMENT. You may not assign or dispose of any rights or obligations under this Agreement or sub-lease the Equipment, without our prior written consent. We may, without notifying you, (a) assign this Agreement or our interest in the Equipment; and (b) release information we have about you and this Agreement to the manufacturer, supplier or any prospective investor, participant or purchaser of this Agreement. If we do make an assignment under subsection 13(a) above, our assignee will have all of our rights under this Agreement, but none of our obligations. You agree not to assert against our assignee claims, offsets or defenses you may have against us.

14. MISCELLANEOUS. Notices must be in writing and will be deemed given 5 days after mailing to your (or our) business address. You represent that: (a) you have authority to enter into this Agreement and by so doing you will not violate any law or agreement; and (b) this Agreement is signed by your authorized officer or agent. This Agreement is the entire agreement between us, and cannot be modified except by another document signed by us. This Agreement is binding on you and your successors and assigns. All financial information you have provided is true and a reasonable representation of your financial condition. You authorize us or our agent to: (a) obtain credit reports and make credit inquiries; (b) furnish payment history to credit reporting agencies; and (c) file UCC financing statements. Any claim you have against us must be made within two (2) years after the event which caused it. If a court finds any provision of this Agreement to be unenforceable, all other terms shall remain in effect and enforceable. You authorize us to insert or correct missing information on this Agreement, including your proper legal name, serial numbers and any other information describing the Equipment. If you so request, and we permit the early termination of this Agreement, you agree to pay a fee for such privilege. THE PARTIES INTEND THIS TO BE A "FINANCE LEASE" UNDER ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE ("UCC"). YOU WAIVE ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UCC.

Equipment Delivery and
Acceptance Receipt

The undersigned does hereby acknowledge the complete and satisfactory delivery and installation of the Equipment leased from Pacific Office Automation, Inc. The undersigned does further acknowledge that Lessor has made no warranties expressed or implied regarding the equipment; that our obligations to Lessor or its assignees as set forth in the aforementioned lease are free of any and all claims, counter claims, defenses, or set-offs.

RE: Equipment: Ricoh MPC2500spf Digital Copier
S/N L3676001452

SR3000 Finisher
S/N L4478400075

PB3000 Paper Bank
S/N L4679601336

Benton County Of (Benton County Facilities)
(Full Legal Name of Lessee)

By _____
(Authorized Signature)

(Print Name of Signer)

(Date)

Amendment
(for use with 1218 r9 or r12 and State and Local Governmental Entity)

Agreement No. 7397767-006 dated 02/21/08

Owner / Lessor ("We, Us"): Pacific Office Automation, Inc.

Customer / Lessee ("You"): Benton County of (Benton County Facilities)

The term "Payment" shall mean Lease Payment, Rental Payment, or Minimum Monthly Payment, as such terms may be used in the above referenced Agreement. The term "Agreement" shall mean Equipment Lease Agreement, TotalCopy Management Agreement, or Rental Agreement, as such terms may be used in the above referenced Agreement.

We and you agree to amend the Agreement as follows:

1. The following is inserted as the second paragraph in Section 3 of the Agreement:

NON-APPROPRIATION OF FUNDS. You intend to remit to us all Payments and other amounts for the full Term if funds are legally available. In the event you are not granted an appropriation of funds at any time during the Term for the Equipment or for equipment which is functionally similar to the Equipment and operating funds are not otherwise available to you to pay Payments and other amounts due and to become due under this Agreement, and there is no other legal procedure or available funds by or with which payment can be made to us, and the non-appropriation did not result from an act or omission by you, you shall have the right to return the Equipment in accordance with Section 12 of this Agreement and terminate this Agreement on the last day of the fiscal period for which appropriations were received without penalty or expense to you, except as to the portion of the Payments for which funds shall have been appropriated and budgeted. At least thirty (30) days prior to the end of your fiscal period, your chief executive officer (or legal counsel) shall certify in writing that (a) funds have not been appropriated for the fiscal period, (b) such non-appropriation did not result from any act or failure to act by you, and (c) you have exhausted all funds legally available to pay Payments. If you terminate this Agreement because of a non-appropriation of funds, you may not purchase, lease, or rent, during the subsequent fiscal period, equipment performing the same functions as, or functions taking the place of, those performed by the Equipment provided, however, that these restrictions shall not be applicable if or to the extent that the application of these restrictions would affect the validity of this Agreement. This Section 3 shall not permit you to terminate this Agreement in order to acquire any other Equipment or to allocate funds directly or indirectly to perform essentially the application for which the Equipment is intended.

2. The following is inserted as the second paragraph in Section 4 of the Agreement:

PERSONAL PROPERTY TAXES. If this Agreement provides for an FMV Purchase Option or a 10% Purchase Option, (1) you hereby acknowledge and agree that as the owner of the Equipment throughout the Term we may be assessed personal property taxes, and (2) notwithstanding the fact you may be exempt from the payment of personal property taxes, you hereby agree, at our discretion to either (a) reimburse us annually for all personal property taxes which we may be required to pay as the owner of the Equipment, or (b) remit to us each billing period our estimate of the pro-rated equivalent of such taxes and governmental charges.

3. Section 14 of the Agreement is deleted and replaced in its entirety with the following:

14. MISCELLANEOUS. Notices must be in writing and will be deemed given 5 days after mailing to your (or our) address. You represent that: (a) you are the entity indicated in this Agreement, (b) any documents required to be delivered in connection with this Agreement (collectively, the "Documents") have been duly authorized by you in accordance with all applicable laws, rules, ordinances, and regulations; (c) the Documents are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents have the authority to do so, are acting with the full authorization of your governing body, and hold the offices indicated below their signatures, (d) the Equipment is essential to the immediate performance of a governmental or proprietary function by you within the scope of your authority and shall be used during the Term only by you and only to perform such

function; (e) you intend to use the Equipment for the entire Term and shall take all necessary action to include in your annual budget any funds required to fulfill your obligations each fiscal period during the Term; (f) you have complied fully with all applicable law governing open meetings, public bidding and appropriations, required in connection with this Agreement and the debt under applicable state law; (g) your obligations to remit Payments under this Agreement constitutes a current expense and not a debt under applicable state law; (h) this Agreement is binding on you and your successors and assigns; and (i) all financial information you have provided is true and a reasonable representation of your financial condition. You authorize us or our agent to be your attorney-in-fact for the sole purpose of signing UCC financing statements. Any claim you have against us must be made within two (2) years after the event which caused it. If a court finds any provision of this Agreement to be unenforceable, all other terms shall remain in effect and enforceable. You authorize us to insert or correct missing information on this Agreement, including your proper legal name, serial numbers and any other information describing the Equipment. If you so request, and we permit the early termination of this Agreement, you agree to pay (in addition to the prepayment amount we quote to you) a fee of \$100 per item of Equipment (not to exceed \$400 or the maximum permitted by law) for such privilege.

Except as specifically amended by this Amendment, all of the other terms of the Agreement shall remain in full force and effect.

This Amendment is hereby signed by duly authorized representatives of us and you as of the date of the Agreement.

Owner/Lessor/We
Pacific Office Automation, Inc.

Customer/Lessee/You
Benton County of (Benton County Facilities)

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

AUTHORIZATION CERTIFICATE

I, the undersigned certify that the individual(s) who executed Agreement No. 7397767-006 (the "Agreement") had at the time of execution full power and authority to execute the Agreement and that all required procedures necessary to make the Agreement a legal and binding obligation of Customer/Lessee have been followed.

I also do hereby certify that payments due and payable by Customer/Lessee under the Agreement for the current Term are within the current fiscal budget and are included within an available and unencumbered appropriation.

AUTHORIZATION OFFICIAL

(Signature and Title)

e.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF GRANTING AND CONVEYING A WATERLINE EASEMENT TO THE CITY OF KENNEWICK IN SECTION 32, TOWNSHIP 9 NORTH, RANGE 29 EAST, W.M.

WHEREAS, the construction of the Benton County Health District required the relocation of the main water line located at the Benton County Justice Center Campus; and

WHEREAS, the City of Kennewick has requested that the county grant an easement 10.00 feet in width affecting a Portion of Tract 1 and Tract 2 of Record Survey No. 3718, lying in the Northwest Quarter of Section 32, Township 9 North, Range 29 East, W.M., records of Benton County, Washington; and

WHEREAS, the City of Kennewick their successors and assigns, are granted the right, privilege and authority to construct, improve, repair and maintain a waterline and fire hydrants across, over and upon said land, located in Benton County, State of Washington and in accordance with the waterline easement attached hereto; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby grants the waterline easement to the City of Kennewick and the Board is hereby authorized to sign said easement.

Dated this day of, 20

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County
Commissioners of Benton County,
Washington

Attest:
Clerk of the Board

Return to:
City of Kennewick
PO Box 6108
Kennewick, WA 98336

WATERLINE EASEMENT

For a valuable consideration, receipt of which is hereby acknowledged, the Grantor, Benton County, Washington, hereby grants and conveys to the Grantee, City of Kennewick their successors and assigns, the right, privilege and authority to construct, improve, repair and maintain a waterline and fire hydrants across, over and upon the following land, located in Benton County, State of Washington, to wit:

AN EASEMENT 10.00 FEET IN WIDTH AFFECTING A PORTION OF TRACT 1 AND TRACT 2 OF RECORD SURVEY NO. 3718, LYING IN THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 9 NORTH, RANGE 29 EAST, W.M., RECORDS OF BENTON COUNTY, WASHINGTON, THE CENTERLINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT 1 THENCE NORTH 89°10'00" WEST ALONG THE NORTH LINE OF SAID TRACT 394.33 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 45°19'56" EAST 668.30 FEET; THENCE SOUTH 89°35'24" EAST 105.56 FEET; THENCE NORTH 00°24'17" EAST 30.76 FEET TO A POINT HERINAFTER REFERRED TO AS POINT "A"; THENCE NORTH 00°24'17" EAST 55.10 FEET; THENCE NORTH 45°07'51" EAST 116.67 FEET; THENCE SOUTH 89°35'43" EAST 110.66 FEET; THENCE SOUTH 43°09'55" EAST 155.79 FEET; THENCE SOUTH 00°18'22" WEST 55.91 FEET; THENCE SOUTH 89°35'24" EAST 34.43 FEET TO A POINT HERINAFTER REFERRED TO AS POINT "B"; THENCE SOUTH 89°35'24" EAST 15.55 FEET TO THE EAST LINE OF SAID TRACT 2 AND THE POINT OF TERMINUS.

ALSO TOGETHER WITH AN EASEMENT OF ABOVE SAID WIDTH BEGINNING AT AFORE SAID POINT "A"; THENCE SOUTH 89°35'43" EAST 12.88 FEET TO THE POINT OF TERMINUS.

ALSO TOGETHER WITH AN EASEMENT OF ABOVE SAID WIDTH BEGINNING AT AFORE SAID POINT "B"; THENCE SOUTH 00°30'02" EAST 39.67 FEET TO A POINT HERINAFTER REFERED TO AS POINT "C"; THENCE SOUTH 00°30'02" EAST 79.15 FEET; THENCE SOUTH 45°09'32" WEST 124.91 FEET; THENCE NORTH 45°11'51" WEST 61.06 FEET TO THE POINT OF TERMINUS.

ALSO TOGETHER WITH AN EASEMENT OF ABOVE SAID WIDTH BEGINNING AT AFORE SAID POINT "C"; THENCE SOUTH 89°29'58" WEST 58.45 FEET TO THE POINT OF TERMINUS.

ALSO TOGETHER WITH AND SUBJECT TO EASEMENTS, COVENANTS, RESERVATIONS AND RESTRICTIONS OF RECORD AND IN VIEW.

The Grantor shall make any use of the land occupied by said waterline easement except for anything inconsistent with their construction, operation and maintenance.

In exercising the rights herein granted, the Grantee, City of Kennewick, their successors and assigns, may pass and repass over said waterline easement and may cut and remove brush, trees and other obstructions which in the opinion of the Grantee interferes with their construction, operation and maintenance.

The covenants herein contained shall run with the land and are binding upon all subsequent owners thereof.

In Witness Whereof, the said Grantor, Benton County, Washington executed this instrument this 10th day of March, 2008.

Chairman of the Board

Chairman Pro-Tem

Member

STATE OF _____)ss
COUNTY OF _____)

On this _____ day of _____ before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____ to me known to be the _____ President and _____ Secretary, respectively of _____ the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the State of
residing at _____
My commission expires: _____

RESOLUTION

f.

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

**IN THE MATTER OF SUBSTANTIAL COMPLETION OF THE BENTON COUNTY
HEALTH DISTRICT BUILDING CONSTRUCTION**

WHEREAS, Benton County entered into a contract on March 26, 2007 with Chervenell Construction Company, 7511 W. Arrowhead, Kennewick, WA 99336 for the construction of the Benton County Health District Building; and

WHEREAS, the project architect, CWH, Architects PA, determined the project reached substantial completion as February 26, 2008; **NOW, THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board accepts the Benton County Health District Building as substantially complete and authorizes the Chairman of the Board to sign the certificate of substantial completion attached hereto.

Dated this _____ day of _____, 2008

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board



AIA Document G704™ - 2000

Certificate of Substantial Completion

PROJECT:
(Name and address):
Benton County Health District Building
7102 W. Okanogan Place
Kennewick, WA 99336

PROJECT NUMBER: #06102/
CONTRACT FOR: General Construction
CONTRACT DATE: March 26, 2007

OWNER:
ARCHITECT:
CONTRACTOR:
FIELD:
OTHER:

TO OWNER:
(Name and address):
Benton County
620 Market Street, PO Box 190
Prosser, WA 99350-0150

TO CONTRACTOR:
(Name and address):
Chervenell Construction Co.
7511 W. Arrowhead
Kennewick, WA 99336

PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE SHALL INCLUDE:

Substantially complete as of 02/26/08, contingent on owner receiving Certificate of Occupancy.

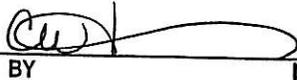
The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

Warranty

Date of Commencement

CWH Architects, PS

ARCHITECT


BY

February 26, 2008

DATE OF ISSUANCE

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost estimate of Work that is incomplete or defective: \$ 0.00

The Contractor will complete or correct the Work on the list of items attached hereto within Zero (0) days from the above date of Substantial Completion.

Chervenell Construction Co.

CONTRACTOR


BY

3/4/08
DATE

The Owner accepts the Work or designated portion as substantially complete and will assume full possession at _____ (date) _____ (time) on _____

Benton County

OWNER

BY

DATE

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

(Note: Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)

9.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING PAYMENT TO APOLLO SHEET METAL, INC. FOR EMERGENCY REPLACEMENT OF THE LEAKING WATER TANK LOCATED AT THE BENTON COUNTY JAIL.

WHEREAS, the Benton County Facilities discovered leak in the 200 gallon water tank in the Benton County Jail laundry closet, causing a need for immediate attention as this tank is under pressure; and declaring the matter an emergency nature; and

WHEREAS, Benton County maintenance employees were not able to repair the leaking water tank, necessitating the County to immediately hire a contractor to replace the water tank; and

WHEREAS, Apollo Sheet Metal, Inc. was contacted to replace the water tank and they provided the county with a proposal for said service in the amount of \$8,169.00 excluding WSST; **NOW, THEREFORE,**

BE IT HEREBY RESOLVED that the Board of Benton County Commissioners hereby declares the replacement of the leaking water tank located that the Benton County Jail an emergency and approves the payment to Apollo Sheet Metal, Inc. in the amount of \$8,169.00 excluding Washington State Sales Tax. All acceptable overages, incidentals and other unanticipated costs shall not exceed \$9,000.00 excluding WSST.

Dated this day of, 2008

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County
Commissioners of Benton County,
Washington

Attest:
Clerk of the Board



Apollo Sheet Metal, Inc.

PO Box 7287
1207 W. Columbia Drive
Kennewick, WA 99336
Ph 509-586-1104
Fax 509-582-6590
www.apollosm.com

February 29th, 2008

Benton County
Facilities and Parks Department
7122 West Okanogan Place Box H
Kennewick WA 99336

Attn: Dean Docken

Re: Price quote for installing new laundry water heater and replace leaking storage tank in closet.

Dean,
Following is the estimate you requested for installation of the leaking Lochinvar water heater in the penthouse. This unit is under warranty, so this is for the labor and miscellaneous materials only.

Price: \$2,475.00.00 (Excludes sales tax)

Replace leaking Lochinvar 200 gallon storage tank in Jail Laundry closet. This price is for an exact replacement with locally installed isolation valves and a bypass valve as well. Price also includes a secondary catch pan under the heater drained to the floor drain. Price is for normal working hours. Add \$912.00 for after hours.

Emergency

Price: \$8,169.00.00 (Excludes sales tax)

Tank is currently in stock in Texas. Anticipate 7 days shipping from date of order. Please call me if you have any questions.

Thank you,

Scott Hagensicker

Scott Hagensicker
Environmental Controls Division
Project Manager
Apollo Sheet Metal

h.

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>		
Meeting Date:	<u>03/10/08</u>	Execute Contract		Consent Agenda
Subject	<u>Grounds</u>	Pass Resolution	X	Public Hearing
	<u>Maintenance</u>	Pass Ordinance		1st Discussion
	<u>Spraying</u>	Pass Motion		2nd Discussion
	<u>Contract</u>	Board Direction		Workshop
Prepared by:	<u>dgg</u>			
Reviewed by:	<u>jcm/Loretta</u>			

BACKGROUND INFORMATION

Attached is the 2008 Grounds Maintenance Spraying Contract for the Benton County Fairgrounds.

RECOMMENDATION

The Fairgrounds Maintenance Supervisor previously sent a Request for Proposal to three contractors and all three submitted quotes. These quotes were from Cut Above Incorporated, Desert Green Lawn and Tree Care LLC and Jesse's Lawn Maintenance. The Fairgrounds Maintenance Supervisor reviewed these quotes and found them to be inconsistent in the project description of work.

A second Request for Proposal was given out to four contractors and all four submitted quotes. These quotes were from Cut Above Incorporated, Desert Green Lawn and Tree Care LLC, Jesse's Lawn Maintenance and Baisch Vegetation Management Inc. The Fairgrounds Maintenance Supervisor has reviewed these quotes and finds Cut Above Incorporated to have the lowest price.

Move to award Cut Above Incorporated for the 2008 Grounds Maintenance Spraying Contract with an option to extend for two twelve-month periods.

FISCAL IMPACT

MOTION

RESOLUTION

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

IN THE MATTER OF AWARD AND AUTHORIZING THE CHAIRMAN OF THE BENTON COUNTY BOARD OF COMMISSIONERS TO SIGN THE CONTRACT FOR GROUNDS MAINTENANCE SPRAYING SERVICES AT THE BENTON COUNTY FAIRGROUNDS

WHEREAS, per resolution 08-131 and 08-133 the Board of Benton County Commissioners has dispensed with advertising and competitive bid procedures with respect to certain contracts for public works projects with a value between ten thousand (\$10,000) and one hundred thousand (\$100,000) dollars if a small works roster process is followed per RCW 39.04.155; and

WHEREAS, the Benton County Fairgrounds Maintenance Supervisor solicited quotes from four contractors who are listed on the Benton County small works roster and received quotes from the following: Cut Above Incorporated, PO Box 6722, Kennewick, WA 99336 in the amount of \$18,411.00; Desert Green Lawn and Tree Care LLC, 642 Truman Ave., Richland, WA 99352 in the amount of \$18,947.09; Baisch Vegetation Management Inc., PO Box 3841, Pasco, WA 99302 in the amount of \$21,408.00; Jesse's Lawn Maintenance, 6418 W Deschutes Ave., Kennewick, WA 99336 in the amount of \$27,165.97; and

WHEREAS, the Fairgrounds Maintenance Supervisor reviewed all quotes and recommends the award to Cut Above Incorporated in the amount of \$18,411.00 as lowest, most responsible bidder; **NOW THEREFORE**,

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby concurs with the recommendation and awards the grounds maintenance spraying services to Cut Above Incorporated for an amount not to exceed \$19,000.00 including WSST; and

BE IT FURTHER RESOLVED, the Fairgrounds Maintenance Supervisor recommends the contract with Cut Above Incorporated include the option to extend for two twelve-month periods; and

BE IT FURTHER RESOLVED, the Board of Commissioners hereby authorizes the Chairman to sign the contract between Benton County and Cut Above Incorporated attached hereto.

Dated this _____ day of _____, 2008

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

**STANDARD SERVICE AGREEMENT
TERMS AND CONDITIONS**

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision of the State of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and Cut Above Incorporated with its principal address at P.O. Box 6722, Kennewick, WA 99336 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

- A. Exhibit A - Contractor's Bid Proposal
- B. Exhibit B - Benton County Prevailing Wage Rates

2. DURATION OF CONTRACT

The term of this Contract shall begin when executed by both parties, and shall expire on December 31, 2008 with an option to extend for two twelve-month periods.

3. SERVICES PROVIDED

The COUNTY requires and the CONTRACTOR agrees to provide complete grounds maintenance spraying which is consistent with Contractors bid proposal attached hereto as Exhibit A.

4. CONTRACT REPRESENTATIVES

The parties' representatives are as follows:

- a. For CONTRACTOR: **Tina Murphy**
Cut Above Incorporated
P.O. Box 6722
Kennewick, WA 99336
(509) 627-6693
(509) 582-6590 Fax
- b. For COUNTY: Ms. Loretta Smith Kelty, Contract Manager
Contact: Benton County Commissioners
PO Box 190
Prosser, WA 99350

(509) 786-5600 Phone
(509) 786-5625 Fax

A party may change its representative by providing prompt written notice to the other party.

5. COMPENSATION

The CONTRACTOR shall be paid in accordance with the proposal provided in Exhibit A attached hereto. The maximum total amount payable by the COUNTY to the CONTRACTOR under this agreement shall not exceed eighteen thousand four hundred eleven dollars and zero cents (\$18,411.00) including Washington State Sales Tax. Prior to receiving any payment, CONTRACTOR shall execute an affidavit of intent to pay prevailing wages in a form approved by the State Department of Labor and Industries.

6. INVOICING

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

7. DEFECTS

In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. Compensation may be withheld until CONTRACTOR makes such corrections. All work submitted by the CONTRACTOR shall be held to applicable standards set forth in the industry. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

8. AMENDMENT AND CHANGES IN WORK

No amendment, modification or renewal of this contract shall be effective, unless set forth in a written Amendment signed by both parties.

9. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature

whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons, damage to property or business, or any other source of liability whatsoever, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.

- b. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, its employees, agents or subcontractors.
- c. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount of type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws. By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder.

10. INSURANCE

The CONTRACTOR shall obtain and maintain continuously, and annually provide evidence thereof within 10 days of the signing of this contract and thereafter, by the 1st day of January of each contract year:

- a. Workers Compensation: CONTRACTOR shall comply with all Washington State Workers Compensation laws. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial liability or commercial umbrella liability insurance.
- b. Commercial General Liability Insurance: CONTRACTOR shall maintain commercial general liability coverage for bodily

injury, sickness, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract (per project) and be no less than two million dollars (\$2,000,000). The policy shall not contain exclusions or limitations applicable to any activities undertaken, or materials used by CONTRACTOR in fulfilling this agreement. CONTRACTOR shall cause COUNTY to be added as an additional insured and the policy shall state that it cannot be canceled except with 30 days written notice to COUNTY. This policy shall be primary to any of COUNTY'S other sources of insurance including self-insurance through a risk pool. CONTRACTOR shall provide certificate of such insurance, including the endorsements specified in this paragraph, to County's representative prior to start of work.

- c. Automobile Liability: The CONTRACTOR shall maintain business automobile liability insurance with a limit of not less than one million dollars (\$1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out of "Any Auto". CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by business auto liability. CONTRACTOR shall cause the carrier for its automobile liability policy to execute a waiver of subrogation in favor of COUNTY.
- d. Other Insurance Provisions:
- 1) The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its' elected and appointed officers, officials, employees and agents.
 - 2) The COUNTY, its officers, officials, employees and agents shall be named as additional insured on all required insurance policies, except for any required automobile liability policy.
 - 3) The CONTRACTORS'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
 - 4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
 - 5) The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 6) All subcontractors shall comply with the same insurance requirements as are required of the CONTRACTOR as set forth

- in Section 10(a) through 10(e). Additionally, the insurance policies required of subcontractors shall list the COUNTY (and all of its elected officials, employees and agents) as well as the CONTRACTOR as additional insureds, and the subcontractors shall provide certificates listing these endorsements to the COUNTY and the CONTRACTOR prior to the commencement of any work by the subcontractor.
- 7) The insurance limits mandated for any insurance coverage required by this Contract are not intended to be indication of exposure nor are they limitations on indemnification.
 - 8) The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. Any insurance coverage required of CONTRACTOR may not be written as a "claims made" policy.
 - 9) Verification of Coverage and Acceptability of Insurers: All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing in advance of commencement of work by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.
 - 10) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered accord form certificate of insurance of a signed policy endorsement which shall clearly evidence all required insurance within then (10) days after the effective date of this contract. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the COUNTY. Any certificate or endorsement limiting or negating the insurer's obligation to notify the COUNTY of cancellation or changes shall be altered so as not to negate the intent of this provision. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.
 - 11) Certificates of insurance shall show the certificate holder as "Benton County" and include "C/O" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.

- 12) The CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.
- 13) All written notices and notice of cancellation or change of required insurance coverage shall be mailed to the COUNTY at the following address:

Lisa Small, Contract Administration
Benton County Commissioners
PO Box 190
Prosser, WA 99350

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

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

11. PERFORMANCE BOND

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

12. TERMINATION

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.
- b. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines, in its sole discretion, that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) days written notice by certified mail to the COUNTY. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, including, but not limited to, prevailing wage laws. A copy of the schedule of prevailing wages applicable to Benton County is attached as Exhibit B. This schedule has been obtained directly from the Department of Labor and Industries by way of the Internet website and should be considered their work product. COUNTY does not warrant the accuracy of such schedule in any way. CONTRACTOR is responsible for paying prevailing wages to each employee subject to prevailing wages provisions, regardless of whether their work class appears in the schedule or not.

14. NONDISCRIMINATION

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

15. DISPUTES

Disputes over the CONTRACTOR's performance will be promptly

addressed in writing by the aggrieved party in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief. Venue for any such judicial proceeding shall be in Benton County, Washington.

16. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

17. ENTIRE AGREEMENT

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

18. NOTICES

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Article 4 above. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be effective three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

19. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and is effective on the last date signed.

The parties specifically certify that the provisions contained within paragraph 9(c) are mutually negotiated.

BENTON COUNTY

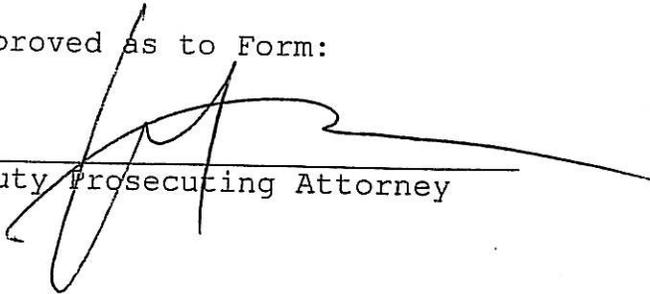
CUT ABOVE INCORPORATED

Claude Oliver, Chairman
Benton County Commissioner

Dated: _____

Dated: _____

Approved as to Form:



Deputy Prosecuting Attorney



P.O. BOX 6722 , KENN., WA. 99336-0640 (509) 627-6693

BID PROPOSAL CONTRACT FOR: Benton County Fairgrounds
1500 S. Oak
Kennewick, Wa. 99337

ITEM :	PER :	YEARLY :
1.) Mowing : (Average 32 Mows)		
2.) Lawn Maintenance:		
Weed Control & Fertilization	(2 Applications)	\$ 5,200.00
3.) Weed Control Shrub Beds		
4.) Lawn Aeration		
5.) Bare Ground Treatment		\$ 7,500.00
6.) Exterior Spider Control	(15 Buildings)	\$ 2,400.00
7.) Fly Control	(3 Buildings)	\$ 1,900.00
8.) Irrigation Winterization		
9.) Clean ups -Spring & Fall		
10.) Tree & Shrub Pruning		
11.) Tree & Shrub Pest Control		

Sub Total : \$ 17,000.00

Sales Tax 8.3% : \$ 1,411.00

Total : \$ 18,411.00

- 2.) Lawn Maintenance: Consists of Broadleaf weed control, Pre-Emergent applications
- 5.) Bare Ground : Combination Treatment consisting of Pendulum, Round up , & Casseron.
Spot Spray follow-ups once a month or per Fairgrounds request, to help maintain a weed free environment.
- 6.) Exterior spider control: Entire coverage of outside of buildings to control infestation of spiders and insects
- 7.) Fly Control : Done prior to Fair Opening as requested , Spray to be applied both inside and outside of buildings before chips are spread for fair opening . This also includes totes and dumpsters sprayed as outlined in project scope. Arrangements to be made with officials on exact time before application is to be applied.

This contract shall run from February 1 st, 2008 through August 31st 2008.

Authorized Signature Date
Benton County Fairgrounds

Authorized Signature Date
Cut Above Lawn Care

***BAISCH VEGETATION
MANAGEMENT INC.***

WHERE ROGER GOES NOTHING GROWS

P.O. BOX 3841 PASCO WA. 99302

ROGER BAISCH 509 (509)947-3897

BAISCH VEGETATION MANAGEMENT INC.

PO.O. BOX 3841

PASCO, WA. 99302

(509) 947-3897

ROGER BAISCH

FEBRUARY 15, 2008

**BID PROPOSAL: GROUNDS MAINTENANCE SPRAYING SERVICES
BENTON COUNTY FAIRGROUNDS.**

1500 S. OAK STREET # 20

KENNEWICK, WA. 99336

JEFF McKENZIE MAINTENANCE SUPERVISOR

**PLEASE ADD BAISCH VEGETATION MAMGEMENT INC. TO THE BENTON
COUNTY SMALL WORKS ROSTER.**

BAREGROUND WEED CONTROL	\$11,778.00
TURF FERTILIZER AND WEED CONTROL 2 APPLICATIONS	\$7,180.00
INSECT CONTROL	\$1,450.00
FLY CONTROL	\$1,000.00

TOTAL	\$ 21,408.00
PLUS TAX	

As each section of this project is completed, it will be invoiced. Written approval by the Maintenance Supervisor regarding that invoice will be considered "Final Acceptance" for that section of the project. Invoices are to be paid 30 days following final approval of each section.

Follow up work will be done within 7 days after notification from the Maintenance Supervisor, unless delayed by unforeseeable weather. Follow up work will be done at the expense of Baisch Vegetation Management Inc.

Baisch Vegetation Management Inc. is a solely owned and operated corporation with no employees. All work will be performed and completed by the owner, Roger Baisch. Therefore Workman's Compensation does not apply to this contract. In the event that an employee must be hired, the county will be provided with proof of compliance with Workman's Compensation requirements at that time.

2-14-08

Roger Baisch



*Your Complete
Landscape
Specialists*

6418 W Dechutes Av Kennewick WA 99336
Phone (509) 734-9536 FAX (509)734-9556

JOB QUOTATION FOR

Jeff McKenzie - Maintenance Supervisor
Benton Co Fairgrounds
1500 S Oak St Bldg #20
Kennewick Wa 99337

Quantity	Description of Work	Rate	Cost
Date 14-Feb-08	Bare Ground Maintenance and Pest Control To Include the following services: Apply Sterilant To Parking Areas & Along Fairway Dr As outlined in RFP dated 02/08/08 Apply Fertilizer & Weed Control To Lawns 2 Apps As outlined in RFP dated 02/08/08 Apply Insect Control Interior and Exterior of Buildings One Application As outlined in RFP dated 02/08/08 Apply Fly Control To Trash Containers and Dumpsters One Application As outlined in RFP dated 02/08/08		\$25,084.00
Thanks for letting me provide you with this quote for services If you have any questions please feel free to give me a call Office 734-9536		Sub Total	\$25,084.00
		Sales Tax	\$2,081.97
		TOTAL	\$27,165.97

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>03/10/08</u> Subject: <u>Benton Franklin Fair Association Lease Agreement Addendum</u> Prepared by: <u>dgg</u> Reviewed by: <u>lji/lsk</u>	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Board Direction	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Workshop

BACKGROUND INFORMATION

The Benton Franklin Fair Association requests that their Lease Agreement be amended to allow for limited circumstances where they can earn credit towards their Lease Agreement fee for performing approved leasehold improvements.

The Prosecuting Attorney has reviewed and approved the Addendum as to form.

The County Administrator recommends approval of the Addendum to the Benton Franklin Fair Association Lease Agreement.

RECOMMENDATION

Move the Addendum to the Benton Franklin Fair Association Lease Agreement be approved.

RESOLUTION

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

**IN THE MATTER OF AN ADDENDUM TO THE BENTON FRANKLIN FAIR
ASSOCIATION LEASE AGREEMENT WITH BENTON COUNTY**

WHEREAS, the Benton Franklin Fair Association requests a Leasehold Improvement Agreement credit towards their Lease Agreement fee; and

WHEREAS, the parties find it mutually beneficial to amend the Lease to allow for limited circumstances where the Benton Franklin Fair Association may earn credit toward its lease obligation for performing approved leasehold improvements; and

WHEREAS, the Benton County Administrator recommends the Benton Franklin Fair Association Lease Agreement Addendum be approved; **NOW THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners that the Addendum to the Benton Franklin Fair Association Lease Agreement shall be granted; and

BE IT FURTHER RESOLVED that the Board authorizes the Chairman of the Board to sign the Addendum to the Lease Agreement with the Benton Franklin Fair Association.

Dated this _____ day of _____ 2008.

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

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

**ADDENDUM TO THE
LEASE AGREEMENT WITH THE
BENTON FRANKLIN FAIR ASSOCIATION**

This Addendum to the Lease Agreement with the Benton Franklin Fair Association dated January 1, 2006 is entered into effect March 1, 2008 by and between Benton County, ("LESSOR"), and the Benton Franklin Fair Association ("LESSEE").

The Lease Agreement is with the Benton Franklin Fair Association for lease of the Benton County Fairgrounds from January 1, 2006 through December 31, 2010.

WITNESSETH:

WHEREAS, the parties find it mutually beneficial to amend the lease in the following manner to allow for limited circumstances where LESSEE may earn credit toward its lease obligations for performing approved leasehold improvements,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

15. Capital Improvements (the following language shall be added at the end of the present paragraph):

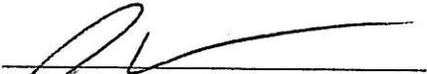
NOTWITHSTANDING the above, in the event that LESSOR, in its sole discretion, decides that a proposed leasehold improvement is of such value to LESSOR that it is in its best interests to credit some or all of the value of such improvement to LESSEE's outstanding lease obligations, LESSOR may enter into a written agreement for such credit. PROVIDED that LESSEE shall not be entitled to such credit unless it enters into a fully executed leasehold improvement credit agreement with LESSOR prior to initiating such leasehold improvement and such leasehold improvement credit agreement includes the following a) a specific description of the proposed leasehold improvement; b) the maximum credit to be applied; Thereafter, no credit shall be provided unless LESSEE, within 10 days of completion of the leasehold improvement, provides to LESSOR written proof of the dollar value of purchased materials or resources (including labor) utilized in completing the leasehold improvement. The parties agree that all leasehold improvements, upon delivery to the Benton County Fairgrounds, either in assembled or raw material form, shall immediately become the property of LESSOR. The credit contemplated by this section shall not be applicable in the calculation of lease payments or damages owed if LESSEE breaches the lease in such a way as to justify termination of the lease agreement.

With the exception of the above, all remaining terms and conditions in the underlying agreement shall remain the same. Any conflicts between the underlying agreement and this amendment should be resolved in favor of this amendment.

IN WITNESS WHEREOF, the parties have caused this Addendum to be signed as follows:

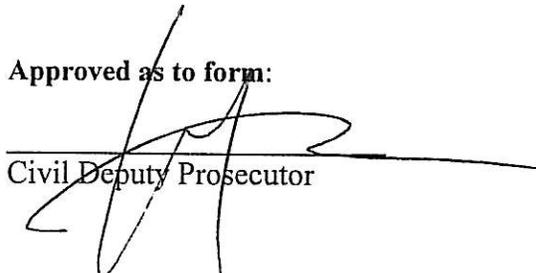
**BENTON FRANKLIN FAIR
ASSOCIATION**

Date: 2/20/08



Steve Lancaster, President

Approved as to form:



Civil Deputy Prosecutor

BENTON COUNTY

Date: _____

Chairman of the Board

Chairman Pro Tem

Member

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

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>		
Meeting Date:	<u>03/10/08</u>	Execute Contract		Consent Agenda
Subject:	<u>Benton Franklin Fair Association Leasehold Improvement</u>	Pass Resolution	X	Public Hearing
Prepared by:	<u>dgg</u>	Pass Ordinance		1st Discussion
Reviewed by:	<u>lji/lsk</u>	Pass Motion		2nd Discussion
		Board Direction		Workshop

BACKGROUND INFORMATION

The Benton Franklin Fair Association would like to provide the materials to replace and remodel the Rodeo Arena Bleachers in the Zoo Crew seating area. The cost of the bleachers is \$34,263.00 and the Benton Franklin Fair Association has requested that \$17,131.50 be deducted from their lease payment for 2008 as a leasehold improvement.

The Prosecuting Attorney has reviewed and approved the leasehold improvement as to form.

RECOMMENDATION

The Benton County Fairgrounds Maintenance Supervisor has reviewed the materials list and invoice and recommends authorizing the leasehold improvement to provide materials to replace and remodel the Rodeo Arena Bleachers.

RESOLUTION

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

**IN THE MATTER OF A PROPOSED BENTON FRANKLIN FAIR ASSOCIATION
LEASEHOLD IMPROVEMENT AGREEMENT AT THE BENTON COUNTY
FAIRGROUNDS**

WHEREAS, the Benton Franklin Fair Association requests a Leasehold Improvement Agreement that provides materials to replace and remodel the Rodeo Arena Bleachers; and

WHEREAS, the Benton Franklin Fair Association will be required to sign a Leasehold Improvement Agreement (see Exhibit A); and

WHEREAS, the Benton Franklin Fair Association will provide all materials required to replace and remodel the Rodeo Arena Bleachers; and

WHEREAS, the Benton County Fairgrounds Maintenance Supervisor has reviewed the Rodeo Arena Bleachers materials list and invoice (see Exhibit B) and recommends allowing the proposed Leasehold Improvement Agreement to provide materials to replace and remodel the Rodeo Arena Bleachers; **NOW THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners that the Leasehold Improvement Agreement shall be granted; and

BE IT FURTHER RESOLVED that the Board authorizes the Chairman of the Board to sign the Leasehold Improvement Agreement for the Benton Franklin Fair Association Rodeo Arena Bleachers.

Dated this _____ day of _____ 2008.

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

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

cc: Originals - Fairgrounds, File, L. Ivey

**LEASEHOLD IMPROVEMENT AGREEMENT
BENTON COUNTY FAIRGROUNDS**

WHEREAS, the Benton Franklin Fair Association, a non-profit corporation organized under the laws of the State of Washington, hereinafter "LESSEE," currently contracts to lease the Benton County Fairgrounds, owned and operated by Benton County, a political subdivision of the State of Washington (hereinafter "LESSOR") for the purposes of holding an annual Fair and Rodeo therein;

WHEREAS LESSEE has made a request of LESSOR to make an improvement to certain real property located within the Benton County Fairgrounds, hereinafter "FAIRGROUNDS"; and,

WHEREAS, it is in the mutual interest of both parties to pursue improvements to the FAIRGROUNDS that will improve the operation and the quality of the Fair and Rodeo; **NOW THEREFORE**,

IT IS HEREBY MUTUALLY RESOLVED, that the LESSOR and LESSEE agree to the following conditions regarding the proposed improvement.

1. Improvement

LESSEE shall furnish materials for the replacement and remodel of the Rodeo Arena Bleachers located at the Benton County Fairgrounds ("IMPROVEMENT"). This shall include 3 – 10 row x 30' non-elevated, all aluminum angle frame bleachers; each bleacher includes no aisle or center aisle hand rail; row rise – 8"; row depth 24"; aluminum seat boards – 2" x 10" anodized; aluminum foot boards – 2" x 10" mill finished (doubled each row); aluminum riser board – mill finished, row 4-9; doubled on row 10; 3 – line, 1.66" O.D. anodized guard rails and 9 gauge chain link safety fencing at top and sides to row 3. All materials utilized for this work shall be in new condition. Materials shall be delivered F.O.B. the site of the improvement and shall only be delivered at the direction of Benton County Fairgrounds staff. LESSOR is responsible for making reasonable accommodations to protect the materials from the elements if necessary and LESSEE, in arranging for delivery of materials, shall comply with such reasonable accommodations. The materials selected shall be as provided in the quote from Bleachers International attached as Exhibit A.

2. Timeline

Delivery of materials shall be completed by December 31, 2009. Delivery of materials shall commence no sooner than March 1, 2008, and during the period of time between commencement of work and December 31, 2009, LESSEE shall have reasonable access to the facility in which the work is to be done, but shall have no license to utilize other portions of, or facilities belonging to, LESSOR, unless otherwise authorized by way of a lease or other written document. LESSEE shall utilize all reasonable caution in delivering the materials and shall assume responsibility for all damage done to property belonging to LESSOR in the process of such delivery. In delivering the materials, LESSEE hereby agrees to accept the condition of the premises, including any surrounding areas which LESSEE, its employees, volunteers, agents and representatives will need to occupy in order to complete the IMPROVEMENT, in "AS-IS"

condition. LESSEE or its representatives shall have the responsibility to inspect the premises prior to commencing any delivery and shall notify LESSOR within 3 working days of the commencement date, in writing, of any perceived safety hazard which LESSEE believes will cause danger to anyone working on completing the IMPROVEMENT. If LESSEE does so notify, then LESSOR shall have the option of canceling this agreement upon written notice to LESSEE, with no recourse against either party. LESSEE, also hereby assume all reasonable risks associated with the completion of the IMPROVEMENT and waive any right to assert claims or a lawsuit against LESSOR for any injury, property damage, death or illness sustained as a result of working on the IMPROVEMENT. This waiver also applies to any right of subrogation any insurance carrier, or the State of Washington might have as a result of compensating LESSEE, its employees, volunteers, representatives and agents for any injury, property damage, death or illness sustained.

3. Funding

LESSEE shall be responsible for delivering all materials described above, necessary to complete the IMPROVEMENT, according to the specified terms and conditions. The LESSOR shall not be responsible for any expenses incurred or necessary to complete the proposed leasehold improvement.

4. Labor

LESSEE shall provide all materials required for the IMPROVEMENT. LESSOR shall provide all the labor required for the erection and installation of IMPROVEMENT. LESSEE, its employees, officers, directors or agents, shall not assist in any way in the erection or installation of the improvement.

5. Credit Towards Lease Payments

The LESSEE shall be granted credit towards its lease payments upon completion of the materials as stated in the LESSEE'S Lease Agreement, Paragraph 15. The amount of credit will be \$17,131.50, when the IMPROVEMENT is finished, certified for occupancy and approved by LESSOR.

6. Ownership

LESSEE agrees that the IMPROVEMENT and the structure in which it is located, is solely the property of the LESSOR at all times prior to, during and after completion of the IMPROVEMENT. Nothing in this agreement is intended to, and nothing shall be interpreted as, granting lessee any ownership rights or right of usage outside of any right of usage conferred upon LESSEE via any lease agreement. LESSEE waives any right to file or enforce any mechanic's lien and expressly agrees not to file any such lien, upon the IMPROVEMENT, the structure within which it is housed, or any real property appurtenant to such.

7. Hold Harmless and Indemnification

The LESSEE shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons, including

LESSEE'S own volunteers, employees or agents, or damage to property or business, caused by or arising out of the LESSEE'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the LESSEE'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the LESSOR, Benton County, its officers, officials, employees or agents. FURTHER PROVIDED that if liability is caused by or results from the concurrent negligence of a) LESSEE or LESSEE'S agents or employees, and b) COUNTY or COUNTY'S agents or employees, then the indemnification contemplated in this section shall only apply to the extent of LESSEE'S negligence.

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

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

8. Insurance

Lessee shall obtain, and maintain in force throughout the period of work contemplated by this agreement, commercial general liability insurance in the amount of no less than \$1,000,000 per accident or incident with a general aggregate limit of \$2,000,000. LESSEE shall also ensure that any of its employees or volunteers who do any work at the site of the IMPROVEMENT to fulfill its duties under this Contract are covered by an appropriate workman's compensation policy issued by the Washington State Department of Labor and Industries. LESSEE also shall maintain employers liability insurance with limits of not less than one million dollars (\$1,000,000) each incident for bodily injury by accident or one million dollars (\$1,000,000) each employee for bodily injury by disease.

a. Additional insurance terms:

- 1). The LESSEE'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
- 2). The COUNTY, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required automobile liability policy.
- 3). The LESSEE'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the LESSOR as an additional insured. Specifically, the policies shall not exclude contractual liability pursuant to the

indemnification and hold harmless provisions contained in section 7 of this agreement.

- 4). Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
 - 5). The LESSEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 6). The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
 - 7). The LESSEE shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. The insurance policies purchased to satisfy the requirements of this contract shall not be "claims made" policies, in other words, they must cover losses occurring within the policy effective period regardless of when such claim is filed.
- b. Verification of Coverage and Acceptability of Insurers: All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.
- 1). The LESSEE shall furnish the LESSOR with properly executed and unaltered accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance no less than ten (10) days prior to the commencement of the work contemplated in this agreement. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the LESSOR. Any certificate or endorsement limiting or negating the insurer's obligation to notify the LESSOR of cancellation or changes shall be altered so as not to negate the intent of this provision.
 - 2). The LESSEE shall furnish the LESSOR with evidence that the additional insured provision required above has been met. This proof must be in the form of an insurance certificate as well as the endorsement pages of the policy showing the LESSOR as an additional insured.
 - 3). Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.
 - 4). All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the LESSOR at the following address:

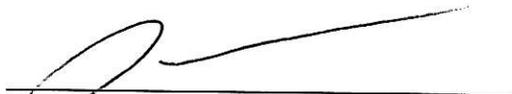
Denise Gerry
Benton County Fairgrounds
1500 S Oak Street Building #20
Kennewick, WA 99337

- 5). The LESSEE or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the LESSOR.
- 6). LESSEE shall request that the Department of Labor and Industries provide written proof to LESSOR of that fact that LESSEE maintains current workman's compensation coverage for LESSEE's employees and volunteers.

9. Enforcement

In the event that LESSEE fails to or refuses to deliver the described materials in a timely manner, or breaches this agreement, then, upon proper written notice to LESSEE, if LESSEE does not correct the problem or take substantial steps toward same within ten (10) days, then LESSOR shall have the right to procure the necessary materials to remedy the problem, including completion of the IMPROVEMENT, if applicable, at LESSEE'S expense.

**BENTON FRANKLIN FAIR
ASSOCIATION**



Steve Lancaster, President

Date



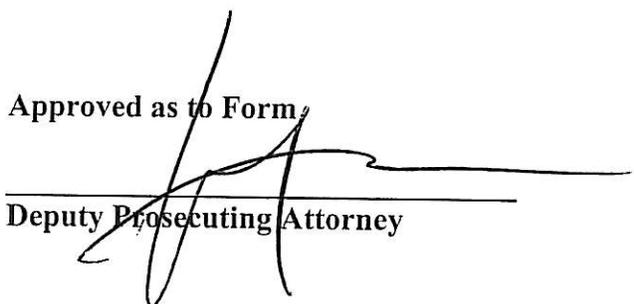
2/20/08

BENTON COUNTY

Chairman of the Board

Date

Approved as to Form



Deputy Prosecuting Attorney

BLEACHERS INTERNATIONAL 1

QUOTATION

Quote Date: 1/7/08
Quote No: QW010708-H1

Benton Franklin Fair
Lori Lancaster
Kennewick, WA 99337
Tel: 509-586-9211 Ext. 203
lori@bffairrodeo.com

Dear Lori:

Prices quoted are in U. S. Dollars and based on today's aluminum per pound price.

This quotation is valid for up to 30 days after this date and is subject to all terms and conditions found below.

MATERIAL DESCRIPTION

3- 10 row x 30' non-elevated, all-aluminum angle frame bleachers; each bleacher includes no aisle or center aisle hand rail; row rise - 8"; row depth - 24"; aluminum seat boards - 2" x 10" anodized; aluminum foot boards - 2" x 10" mill finished (doubled each row); aluminum riser board - mill finished, row 4-9; doubled on row 10; 3 - line, 1.66" O.D. anodized guard rails and 9 ga. chain link safety fencing at top and sides to row 3. Net seating, per bleacher - approximately 200.

Materials	\$31,335.00
Delivery	<u>\$2,928.00</u>
	\$34,263.00

BLEACHERS INTERNATIONAL**I. Product Specifications**

- A. Rise and Depth: Vertical rise and horizontal depth per row: 8" x 24". Seat is 17" above its respective tread.
- B. Framework: Prefabricated angle bleachers frames are spaced at 6' intervals and connected by cross braces.
- C. Seats: Nominal 2" x 10" anodized aluminum plank, with 2" x 10" end caps.
- D. Treads: Nominal 2" x 10" mill finish aluminum plank, with 2" x 10" end caps.
- E. Riser: 1" x 6" mill finish aluminum plank.
- F. Joint Sleeve Assy: Optional on large continuous units to maintain true alignment in joining two plank together.
- G. Steps: Frames with 2" x 12" mill finish aluminum plank.
- H. Guard railing: Each line with end caps at end of straight runs and elbows at corners. Secured to angle rail risers by fasteners. Back and side top rail to be 42 inches above its adjacent seat. From top rails to be 42 inches above walkway.

II. Materials

- 1. Framework, Aluminum: Structural fabrication with aluminum alloy 6061-T6, Mill finish.
- 2. Extruded Aluminum:
 - a. Seat Planks: extruded aluminum alloy 6063-T6, Clear anodized 204R1, AA-M10C22A31, Class II
 - b. Tread Planks, Riser Planks: Extruded aluminum alloy 6063-T6, mill finish.
 - c. Joint Sleeve Assembly: Extruded aluminum alloy 6063-T6
- 3. Accessories
 - a. Channel End Caps: Aluminum alloy 6063-T6, Clear anodized 204R1, AA-M10C22A31, Class II or plastic PVC.
 - b. Hardware:
 - 1) Bolt, Nuts: Hot – dipped galvanized or cadmium plated
 - 2) Hold – down clip assembly: Aluminum alloy 6063-T6
 - 3) Structural Hardware: Hot – dipped galvanized A5TM-A325
 - c. Guard Railing: Anodized Aluminum Pipe: 1.66" O.D. & A5TM-A325

III. Design Specifications

- 1) Live Load: 100 psf gross horizontal projection
- 2) Lateral Sway Load: 24 plf seat plank
- 3) Perpendicular Sway Load: 10 plf seat plank
- 4) Wind Load: 30 psf vertical projection
- 5) Live Load of Seat and Tread Plank: 120 plf
- 6) Guardrail: 100 plf vert, and 50 plf horiz.

Terms:

Unless specifically noted, bids do not include neither the cost of site preparation nor local construction permits, which remain the responsibility of the purchaser. Additionally, unless specifically noted, bids do not include the cost of providing drawings and/or engineering calculations stamped by a structural engineer licensed in the jurisdiction in which the bleachers are installed.

BLEACHERS INTERNATIONAL

This quote is offered exclusive of local and state taxes payable in the applicable jurisdiction. In accepting this quotation, the purchaser agrees to: 1) provide a current tax exempt certificate recognized in the applicable jurisdiction, or 2) approve an increase to the purchase price equal to the amount of the state and local taxes payable in applicable jurisdiction.

If this quotation meets your specific needs and you agree to the terms and pricing, then sign below and this will be your contract for purchase. Send your purchase order with this signed contract, your tax-exempt certificate if applicable, and **a 60% down payment**. The second payment of **40% is due upon delivery**.

If you have any further questions or concerns, please feel free to call. Thank you for your consideration.

Sincerely,

Heidi Meyer

Signature

Date

Print name / Title

EXHIBIT B

Bleachers International

1422 Monroe Street
 PO Box 718
 Strasburg, CO 80136

Invoice

Date	Invoice #
1/24/2008	S8-0105-1

Bill To
Benton Franklin Fair Kennewick, WA 99337

Ship To
Benton Franklin Fair Kennewick, WA 99337

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt	CAR	1/24/2008			S8-0105

Quantity	Item Code	Description	Price Each	Amount
1	Sales	60 % down payment for : (3) 10 row x 30' non-elevated all-aluminum angle frame. Net seating Aprox = 200. Delivery	17,629.80	17,629.80
1	Delivery		2,928.00	2,928.00

Please remit payment to: Bleachers International
 Box 718 Strasburg CO 80136-0718

Total \$20,557.80

K.

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>3/10/08</u> Subject: <u>Benton-Franklin Mounted Sheriff's Posse</u> Prepared by: <u>dgg</u> Reviewed by: <u>lji/lsk</u>	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Board Direction	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Workshop

BACKGROUND INFORMATION

Attached for Board review is the Lease Agreement with Benton-Franklin Mounted Sheriff's Posse. The Lease Agreement has been reviewed and approved as to form by the Prosecuting Attorney's office.

This Lease Agreement allows the 4-H Arena to be used for weekly horse riding meets from March 31 – June 9, 2008.

Compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased. Capitol improvements by the Benton-Franklin Mounted Sheriff's Posse, on the Fairgrounds may be credited, in whole or in part, towards the lease agreement fee.

RECOMMENDATION

Move the Benton-Franklin Mounted Sheriff's Posse Lease Agreement is approved for holding weekly riding meets at the Benton County Fairgrounds.

FISCAL IMPACT

Compensation from the Benton-Franklin Mounted Sheriff's Posse weekly riding meets is \$1,575.00 or capital improvements may be credited, in whole or in part, towards this fee.

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING THE LEASE AGREEMENT BETWEEN THE BENTON COUNTY FAIRGROUNDS AND THE BENTON-FRANKLIN MOUNTED SHERIFF'S POSSE

WHEREAS, Benton-Franklin Mounted Sheriff's Posse will provide Benton County Fairgrounds with \$1,575.00 to hold weekly horse riding meets at the Fairgrounds from March 31 – June 9, 2008; and

WHEREAS, the value of capital improvements made by Benton-Franklin Mounted Sheriff's Posse to the Fairgrounds may be credited, in whole or in part, towards the \$1,575.00 payment; and

WHEREAS, compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased, and per Resolution 04-112, the Lease Agreement must be approved by the Board of Benton County Commissioners **NOW, THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, that the Board authorizes the Chairman of the Board to sign the Benton-Franklin Mounted Sheriff's Posse Lease Agreement.

Dated this _____ day of _____, 2008

Chairman of the Board

Member

Member

**Constituting the Board of County
Commissioners of Benton County
Washington**

Attest: _____
Clerk of the Board

BENTON COUNTY FAIRGROUNDS

1500 South Oak Street, Bldg #20
Kennewick, WA 99337
(509) 586-9211

LEASE AGREEMENT

TODAY'S DATE: **January 7, 2008**

LEASE AGREEMENT NUMBER: **002.08**

EVENT DATE(S): **March 31, April 3, 7, 10, 14, 17, 21, 24, 28,
May 1, 5, 8, 12, 15, 19, 22, 26, 29, June 2, 5, 9, 2008**

NUMBER OF DAYS: **21**

BUILDING(S) / AREA: **4-H Arena**

LESSEE: **Benton-Franklin Mounted Sheriff's Posse,
a Washington Non-Profit Corporation**

MAILING ADDRESS: **PO Box 6406, Kennewick, WA 99336**

CONTACT: **Phil Clouse, Captain**

HOME PHONE: **545-9202** CELLULAR PHONE: **521-5505**

TIME OF THE EVENT: **4:00 pm – 9:00 pm**

TYPE OF EVENT: **Horse Riding Meets**

ESTIMATED ATTENDANCE: **50**

SELLING TICKETS: YES NO **X**

THIS LEASE (AGREEMENT) is entered into effective upon the signature of both parties, between Benton-Franklin Mounted Sheriff's Posse (LESSEE) and BENTON COUNTY, a municipal corporation authorized under the laws of the State of Washington, operating the Benton County Fairgrounds (LESSOR).

1. **EVENT**

- a. HORSE RIDING MEETS IN MARCH, APRIL, MAY AND JUNE OF 2008 (SEE PAGE 1 FOR DATES) IN THE 4-H ARENA FROM 4:00 PM UNTIL 9:00 PM WITH AN ESTIMATED ATTENDANCE OF 50 PEOPLE, hereafter referred to as the EVENT.

2. **FACILITIES LEASED FOR THE EVENT**

- a. LESSEE agrees to lease the buildings and grounds, equipment and services specified in Exhibit A (Attached) (collectively the Facilities) to hold EVENT on the date(s) specified on the cover hereto. In addition to said date(s), LESSEE desires and further agrees to lease said Facilities for move-in and/or move-out purposes on n/a. LESSEE WARRANTS THAT SAID FACILITIES WILL BE USED ONLY FOR LAWFUL PURPOSES NECESSARY TO SUPPORT THE EVENT.

3. **PAYMENTS**

- a. In consideration for the license to hold the EVENT, LESSEE agrees to pay LESSOR the FEE of \$ 1,575.00 (less damage/cleaning deposit if previously paid) for use of the Facilities as detailed in Exhibit A, no later than March 16, 2008. If the fee is not made by said date, this Agreement will be null and void unless otherwise agreed to in writing by LESSOR. Upon such termination, LESSEE shall be obligated to pay a cancellation fee as specified in the Benton County Fairgrounds Policies and Procedures, Paragraph #9.
- b. Until December 31, 2008, LESSEE may earn one or more credits of up to \$1,575.00 towards the annual rental amount otherwise payable for the 2008 rental year, in return for capital improvements made at LESSEE's expense to the Leased Facilities by the LESSEE after the effective date of this agreement. Such credit(s) shall be equal to the estimated cost of such improvement(s) to LESSOR if the improvement(s) had been done by LESSOR or its agents. No credit will be given for any improvement by LESSOR unless a Fairgrounds Leasehold Improvement Agreement, in a form similar to that attached hereto as Exhibit B, is executed by LESSOR and LESSEE prior to the commencement of the particular improvement at issue. It is solely within LESSOR's discretion as to whether any particular proposal for an improvement by LESSEE is in LESSOR's best interest and consequently whether LESSOR will enter into a corresponding Fairgrounds Leaseholder Improvement Agreement. At the completion of each approved improvement project, LESSEE must promptly submit documentation of the materials used, the type and amount of labor utilized and any other expenses necessary to complete the improvement. LESSOR shall within fifteen (15) days of receipt of all necessary and requested documentation, notify LESSEE in writing whether it accepts the improvement as complete and the determination by the Benton County Deputy Administrator as to the estimated cost of the improvement if

made by LESSOR or its agents. Such estimate will be the amount of credit earned by LESSEE. For any improvement not completed by December 31, 2008, or by a prior date of any termination of this Lease, LESSEE will receive credit only for the estimated cost to LESSOR of such improvement in the condition the improvement exists as of the earlier of the date of termination of this Lease or December 31, 2008.

4. CAMPING OVERNIGHT

- a. LESSOR does not make any warranties as to suitability of campgrounds for LESSEE'S purposes or compatibility of campground infrastructure to any equipment anticipated to be used by LESSEE or participants in LESSEE'S EVENT. LESSEE is responsible for ensuring that the campgrounds, as they exist, are suitable for LESSEE'S purposes and that campground infrastructure meets the needs of LESSEE and/or participants in LESSEE'S EVENT. LESSEE may request a walk-through of the campground facilities and LESSOR shall take all reasonable steps to accommodate such a request. PROVIDED that all such walk-throughs shall be during regular business hours only, and may be by appointment only.
- b. Camping on the Fairgrounds property is not permitted unless requested by LESSEE in advance when booking the EVENT. Fees, terms and conditions applicable to camping will be furnished on request and attached to a resultant lease when applicable.

5. CANCELLATION OF EVENT

- a. The parties recognize that cancellations made less than 60 days prior to the first event date will potentially cause the BCF to lose lease or rental revenue. The parties further recognize that for a number of reasons outside of the control of the parties, the actual amount of the loss is often difficult to quantify. Therefore, the parties agree to the following schedule of liquidated damages which shall become due and owing if Lessee cancels less than 60 days prior to the first day of the event:
 - 1. If the Cancellation is made less than 60 days prior to the first event date, then Lessee shall pay 25% of the Lease fee as liquidated damages;
 - 2. If the cancellation is made less then 30 days prior to the first event date, then Lessee shall pay 50% of the fee as liquidated damages.
- b. The liquidated damages specified in this section may be deducted from cleaning or any other deposits retained by the BCF, and if any further amount is still due after such deduction, the Lessee may recover such amount due in the same manner as if it were seeking to recover any other sum due under this agreement, and may utilize any lawful means to do so.

6. CONCESSIONAIRES

- a. LESSEE certifies that no food or beverage concessions will be available at the EVENT and understand that it shall not provide such concession services without the prior written permission of LESSOR.

7. **NOVELTIES/SOUVENIRS**

- a. LESSEE warrants that there will be no novelties, souvenirs or similar merchandise sold at the EVENT.

8. **DAMAGE / CLEANING DEPOSIT**

- a. LESSEE must pay a damage/cleaning deposit of 0 at the time LESSEE executes this Agreement. **THIS AGREEMENT IS NOT EFFECTIVE UNTIL EXECUTED BY LESSOR AND THE DAMAGE/CLEANING DEPOSIT IS RECEIVED.** Damages to the Fairgrounds' resulting from the EVENT activities will be charged to the LESSEE at replacement cost plus labor; the cost of labor not exceeding the average cost for such labor in the Tri-Cities area. Charges for repairs will be subtracted from the damage/cleaning deposit, as may any other fees specified as subject to forfeiture of the damage/cleaning deposit elsewhere in this Agreement. The remaining balance, if any, of the damage/cleaning deposit, if any, will be returned to the LESSEE in approximately ten (10) business days after the EVENT date. If the damage/cleaning deposit is less than the amount of damage, LESSEE remains liable for the balance. Neither the Benton County Fairgrounds nor Benton County assume any liability whatsoever for any loss or injury to the LESSEE or LESSEE'S property while on Benton County Fairgrounds' property.

9. **INSURANCE**

- a. LESSEE agrees to purchase, and maintain in force throughout the duration of this Agreement, **general liability insurance with a minimum coverage of one million dollars (\$1,000,000) per person with a general aggregate limit of two million dollars (\$2,000,000).** Said policy shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured and shall include a provision prohibiting cancellation of said policy except after thirty (30) days prior written notice to LESSOR. The policy required by this paragraph shall be a "horse club and association liability policy" or horse owner's policy which specifically covers the hazards associated with horse riding activities. If horse racing, barrel racing or other type of hazardous activity other than ordinary horse riding is to be undertaken at the event, then the policy shall be specifically written to cover such hazardous activity. In any case, the policy may not exclude any activities reasonably expected to be undertaken, or actually undertaken, at the EVENT.
- b. LESSEE agrees to ensure that all participating riders are covered by a horse owner's liability or similar insurance policy either as a primary or additional insured. **Such horse owner's liability policy shall be for no less than one million dollars (\$1,000,000) per person, with a general aggregate limit of two million dollars (\$2,000,000),** and shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured, and shall include a provision prohibiting the cancellation of said policy except after thirty (30) days prior written notice to LESSOR. *No uninsured riders shall be permitted to ride in any event covered by this Agreement.*

- c. All insurance required by this section shall cover losses which occur during the covered period, regardless of when the claim is filed, i.e. cannot be "claims made" policies.
- d. All insurance policies required by this section shall be primary to any insurance policies or policies of self-insurance carried by LESSOR;
- e. The limits required by this section are not intended to an indication of liability nor are they to be considered limits on amount of indemnification;
- f. LESSEE SHALL PROVIDE, NO LATER THAN THIRY (30) DAYS PRIOR TO ANY EVENT COVERED BY THIS AGREEMENT, PROOF OF ALL FORMS OF INSURANCE REQUIRED IN THIS SECTION. THIS PROOF SHALL CONSIST OF A CERTIFICATE OF INSURANCE NAMING "BENTON COUNTY FAIRGROUNDS" AS CERTIFICATE HOLDER, AS WELL AS COPIES OF ALL KEY PROVISIONS, EXCLUSIONS, AND ENDORSEMENTS FROM THE POLICY INCLUDING THE REQUIRED ADDITIONAL INSURED LANGUAGE.

10. PERMITS

- a. All necessary city and/or state permits and/or licenses must be obtained and presented to LESSOR prior to the first day of the EVENT, or the first day of set up if applicable.

11. SECURITY

- a. LESSEE takes full responsibility for the safety and well being of participants while they are participating in the EVENT. LESSEE is responsible for inspecting the building and premises and ensuring that they are sufficient to provide for the safety and security of event participants. LESSOR will make all reasonable attempts to honor requests for a walk through of premises and buildings to be leased provided that such walk through will be by appointment only, during regular business hours.
- b. LESSEE shall designate a primary and secondary contact person for purposes of the EVENT. These contact persons shall be persons who have authority, during the EVENT, to direct how the EVENT is being operated, including the operations of any vendors (such as music DJs, food concessionaires, etc). Within ten (10) days following execution of this contract, LESSEE shall furnish LESSOR with these contact persons on a form provided by LESSOR including cellular telephone numbers which will allow these persons to be contacted AT ALL TIMES DURING THE OPERATION OF THE EVENT and copies of their photo ID. Depending on the size of the event, LESSEE may designate more contact persons at LESSEE'S discretion, but shall do so in writing. If event security or law enforcement officers responding to any incident at the event are unable to contact any designated contact for a period of 15 minutes or longer, then LESSOR shall have the option to terminate the EVENT and LESSEE'S license to use the facility pursuant to this Agreement. If the EVENT is terminated for these reasons, LESSEE forfeits all right to recover any payments

paid to date.

12. SERVING ALCOHOL

- a. No alcoholic beverages will be served at this EVENT.
- b. The LESSEE agrees to abide by and enforce within the EVENT the County Policies regarding the presence of alcohol or the use of alcoholic beverages on County leased property.
- c. LESSOR'S POLICY IS THAT NO LIQUOR BE CONSUMED BY ANY INDIVIDUAL UNDER TWENTY-ONE (21) YEARS OF AGE. VIOLATION OF THE POLICY SHALL CONSTITUTE A SUBSTANTIAL AND SIGNIFICANT BREACH OF THE AGREEMENT AND IF LESSOR LEARNS OF SUCH VIOLATION, LESSOR SHALL HAVE THE AUTHORITY TO IMMEDIATELY TERMINATE THE EVENT.

13. HORSE STALLS

- a. LESSEE shall pay \$8.00 per stall per day for every horse stall used during the EVENT. The LESSEE is responsible for collecting all stall fees, which must be turned into the Fairgrounds Administrative Office no later than two (2) business days after the EVENT. If payment is not received by such date, the entire otherwise refundable balance of the LESSEE'S damage/cleaning deposit will be forfeited. If the refundable portion of the damage/cleaning deposit is less than the amount of stall fees accrued, LESSEE remains liable for the additional stall fees accrued.

14. TERMINATION OR AMENDMENT

- a. Unless otherwise specified herein, the LESSOR reserves the right to terminate or amend this agreement at any time by giving the LESSEE thirty (30) days written notice. Notice will be assumed to be received on the day (except Sundays) following the date when it is addressed to Lessee's address and mailed by first class and certified mail.

15. INDEMNIFICATION AND HOLD HARMLESS

- a. LESSEE agrees to defend, indemnify and hold harmless LESSOR and its elected and appointed officials employees, agents, licensees and representatives, from and against any and all suits, claims, actions, losses, costs, penalties, damages, attorneys' fees and all other costs of defense of whatever kind or nature arising out of injuries to or death of any and all persons (including subcontractors, agents, licensees or representatives, and any of their employees) or damage to or destruction of any property (including, without limitation, LESSEE or LESSOR'S property or any other activity or omission which results in civil liability of any sort or type) in any manner caused by, resulting from incident to, connected with or arising out of LESSEE'S use of the facilities or performance under this agreement, unless such injury, death or damage is caused by

the sole negligence of LESSOR. In the event of litigation between the parties to enforce the rights under this paragraph, LESSOR shall be entitled to attorney's fee and all other costs incurred in establishing its rights. LESSEE'S obligations pursuant to this article include investigating, adjusting and defending any cause of action or claim falling within the parameters as set out in this article.

16. FAIRGROUNDS CONTACT

a. The following person(s) is the contact representative of the Benton County Fairgrounds:

Jeff	727-5703
Farrin	727-5249
Denise	727-5128

b. This person(s) may be contacted for the following reasons:

1. To access locked locations of the Fairgrounds for functions essential to the EVENT;
2. In the event of malfunction of services or equipment essential to the EVENT.

c. This person(s) SHALL be contacted (any one of them) if any of the following occurs:

1. The police department is summoned to the scene for any criminal investigation which takes place on the premises of the Fairgrounds;
2. The fire department or an ambulance is summoned to the scene for an incident involving injury or illness to a person on the premises of the Fairgrounds;
3. LESSEE is unable to ensure that all persons have left the premises of the Fairgrounds at the termination of the EVENT;
4. There is a situation such as a fire, explosion or structural failure, which results in substantial damage to LESSORS' property and/or injury to persons.

17. POLICIES AND PROCEDURES

In signing this Lease Agreement, the LESSEE signifies that said LESSEE has been provided a copy of the Policies and Procedures governing the use of the Benton County Fairgrounds and has had an opportunity to review those policies and procedures. The parties agree that the provisions contained within the Policies and Procedures manual are hereby incorporated into this Agreement and any violation of such provisions shall constitute a breach of this Lease Agreement.

I, Phil Clouse, Captain (name and job title/position) have read and fully understand this Agreement. I hereby certify that I have the authority to bind Benton-Franklin Mounted Sheriff's Posse to the terms and conditions set forth herein. In the event I do not have the authority, I acknowledge and agree that I shall be personally liable for any payments due under this Agreement and for any breach that occurs under the Agreement. I agree to abide by the conditions set forth in this Lease Agreement and assume the responsibility for enforcing these policies.

LESSEE: Benton-Franklin Mounted Sheriff's Posse

BY: BFMSP
Date: 7/25/08
Name: Phil Clouse
Title: Captain

LESSOR: BENTON COUNTY

BY: _____
Chairman of the Board
Date: _____

Approved as to form:

BY: [Signature]
Civil Deputy Prosecutor

EXHIBIT A
FEEs APPLICABLE TO LESSEE'S LICENSE TO USE THE FACILITIES

DAMAGE/CLEANING DEPOSIT

Refundable in approximately ten (10) business days after the EVENT, only if the building and/or rented area is completely clean, all garbage in dumpster(s), and tables and chairs re-stacked.

DEPOSIT TOTAL: \$ 0

BUILDING(S) AND/OR AREA(S) FEES

4-H Arena \$ 75.00 X 21 Days = \$ 1,575.00

Note: Arena will not be groomed.

BUILDING(S)/AREA TOTAL: \$ 1,575.00

EQUIPMENT RENTAL FEES

No equipment needed.

EQUIPMENT RENTAL TOTAL: \$ 0

LESSOR FURNISHED INSURANCE FEES

Lessee will provide.

INSURANCE TOTAL: \$ 0

SECURITY FEES

Lessee will provide.

SECURITY TOTAL: \$ 0

REFUSE DISPOSAL FEES

Bin Size	Number	Cost	Total
4 Yard Bin	1	Included	0

REFUSE TOTAL: \$ 0

NAME: Benton-Franklin Mounted Sheriff's Posse

EVENT DATE: March 31; April 23, 7, 10 14, 17, 21, 24, 28;
May 1, 5, 8, 12, 15, 19, 22, 26, 29; June 2, 5, 9, 2008

SUMMARY OF FEE(S)

Damage/Cleaning Deposit	\$ <u>0</u>
Building(s)/Area Fees	\$ <u>1,575.00</u>
Equipment Fees	\$ <u>0</u>
Insurance Fees	\$ <u>0</u>
Security Fees	\$ <u>0</u>
Refuse Disposal Fees	\$ <u>0</u>
Other Fees	\$ <u>0</u>

TOTAL FEE: \$ 1,575.00

EXHIBIT B

LEASEHOLD IMPROVEMENT AGREEMENT BENTON COUNTY FAIRGROUNDS

WHEREAS, the Benton-Franklin Mounted Sheriff's Posse, a non-profit corporation organized under the laws of the State of Washington, hereinafter "LESSEE," currently contracts to lease a portion of the Benton County Fairgrounds, owned and operated by Benton County, a political subdivision of the State of Washington (hereinafter "LESSOR") for portions of the year for purposes of holding horse riding events therein;

WHEREAS LESSEE has made a request of LESSOR to make an improvement to certain real property located within the Benton County Fairgrounds, hereinafter "FAIRGROUNDS"; and,

WHEREAS, it is in the mutual interest of both parties to pursue improvements to the FAIRGROUNDS that will improve the operation and the quality of horse riding; **NOW THEREFORE,**

IT IS HEREBY MUTUALLY RESOLVED, that the LESSOR and LESSEE agree to the following conditions regarding the proposed improvement.

1. Improvement

(Detailed Description)

2. Timeline

The IMPROVEMENT shall be completed by (DATE) Work shall commence no sooner than (DATE) and during the period of time between commencement of work and (DATE) LESSEE shall have reasonable access to the building in which the work is to be done, but shall have no license to utilize other portions of, or facilities belonging to, LESSOR, unless otherwise authorized by way of a lease or other written document. LESSEE shall utilize all reasonable caution in completing the IMPROVEMENT and shall assume responsibility for all damage done to property belonging to LESSOR in the process of completing the IMPROVEMENT. In completing the IMPROVEMENT, LESSEE hereby agrees to accept the condition of the (NAME OF PROJECT) including any surrounding areas which LESSEE, its employees, volunteers, agents and representatives will need to occupy in order to complete the IMPROVEMENT, in "AS-IS" condition. LESSEE or its representatives shall have the responsibility to inspect the (NAME OF PROJECT) prior to commencing any work and shall notify LESSOR within 3 working days of the commencement date, in writing, of any perceived safety hazard which LESSEE believes will cause danger to anyone working on completing the IMPROVEMENT. If LESSEE does so notify, then LESSOR shall have the option of canceling this agreement upon written notice to LESSEE, with no recourse against either party. LESSEE, its employees, volunteers, representatives and agents, also hereby assume all reasonable risks associated with the completion of the IMPROVEMENT and waive any right to assert claims or a lawsuit against LESSOR for any injury, property damage, death or illness sustained as a result of working on the

IMPROVEMENT. This waiver also applies to any right of subrogation any insurance carrier, or the State of Washington might have as a result of compensating LESSEE, its employees, volunteers, representatives and agents for any injury, property damage, death or illness sustained.

3. Permitting

LESSEE shall obtain and pay for all required permits, engineering, plans drafting, and inspection necessary to comply with any and all building codes. LESSEE shall provide copies of all required permits to LESSOR prior to project commencement. Work may not commence until all required permits are provided to, and acknowledged by, LESSOR.

4. Funding

LESSEE shall be responsible for all labor and materials necessary to complete the IMPROVEMENT. The LESSOR shall not be responsible for any expenses incurred or necessary to complete the proposed leasehold improvement.

5. Labor

LESSEE shall provide all labor and equipment required for the IMPROVEMENT.

6. Credit Towards Lease Payments

The LESSEE shall be granted credit towards its lease payments upon completion of the (DESCRIPTION) as stated in the LESSEE'S Lease Agreement, Paragraph 3 b. The amount of credit will be determined by the County Administrator or his designee, when the IMPROVEMENT is finished, certified for occupancy and approved by LESSOR.

7. Ownership

LESSEE agrees that the (DESCRIPTION) IMPROVEMENT and the structure in which it is located, is solely the property of the LESSOR at all times prior to, during and after completion of the IMPROVEMENT. Nothing in this agreement is intended to, and nothing shall be interpreted as, granting lessee any ownership rights or right of usage outside of any right of usage conferred upon LESSEE via any lease agreement. LESSEE waives any right to file or enforce any mechanic's lien and expressly agrees not to file any such lien, upon the IMPROVEMENT, the structure within which it is housed, or any real property appurtenant to such.

8. Hold Harmless and Indemnification

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

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

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

9. Insurance

LESSEE shall ensure that each volunteer or employee who performs any work on the installation, construction, or erection, of the IMPROVEMENT is covered under a workman's compensation policy through the Department of Labor and Industries during all periods of time covered by this agreement. No volunteer or employee of LESSEE who is not so covered shall perform any work related in any way to the installation, construction or erection of the IMPROVEMENT.

Lessee shall obtain, and maintain in force throughout the period of work contemplated by this agreement, commercial general liability insurance in the amount of no less than \$1,000,000 per accident or incident with a general aggregate limit of \$2,000,000.

a. Additional insurance terms:

- 1). The LESSEE'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
- 2). The COUNTY, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required automobile liability policy.
- 3). The LESSEE'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the LESSOR as an additional insured. Specifically, the policies shall not exclude contractual liability pursuant to the indemnification and hold harmless provisions contained in section 7 of this agreement.
- 4). Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
- 5). The LESSEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 6). The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
 - 7). The LESSEE shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the LESSEE'S liability coverage is written as a claims made policy, then the LESSEE must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.
- b. Verification of Coverage and Acceptability of Insurers: All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.
- 1). The LESSEE shall furnish the LESSOR with properly executed and unaltered accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance no less than ten (10) days prior to the commencement of the work contemplated in this agreement. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the LESSOR. Any certificate or endorsement limiting or negating the insurer's obligation to notify the LESSOR of cancellation or changes shall be altered so as not to negate the intent of this provision.
 - 2). The LESSEE shall furnish the LESSOR with evidence that the additional insured provision required above has been met. This proof must be in the form of an insurance certificate as well as the endorsement pages of the policy showing the LESSOR as an additional insured.
 - 3). Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.
 - 4). All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the LESSOR at the following address:

Denise Gerry
Benton County Fairgrounds
1500 S Oak Street Building #20
Kennewick, WA 99337
 - 5). The LESSEE or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the LESSOR.

10. Independent Contractor

- a. The LESSEE'S services shall be furnished by the LESSEE as an independent contractor and not as an agent, employee or servant of the LESSOR. The LESSEE specifically has the right to direct and control LESSEE'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The LESSEE shall have and maintain complete responsibility and control over all of its volunteers, employees, agents, and representatives. No volunteer, employee, agent, or representative of the LESSEE shall be or deem to be or act or purport to act as an employee, agent, or representative of the LESSOR or of Benton County, and no volunteer, employee, agent or representative of the LESSEE shall claim or otherwise assert rights to any benefits, including, but not limited to, accident insurance, worker's compensation benefits, pay, medical insurance, or fringe benefits, which are actually, or customarily, given to employees, or agents of the LESSOR or Benton County.

11. Enforcement

In the event that LESSEE fails to or refuses to complete the IMPROVEMENT in a timely manner, fails to or refuses to present the IMPROVEMENT to LESSOR in a fashion suitable for occupancy (including procuring an occupancy permit), fails to or refuses to complete the IMPROVEMENT in a workmanlike manner, as determined by LESSOR, or breaches this agreement, then, upon proper written notice to LESSEE, if LESSEE does not correct the problem or take substantial steps toward same within ten (10) days, then LESSOR shall have the right to procure the services of a licensed contractor, or utilize LESSOR'S employees, to remedy the problem, including completion of the IMPROVEMENT, if applicable, at LESSEE'S expense.

BENTON COUNTY

Benton-Franklin Mounted Sheriff's Posse

For Exhibit Only

For Exhibit Only

David Sparks, County Administrator

Phil Clouse, Captain

Date:

Date:

Approved as to Form

For Exhibit Only

Deputy Prosecuting Attorney

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>3/10/08</u> Subject: <u>Benton-Franklin Mounted Sheriff's Posse</u> Prepared by: <u>dgg</u> Reviewed by: <u>lji/lsk</u>	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Board Direction	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Workshop

BACKGROUND INFORMATION

Attached for Board review is the Lease Agreement with Benton-Franklin Mounted Sheriff's Posse. The Lease Agreement has been reviewed and approved as to form by the Prosecuting Attorney's office.

This Lease Agreement allows the 4-H Arena to be used for horse riding play days on September 13, 20, 27 and October 4, 2008.

Compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased. Capital improvements by the Benton-Franklin Mounted Sheriff's Posse, on the Fairgrounds may be credited, in whole or in part, towards the lease agreement fee.

RECOMMENDATION

Move the Benton-Franklin Mounted Sheriff's Posse Lease Agreement is approved for holding horse riding play days at the Benton County Fairgrounds.

FISCAL IMPACT

Compensation from the Benton-Franklin Mounted Sheriff's Posse horse riding play days is \$800.00 or capital improvements may be credited, in whole or in part, towards this fee. .

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING THE LEASE AGREEMENT BETWEEN THE BENTON COUNTY FAIRGROUNDS AND THE BENTON-FRANKLIN MOUNTED SHERIFF'S POSSE

WHEREAS, Benton-Franklin Mounted Sheriff's Posse will provide Benton County Fairgrounds with \$800.00 to hold horse riding play days at the Fairgrounds on September 13, 20, 27 and October 4, 2008; and

WHEREAS, the value of capital improvements made by Benton-Franklin Mounted Sheriff's Posse to the Fairgrounds may be credited, in whole or in part, towards the \$800.00 payment; and

WHEREAS, compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased, and per Resolution 04-112, the Lease Agreement must be approved by the Board of Benton County Commissioners **NOW, THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, that the Board authorizes the Chairman of the Board to sign the Benton-Franklin Mounted Sheriff's Posse Lease Agreement.

Dated this _____ day of _____, 2008

Chairman of the Board

Member

Member

Constituting the Board of County
Commissioners of Benton County
Washington

Attest: _____
Clerk of the Board

BENTON COUNTY FAIRGROUNDS

1500 South Oak Street, Bldg #20

Kennewick, WA 99337

(509) 586-9211

LEASE AGREEMENT

TODAY'S DATE: **January 7, 2008**

LEASE AGREEMENT NUMBER: **003.08**

EVENT DATE(S): **September 13, 20, 27 and October 4, 2008**

NUMBER OF DAYS: **4**

BUILDING(S) / AREA: **4-H Arena**

LESSEE: **Benton-Franklin Mounted Sheriff's Posse,
a Washington Non-Profit Corporation**

MAILING ADDRESS: **PO Box 6406, Kennewick, WA 99336**

CONTACT: **Phil Clouse, Captain**

HOME PHONE: **545-9202** CELLULAR PHONE: **521-5505**

TIME OF THE EVENT: **8:00 am – 8:00 pm**

TYPE OF EVENT: **Horse Riding Play Days**

ESTIMATED ATTENDANCE: **100**

SELLING TICKETS: YES NO **X**

THIS LEASE (AGREEMENT) is entered into effective upon the signature of both parties, between Benton-Franklin Mounted Sheriff's Posse (LESSEE) and BENTON COUNTY, a municipal corporation authorized under the laws of the State of Washington, operating the Benton County Fairgrounds (LESSOR).

1. **EVENT**

- a. HORSE RIDING PLAY DAYS IN THE 4-H ARENA ON SEPTEMBER 13, 20, 27 AND OCTOBER 4, 2008 FROM 8:00 AM UNTIL 8:00 PM WITH AN ESTIMATED ATTENDANCE OF 100 PEOPLE, hereafter referred to as the EVENT.

2. **FACILITIES LEASED FOR THE EVENT**

- a. LESSEE agrees to lease the buildings and grounds, equipment and services specified in Exhibit A (Attached) (collectively the Facilities) to hold EVENT on the date(s) specified on the cover hereto. In addition to said date(s), LESSEE desires and further agrees to lease said Facilities for move-in and/or move-out purposes on n/a. LESSEE WARRANTS THAT SAID FACILITIES WILL BE USED ONLY FOR LAWFUL PURPOSES NECESSARY TO SUPPORT THE EVENT.

3. **PAYMENTS**

- a. In consideration for the license to hold the EVENT, LESSEE agrees to pay LESSOR the FEE of \$ 800.00 (less damage/cleaning deposit if previously paid) for use of the Facilities as detailed in Exhibit A, no later than August 29, 2008. If the fee is not made by said date, this Agreement will be null and void unless otherwise agreed to in writing by LESSOR. Upon such termination, LESSEE shall be obligated to pay a cancellation fee as specified in the Benton County Fairgrounds Policies and Procedures, Paragraph #9.
- b. Until December 31, 2008, LESSEE may earn one or more credits of up to \$800.00 towards the annual rental amount otherwise payable for the 2008 rental year, in return for capital improvements made at LESSEE's expense to the Leased Facilities by the LESSEE after the effective date of this agreement. Such credit(s) shall be equal to the estimated cost of such improvement(s) to LESSOR if the improvement(s) had been done by LESSOR or its agents. No credit will be given for any improvement by LESSOR unless a Fairgrounds Leasehold Improvement Agreement, in a form similar to that attached hereto as Exhibit B, is executed by LESSOR and LESSEE prior to the commencement of the particular improvement at issue. It is solely within LESSOR's discretion as to whether any particular proposal for an improvement by LESSEE is in LESSOR's best interest and consequently whether LESSOR will enter into a corresponding Fairgrounds Leaseholder Improvement Agreement. At the completion of each approved improvement project, LESSEE must promptly submit documentation of the materials used, the type and amount of labor utilized and any other expenses necessary to complete the improvement. LESSOR shall within fifteen (15) days of receipt of all necessary and requested documentation, notify LESSEE in writing whether it accepts the improvement as complete and the determination by the Benton County Deputy Administrator as to the estimated cost of the improvement if

made by LESSOR or its agents. Such estimate will be the amount of credit earned by LESSEE. For any improvement not completed by December 31, 2008, or by a prior date of any termination of this Lease, LESSEE will receive credit only for the estimated cost to LESSOR of such improvement in the condition the improvement exists as of the earlier of the date of termination of this Lease or December 31, 2008.

4. CAMPING OVERNIGHT

- a. LESSOR does not make any warranties as to suitability of campgrounds for LESSEE'S purposes or compatibility of campground infrastructure to any equipment anticipated to be used by LESSEE or participants in LESSEE'S EVENT. LESSEE is responsible for ensuring that the campgrounds, as they exist, are suitable for LESSEE'S purposes and that campground infrastructure meets the needs of LESSEE and/or participants in LESSEE'S EVENT. LESSEE may request a walk-through of the campground facilities and LESSOR shall take all reasonable steps to accommodate such a request. PROVIDED that all such walk-throughs shall be during regular business hours only, and may be by appointment only.
- b. Camping on the Fairgrounds property is not permitted unless requested by LESSEE in advance when booking the EVENT. Fees, terms and conditions applicable to camping will be furnished on request and attached to a resultant lease when applicable.

5. CANCELLATION OF EVENT

- a. The parties recognize that cancellations made less than 60 days prior to the first event date will potentially cause the BCF to lose lease or rental revenue. The parties further recognize that for a number of reasons outside of the control of the parties, the actual amount of the loss is often difficult to quantify. Therefore, the parties agree to the following schedule of liquidated damages which shall become due and owing if Lessee cancels less than 60 days prior to the first day of the event:
 1. If the Cancellation is made less than 60 days prior to the first event date, then Lessee shall pay 25% of the Lease fee as liquidated damages;
 2. If the cancellation is made less then 30 days prior to the first event date, then Lessee shall pay 50% of the fee as liquidated damages.
- b. The liquidated damages specified in this section may be deducted from cleaning or any other deposits retained by the BCF, and if any further amount is still due after such deduction, the Lessee may recover such amount due in the same manner as if it were seeking to recover any other sum due under this agreement, and may utilize any lawful means to do so.

6. CONCESSIONAIRES

- a. LESSEE and LESSOR agree that LESSEE may arrange for food and/or beverage service CONCESSIONAIRE(S) at the EVENT. LESSOR is entitled to 0 of the revenues generated by such CONCESSIONAIRE(S).

7. **NOVELTIES/SOUVENIRS**

- a. LESSEE warrants that there will be no novelties, souvenirs or similar merchandise sold at the EVENT.

8. **DAMAGE / CLEANING DEPOSIT**

- a. LESSEE must pay a damage/cleaning deposit of \$ 0 at the time LESSEE executes this Agreement. THIS AGREEMENT IS NOT EFFECTIVE UNTIL EXECUTED BY LESSOR AND THE DAMAGE/CLEANING DEPOSIT IS RECEIVED. Damages to the Fairgrounds' resulting from the EVENT activities will be charged to the LESSEE at replacement cost plus labor; the cost of labor not exceeding the average cost for such labor in the Tri-Cities area. Charges for repairs will be subtracted from the damage/cleaning deposit, as may any other fees specified as subject to forfeiture of the damage/cleaning deposit elsewhere in this Agreement. The remaining balance, if any, of the damage/cleaning deposit, if any, will be returned to the LESSEE in approximately ten (10) business days after the EVENT date. If the damage/cleaning deposit is less than the amount of damage, LESSEE remains liable for the balance. Neither the Benton County Fairgrounds nor Benton County assume any liability whatsoever for any loss or injury to the LESSEE or LESSEE'S property while on Benton County Fairgrounds' property.

9. **INSURANCE**

- b. LESSEE agrees to purchase, and maintain in force throughout the duration of this Agreement, **general liability insurance with a minimum coverage of one million dollars (\$1,000,000) per person with a general aggregate limit of two million dollars (\$2,000,000)**. Said policy shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured and shall include a provision prohibiting cancellation of said policy except after thirty (30) days prior written notice to LESSOR. The policy required by this paragraph shall be a "horse club and association liability policy" or horse owner's policy which specifically covers the hazards associated with horse riding activities. If horse racing, barrel racing or other type of hazardous activity other than ordinary horse riding is to be undertaken at the event, then the policy shall be specifically written to cover such hazardous activity. In any case, the policy may not exclude any activities reasonably expected to be undertaken, or actually undertaken, at the EVENT.
- c. LESSEE agrees to ensure that all participating riders are covered by a horse owner's liability or similar insurance policy either as a primary or additional insured. **Such horse owner's liability policy shall be for no less than one million dollars (\$1,000,000) per person, with a general aggregate limit of two million dollars (\$2,000,000)**, and shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured, and shall include a provision prohibiting the cancellation of said policy except after thirty (30) days prior written notice to LESSOR. *No uninsured riders shall be permitted to ride in any event covered by this Agreement.*

- c. LESSEE shall ensure that all vendors and contractors for the EVENT are either covered by their own insurance policies, covered by a policy purchased through LESSOR specifically for this EVENT, or added as an additional insured on LESSEE'S policy in the following amounts:
 - 1. If the vendor will be serving food or food items, or beverages other than alcoholic beverages of any type, then the policy must be a **commercial general liability policy which does not exclude claims for food poisoning, and must have limits of five million dollars (\$5,000,000) per incident, and five million dollars (\$5,000,000) general aggregate.**
- d. All insurance required by this section shall cover losses which occur during the covered period, regardless of when the claim is filed, i.e. cannot be "claims made" policies.
- e. All insurance policies required by this section shall be primary to any insurance policies or policies of self-insurance carried by LESSOR;
- f. The limits required by this section are not intended to an indication of liability nor are they to be considered limits on amount of indemnification;
- g. LESSEE SHALL PROVIDE, NO LATER THAN THIRY (30) DAYS PRIOR TO ANY EVENT COVERED BY THIS AGREEMENT, PROOF OF ALL FORMS OF INSURANCE REQUIRED IN THIS SECTION. THIS PROOF SHALL CONSIST OF A CERTIFICATE OF INSURANCE NAMING "BENTON COUNTY FAIRGROUNDS" AS CERTIFICATE HOLDER, AS WELL AS COPIES OF ALL KEY PROVISIONS, EXCLUSIONS, AND ENDORSEMENTS FROM THE POLICY INCLUDING THE REQUIRED ADDITIONAL INSURED LANGUAGE.

10. PERMITS

- a. All necessary city and/or state permits and/or licenses must be obtained and presented to LESSOR prior to the first day of the EVENT, or the first day of set up if applicable.

11. SECURITY

- a. LESSEE takes full responsibility for the safety and well being of participants while they are participating in the EVENT. LESSEE is responsible for inspecting the building and premises and ensuring that they are sufficient to provide for the safety and security of event participants. LESSOR will make all reasonable attempts to honor requests for a walk through of premises and buildings to be leased provided that such walk through will be by appointment only, during regular business hours.
- b. LESSEE shall designate a primary and secondary contact person for purposes of the EVENT. These contact persons shall be persons who have authority, during the EVENT, to direct how the EVENT is being operated, including the operations of any vendors (such as music DJs, food concessionaires, etc). Within ten (10) days

following execution of this contract, LESSEE shall furnish LESSOR with these contact persons on a form provided by LESSOR including cellular telephone numbers which will allow these persons to be contacted AT ALL TIMES DURING THE OPERATION OF THE EVENT and copies of their photo ID. Depending on the size of the event, LESSEE may designate more contact persons at LESSEE'S discretion, but shall do so in writing. If event security or law enforcement officers responding to any incident at the event are unable to contact any designated contact for a period of 15 minutes or longer, then LESSOR shall have the option to terminate the EVENT and LESSEE'S license to use the facility pursuant to this Agreement.

12. SERVING ALCOHOL

- a. It is understood that no alcoholic beverages will be served at this EVENT.
- b. The LESSEE agrees to abide by and enforce within the EVENT the County Policies regarding the presence of alcohol or the use of alcoholic beverages on County leased property.
- c. LESSOR'S POLICY IS THAT NO LIQUOR BE CONSUMED BY ANY INDIVIDUAL UNDER TWENTY-ONE (21) YEARS OF AGE. VIOLATION OF THE POLICY SHALL CONSTITUTE A SUBSTANTIAL AND SIGNIFICANT BREACH OF THE AGREEMENT AND IF LESSOR LEARNS OF SUCH VIOLATION, LESSOR SHALL HAVE THE AUTHORITY TO IMMEDIATELY TERMINATE THE EVENT.

13. HORSE STALLS

- a. LESSEE shall pay \$8.00 per stall per day for every horse stall used during the EVENT. The LESSEE is responsible for collecting all stall fees, which must be turned into the Fairgrounds Administrative Office no later than two (2) business days after the EVENT. If payment is not received by such date, the entire otherwise refundable balance of the LESSEE'S damage/cleaning deposit will be forfeited. If the refundable portion of the damage/cleaning deposit is less than the amount of stall fees accrued, LESSEE remains liable for the additional stall fees accrued.

14. TERMINATION OR AMENDMENT

- a. Unless otherwise specified herein, the LESSOR reserves the right to terminate or amend this agreement at any time by giving the LESSEE thirty (30) days written notice. Notice will be assumed to be received on the day (except Sundays) following the date when it is addressed to Lessee's address and mailed by first class and certified mail.

15. INDEMNIFICATION AND HOLD HARMLESS

- a. LESSEE agrees to defend, indemnify and hold harmless LESSOR and its elected and appointed officials employees, agents, licensees and representatives, from and against

any and all suits, claims, actions, losses, costs, penalties, damages, attorneys' fees and all other costs of defense of whatever kind or nature arising out of injuries to or death of any and all persons (including subcontractors, agents, licensees or representatives, and any of their employees) or damage to or destruction of any property (including, without limitation, LESSEE or LESSOR'S property or any other activity or omission which results in civil liability of any sort or type) in any manner caused by, resulting from incident to, connected with or arising out of LESSEE'S use of the facilities or performance under this agreement, unless such injury, death or damage is caused by the sole negligence of LESSOR. In the event of litigation between the parties to enforce the rights under this paragraph, LESSOR shall be entitled to attorney's fee and all other costs incurred in establishing its rights. LESSEE'S obligations pursuant to this article include investigating, adjusting and defending any cause of action or claim falling within the parameters as set out in this article.

16. FAIRGROUNDS CONTACT

- a. The following person(s) is the contact representative of the Benton County Fairgrounds:
- | | |
|--------|----------|
| Jeff | 727-5703 |
| Farrin | 727-5249 |
| Denise | 727-5128 |
- b. This person(s) may be contacted for the following reasons:
1. To access locked locations of the Fairgrounds for functions essential to the EVENT;
 2. In the event of malfunction of services or equipment essential to the EVENT.
- c. This person(s) SHALL be contacted (any one of them) if any of the following occurs:
1. The police department is summoned to the scene for any criminal investigation which takes place on the premises of the Fairgrounds;
 2. The fire department or an ambulance is summoned to the scene for an incident involving injury or illness to a person on the premises of the Fairgrounds;
 3. LESSEE is unable to ensure that all persons have left the premises of the Fairgrounds at the termination of the EVENT;
 4. There is a situation such as a fire, explosion or structural failure, which results in substantial damage to LESSORS' property and/or injury to persons.

17. POLICIES AND PROCEDURES

In signing this Lease Agreement, the LESSEE signifies that said LESSEE has been provided a copy of the Policies and Procedures governing the use of the Benton County Fairgrounds and has had an opportunity to review those policies and procedures. The parties agree that the provisions contained within the Policies and Procedures manual are hereby incorporated into this Agreement and any violation of such provisions shall constitute a breach of this Lease Agreement.

I, Phil Clouse, Captain (name and job title/position) have read and fully understand this Agreement. I hereby certify that I have the authority to bind Benton-Franklin Mounted Sheriff's Posse to the terms and conditions set forth herein. In the event I do not have the authority, I acknowledge and agree that I shall be personally liable for any payments due under this Agreement and for any breach that occurs under the Agreement. I agree to abide by the conditions set forth in this Lease Agreement and assume the responsibility for enforcing these policies.

LESSEE: Benton-Franklin Mounted Sheriff's Posse

LESSOR: BENTON COUNTY

BY: B.F.M.S.P.

BY: _____

Date: 2/28/08

Chairman of the Board

Name: Phil Clouse

Title: Captain

Date: _____

Approved as to form:

BY: [Signature]
Civil Deputy Prosecutor

EXHIBIT A
FEEs APPLICABLE TO LESSEE'S LICENSE TO USE THE FACILITIES

DAMAGE/CLEANING DEPOSIT

Refundable in approximately ten (10) business days after the EVENT, only if the building and/or rented area is completely clean, all garbage in dumpster(s), and tables and chairs re-stacked.

DEPOSIT TOTAL: \$ 0

BUILDING(S) AND/OR AREA(S) FEES

4-H Arena \$ 200.00 X 4 Days = \$ 800.00

BUILDING(S)/AREA TOTAL: \$ 800.00

EQUIPMENT RENTAL FEES

No equipment needed.

EQUIPMENT RENTAL TOTAL: \$ 0

LESSOR FURNISHED INSURANCE FEES

Lessee will provide.

INSURANCE TOTAL: \$ 0

SECURITY FEES

Lessee will provide.

SECURITY TOTAL: \$ 0

REFUSE DISPOSAL FEES

Bin Size	Number	Cost	Total
4 Yard Bin	1	Included	0

REFUSE TOTAL: \$ 0

NAME: Benton-Franklin Mounted Sheriff's Posse

EVENT DATE: September 13, 20, 27 and October 4, 2008

SUMMARY OF FEE(S)

Damage/Cleaning Deposit	\$ <u>0</u>
Building(s)/Area Fees	\$ <u>800.00</u>
Equipment Fees	\$ <u>0</u>
Insurance Fees	\$ <u>0</u>
Security Fees	\$ <u>0</u>
Refuse Disposal Fees	\$ <u>0</u>
Other Fees	\$ <u>0</u>

TOTAL FEE: \$ 800.00

EXHIBIT B

**LEASEHOLD IMPROVEMENT AGREEMENT
BENTON COUNTY FAIRGROUNDS**

WHEREAS, the Benton-Franklin Mounted Sheriff's Posse, a non-profit corporation organized under the laws of the State of Washington, hereinafter "LESSEE," currently contracts to lease a portion of the Benton County Fairgrounds, owned and operated by Benton County, a political subdivision of the State of Washington (hereinafter "LESSOR") for portions of the year for purposes of holding horse riding events therein;

WHEREAS LESSEE has made a request of LESSOR to make an improvement to certain real property located within the Benton County Fairgrounds, hereinafter "FAIRGROUNDS"; and,

WHEREAS, it is in the mutual interest of both parties to pursue improvements to the FAIRGROUNDS that will improve the operation and the quality of horse riding; **NOW THEREFORE**,

IT IS HEREBY MUTUALLY RESOLVED, that the LESSOR and LESSEE agree to the following conditions regarding the proposed improvement.

1. Improvement

(Detailed Description)

2. Timeline

The IMPROVEMENT shall be completed by (DATE) Work shall commence no sooner than (DATE) and during the period of time between commencement of work and (DATE) LESSEE shall have reasonable access to the building in which the work is to be done, but shall have no license to utilize other portions of, or facilities belonging to, LESSOR, unless otherwise authorized by way of a lease or other written document. LESSEE shall utilize all reasonable caution in completing the IMPROVEMENT and shall assume responsibility for all damage done to property belonging to LESSOR in the process of completing the IMPROVEMENT. In completing the IMPROVEMENT, LESSEE hereby agrees to accept the condition of the (NAME OF PROJECT) including any surrounding areas which LESSEE, its employees, volunteers, agents and representatives will need to occupy in order to complete the IMPROVEMENT, in "AS-IS" condition. LESSEE or its representatives shall have the responsibility to inspect the (NAME OF PROJECT) prior to commencing any work and shall notify LESSOR within 3 working days of the commencement date, in writing, of any perceived safety hazard which LESSEE believes will cause danger to anyone working on completing the IMPROVEMENT. If LESSEE does so notify, then LESSOR shall have the option of canceling this agreement upon written notice to LESSEE, with no recourse against either party. LESSEE, its employees, volunteers, representatives and agents, also hereby assume all reasonable risks associated with the completion of the IMPROVEMENT and waive any right to assert claims or a lawsuit against LESSOR for any injury, property damage, death or illness sustained as a result of working on the

IMPROVEMENT. This waiver also applies to any right of subrogation any insurance carrier, or the State of Washington might have as a result of compensating LESSEE, its employees, volunteers, representatives and agents for any injury, property damage, death or illness sustained.

3. Permitting

LESSEE shall obtain and pay for all required permits, engineering, plans drafting, and inspection necessary to comply with any and all building codes. LESSEE shall provide copies of all required permits to LESSOR prior to project commencement. Work may not commence until all required permits are provided to, and acknowledged by, LESSOR.

4. Funding

LESSEE shall be responsible for all labor and materials necessary to complete the IMPROVEMENT. The LESSOR shall not be responsible for any expenses incurred or necessary to complete the proposed leasehold improvement.

5. Labor

LESSEE shall provide all labor and equipment required for the IMPROVEMENT.

6. Credit Towards Lease Payments

The LESSEE shall be granted credit towards its lease payments upon completion of the (DESCRIPTION) as stated in the LESSEE'S Lease Agreement, Paragraph 3 b. The amount of credit will be determined by the County Administrator or his designee, when the IMPROVEMENT is finished, certified for occupancy and approved by LESSOR.

7. Ownership

LESSEE agrees that the (DESCRIPTION) IMPROVEMENT and the structure in which it is located, is solely the property of the LESSOR at all times prior to, during and after completion of the IMPROVEMENT. Nothing in this agreement is intended to, and nothing shall be interpreted as, granting lessee any ownership rights or right of usage outside of any right of usage conferred upon LESSEE via any lease agreement. LESSEE waives any right to file or enforce any mechanic's lien and expressly agrees not to file any such lien, upon the IMPROVEMENT, the structure within which it is housed, or any real property appurtenant to such.

8. Hold Harmless and Indemnification

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

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

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

9. Insurance

LESSEE shall ensure that each volunteer or employee who performs any work on the installation, construction, or erection, of the IMPROVEMENT is covered under a workman's compensation policy through the Department of Labor and Industries during all periods of time covered by this agreement. No volunteer or employee of LESSEE who is not so covered shall perform any work related in any way to the installation, construction or erection of the IMPROVEMENT.

Lessee shall obtain, and maintain in force throughout the period of work contemplated by this agreement, commercial general liability insurance in the amount of no less than \$1,000,000 per accident or incident with a general aggregate limit of \$2,000,000.

a. Additional insurance terms:

- 1). The LESSEE'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
- 2). The COUNTY, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required automobile liability policy.
- 3). The LESSEE'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the LESSOR as an additional insured. Specifically, the policies shall not exclude contractual liability pursuant to the indemnification and hold harmless provisions contained in section 7 of this agreement.
- 4). Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
- 5). The LESSEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 6). The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
 - 7). The LESSEE shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the LESSEE'S liability coverage is written as a claims made policy, then the LESSEE must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.
- b. Verification of Coverage and Acceptability of Insurers: All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.
- 1). The LESSEE shall furnish the LESSOR with properly executed and unaltered accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance no less than ten (10) days prior to the commencement of the work contemplated in this agreement. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the LESSOR. Any certificate or endorsement limiting or negating the insurer's obligation to notify the LESSOR of cancellation or changes shall be altered so as not to negate the intent of this provision.
 - 2). The LESSEE shall furnish the LESSOR with evidence that the additional insured provision required above has been met. This proof must be in the form of an insurance certificate as well as the endorsement pages of the policy showing the LESSOR as an additional insured.
 - 3). Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.
 - 4). All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the LESSOR at the following address:

Denise Gerry
Benton County Fairgrounds
1500 S Oak Street Building #20
Kennewick, WA 99337
 - 5). The LESSEE or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the LESSOR.

10. Independent Contractor

- a. The LESSEE'S services shall be furnished by the LESSEE as an independent contractor and not as an agent, employee or servant of the LESSOR. The LESSEE specifically has the right to direct and control LESSEE'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The LESSEE shall have and maintain complete responsibility and control over all of its volunteers, employees, agents, and representatives. No volunteer, employee, agent, or representative of the LESSEE shall be or deem to be or act or purport to act as an employee, agent, or representative of the LESSOR or of Benton County, and no volunteer, employee, agent or representative of the LESSEE shall claim or otherwise assert rights to any benefits, including, but not limited to, accident insurance, worker's compensation benefits, pay, medical insurance, or fringe benefits, which are actually, or customarily, given to employees, or agents of the LESSOR or Benton County.

11. Enforcement

In the event that LESSEE fails to or refuses to complete the IMPROVEMENT in a timely manner, fails to or refuses to present the IMPROVEMENT to LESSOR in a fashion suitable for occupancy (including procuring an occupancy permit), fails to or refuses to complete the IMPROVEMENT in a workmanlike manner, as determined by LESSOR, or breaches this agreement, then, upon proper written notice to LESSEE, if LESSEE does not correct the problem or take substantial steps toward same within ten (10) days, then LESSOR shall have the right to procure the services of a licensed contractor, or utilize LESSOR'S employees, to remedy the problem, including completion of the IMPROVEMENT, if applicable, at LESSEE'S expense.

BENTON COUNTY

Benton-Franklin Mounted Sheriff's Posse

For Exhibit Only

For Exhibit Only

David Sparks, County Administrator

Phil Clouse, Captain

Date:

Date:

Approved as to Form

For Exhibit Only

Deputy Prosecuting Attorney

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>3-3-2008</u> Subject: _____ Prepared by: <u>Linda Ivey</u> Reviewed by: Loretta	Execute Contract Pass Resolution Pass Ordinance Pass Motion Board Direction	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Workshop 

SUMMARY BACKGROUND INFORMATION

Fairgrounds Operating Budget: 0124101

The Fairgrounds is hiring a new employee as a Groundskeeper.

The Senior Fairgrounds Maintenance Worker position will not be filled at this time.

Request appropriated funds are transferred from Senior Fairgrounds Maintenance Worker line item 575.400.1556 to Groundkeeper line item 575.400.1532.

There is no fiscal impact on the budget.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN THE FAIRGROUNDS OPERATING BUDGET.

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

Dated this _____ day of _____, 2008

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Fairgrounds Operating Dept Nbr: 000
 Fund Name: Fairgrounds Operating Fund Nbr: 0124-101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	TRANSFER TO:	AMOUNT
575.400	1556	Senior Fair Maintenance Worker	\$37,678	Groundskeeper	\$37,678
TOTAL			\$37,678	TOTAL	\$37,678

Explanation:

Line item transfer to appropriate funds to Groundskeeper. Senior Fair Maintenance Worker position will not be filled at this time.

Prepared by: Linda Ivey Date: 21-Feb-2008

Approved Denied Date: _____

Chairman

Member

Member

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

COPY ^{n.}

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment for the provision of cash match for the homeless grant assistance program	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
Prepared By: Carol Carey	<input type="checkbox"/> Other	<input type="checkbox"/> Other

BACKGROUND INFORMATION

In a letter dated March 20, 2007, Benton County committed to a \$50,000 match for each year (three years total) for the Homeless Grant Assistance Program (HGAP) project to be operated by the Community Action Committee with funding awarded by the Department of Community, Trade and Economic Development.

SUMMARY

Award: \$50,000 match per year for three years
Period: July 1, 2007 through December 31, 2010.
Funding Source: Benton County Match

RECOMMENDATION

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

FISCAL IMPACT

Funding for the services described in the Agreement is provided by the Washington State Department of Community Trade and Economic Development. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing the Housing Assistance Grant Match Funding, Amendment #07/10-HGAP-CAC-1 and authorize the Chairs of Benton and Franklin Counties Commissioners to sign on behalf of the Board.

**Benton and Franklin Counties
DEPARTMENT OF HUMAN SERVICES
Agreement #07/10-HGAP-CAC-1**

2008 067

This Amendment is made and entered into by and between Benton and Franklin Counties, hereinafter referred to as "Counties" and the provider identified below, hereinafter referred to as the "Contractor."

COPY

Counties Contact Information:

Carrie Huie-Pascua, Director
Department of Human Services
7207 W. Deschutes Avenue
Kennewick, WA 99336
Phone: 509.783.5284
Fax: 509.783.5981
E-Mail: carriep@bfdhs.org

Contractor Contact Information:

Judith Gidley, Executive Director
B/F Community Action Committee
720 W Court Street
Pasco, WA 99301
Phone: 509.545.4042
Fax:
E-Mail: jgidley@bfcac.org

Is the Contractor a subrecipient for purposes of this Agreement Yes
CFDA Number (Federal Block Grant Funding) N/A

Agreement Start Date July 1, 2007
Agreement End Date June 30, 2010

Prior Contract Amount \$540,000
Amount of Increase or Decrease \$150,000
Total Maximum Contract Amount \$690,000

By their signatures below, the parties agree to the terms and conditions of this Agreement and all documents attached or incorporated by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind the parties. The parties signing below certify that they are authorized to sign this Agreement.

For the Contractor:

Judith A. Gidley 2/15/08
Director/Administrator Date

Board of Directors (if applicable) Date

For Benton County:

Benton County Commissioners Date

Attest: Clerk of the Board

For Franklin County:

[Signature] 2/20/08
Franklin County Commissioners Date

[Signature]
Attest: Clerk of the Board

Approved as to Content:

[Signature]
Department of Human Services

Approved as to Form:

[Signature]
Benton County Prosecutor's Office

Approved as to Form:

[Signature]
Franklin County Prosecutor's Office

PURPOSE

This Amendment to Agreement #07/10-HGAP-CAC serves to administer and distribute the cash match contribution of Benton County "2163" Homeless Housing Assistance Funding committed to the project in a letter dated March 20, 2007, a copy of which is attached as Exhibit A to this Amendment. The "Budget and Use" and "Reporting and Documentation" provisions described below are in addition to any budget and reporting provisions contained in the underlying Agreement. This Amendment should not be interpreted as modifying the budget and reporting provisions in the underlying Agreement in any way. Similarly, the budget and reporting provisions below are intended only for the additional funding as set out herein. Nothing in the "Budget and Use" and "Reporting and Documentation Requirements" below is intended to in any way modify the provisions as contained in the underlying Agreement. The "Budget and Use" and "Reporting and Documentation Requirements" in this Amendment are subject to the general guidelines set out in the underlying agreement so long as they do not conflict. Any conflicts as pertaining to the provisions for this Amendment only should be resolved in favor of the more detailed description contained within this Amendment.

In order to be eligible for the funds contemplated by this Amendment, Contractor shall provide rental assistance and supportive services, as described in the "Home Base Connections" Jail Release Program Technical Submission attachment to the underlying Agreement ("Technical Submission"), to eligible persons who, while homeless, have sufficient ties through work, social services received, temporary shelters or similar, to Benton County, to be considered Benton County residents.

All rights or obligations accruing to or attributable to Benton County by virtue of this Amendment shall be administered through Benton Franklin Counties Department of Human Services at the direction of the Benton County Board of County Commissioners.

BUDGET AND USE

1. The Contractor shall use the funding provided under this Amendment solely as match money for the Washington State Homeless Housing and Assistance Act, 2006 Housing Grant Assistance Program (HGAP) pursuant to the Budget contained in the Technical Submission. The Contractor may request reasonable reimbursement from Benton County's Homeless Housing Assistance Fund for rental assistance and supportive services, as described in the Technical Submission, up to the following maximum amounts:

Benton County Match Funding	Year 1	Year 2	Year 3	Total
Rental Assistance	\$35,700	\$35,700	\$35,700	\$107,100
Supportive Services	\$14,300	\$14,300	\$14,300	\$42,900
Total	\$50,000	\$50,000	\$50,000	\$150,000

2. The Contractor shall submit written requests for allowable reimbursements on the appropriate forms provided by the Counties. The requests must identify the work performed and be accompanied by documentation, in a manner prescribed or requested by the Counties, of all allowable costs and expenses incurred for which the Contractor is seeking reimbursement. Benton County will pay the Contractor with County warrants within twenty days following receipt of the request and satisfactory supporting documentation, and subject to the other terms and conditions contained in the Agreement or this Amendment. All initial claims for reimbursement must be received by Benton County within 30 days following the last day of the

month for which the service is provided. The final billing for services against this Agreement shall occur no more than 60 days after the end date of this Agreement.

3. In no event shall Benton County ever be required to disburse funds in excess of either the total match funding per year or totals for each subcategory, as set out above in paragraph 1 and the chart contained therein. In addition, no disbursements shall be made in advance of costs or expenses being incurred, and no costs or expenses incurred by the Contractor prior to the effective date of this Amendment, or after its termination, are eligible for reimbursement.
4. Any disbursement made by Benton County to the Contractor shall be without prejudice to Benton County's rights later to challenge the propriety of the Contractor's claimed costs or expenses.
5. If the Contractor fails to perform any obligation under this Agreement and the failure has not been cured within ten (10) days following oral or written notice from the Counties, the Counties may, without penalty and in its sole discretion and upon written notice to the Contractor, withhold all monies otherwise due the Contractor until such failure to perform is cured. This right to withhold disbursements is in addition to all other rights and remedies the Counties may have available to it under this Agreement or under law.

REPORTING AND DOCUMENTATION REQUIREMENTS

The Contractor shall provide a monthly report to the Counties, in a format prescribed or approved by the Counties, which documents progress and funding used for the Housing Grant Assistance Program. The report shall include a summary of all Department of Community, Trade and Economic Development funding and match funding provided by Benton County, Franklin County and the Benton Franklin Community Action Committee Community Services Block Grant (BFCAC CSBG) expended for HGAP services.

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

COPY D.

AGENDA ITEM	TYPE OF ACTION NEEDED	
Program Agreement #0763-21308-01 with the Division of Developmental Disabilities	<input checked="" type="checkbox"/> Execute Amendment	<input checked="" type="checkbox"/> Consent Agenda
Prepared By: Carol Carey	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other

BACKGROUND INFORMATION

The Division of the Developmental Disabilities would like to add additional funding in their contract with the Department of Human Services for the purpose to advance the state legislative policy to provide coordinated and comprehensive state and local program of services for persons with developmental disabilities.

SUMMARY

Award: This agreement has a maximum consideration of \$3,466,810.00

Period: December 1, 2007 through June 30, 2009.

Funding Source: Division Developmental Disabilities through the Department of Social and Health Services

RECOMMENDATION

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

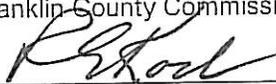
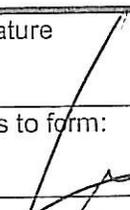
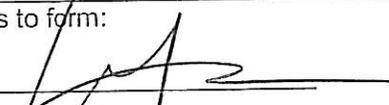
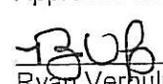
FISCAL IMPACT

Funding for the services described in this Amendment is provided by the Washington State Department of Social and Health Services, Developmental Disabilities Contract. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #0763-21308-01 with the Division of Developmental Disabilities and authorize the Chairs of Benton and Franklin Counties Commissioners to sign on behalf of the Board.

		CONTRACT AMENDMENT DDD County Services		DSHS CONTRACT NUMBER: 0763-21308 Amendment No. 0763-21308-01	
This Contract Amendment is between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below.				Program Contract Number Contractor Contract Number	
CONTRACTOR NAME Benton County		CONTRACTOR doing business as (DBA) Benton-Franklin Counties Developmental Disabilities Services			
CONTRACTOR ADDRESS Department of Human Services 7207 West Deschutes Avenue Kennewick, WA 99336-		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI) 035-000-971		DSHS INDEX NUMBER 1122	
CONTRACTOR CONTACT Carrie Huie-Pascua	CONTRACTOR TELEPHONE (509) 783-5284 Ext:	CONTRACTOR FAX (509) 783-5981	CONTRACTOR E-MAIL ADDRESS carriep@bfdhs.org		
DSHS ADMINISTRATION Aging and Disability Services Administration		DSHS DIVISION Division of Developmental Disabilities		DSHS CONTRACT CODE 1769CS-63	
DSHS CONTACT NAME AND TITLE Gerald Tucker Business Manager		DSHS CONTACT ADDRESS Division of Developmental Disabilities/Region 2 P.O. Box 12500 Yakima, WA 98909			
DSHS CONTACT TELEPHONE (509) 225-4631 Ext:		DSHS CONTACT FAX (509) 454-4320		DSHS CONTACT E-MAIL ADDRESS tuckejl@dshs.wa.gov	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? No			CFDA NUMBERS		
AMENDMENT START DATE 12/1/2007		CONTRACT END DATE 6/30/2009			
PRIOR MAXIMUM CONTRACT AMOUNT \$2,257,194.00		AMOUNT OF INCREASE OR DECREASE \$1,209,616.00		TOTAL MAXIMUM CONTRACT AMOUNT \$3,466,810.00	
REASON FOR AMENDMENT; CHANGE OR CORRECT OTHER: SEE PAGE TWO					
ATTACHMENTS. When the box below is marked with an X, the following Exhibits are attached and are incorporated into this Contract Amendment by reference: <input checked="" type="checkbox"/> Additional Exhibits (specify): Exhibit A					
This Contract Amendment, including all Exhibits and other documents incorporated by reference, contains all of the terms and conditions agreed upon by the parties as changes to the original Contract. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract Amendment shall be deemed to exist or bind the parties. All other terms and conditions of the original Contract remain in full force and effect. The parties signing below warrant that they have read and understand this Contract Amendment, and have authority to enter into this Contract Amendment.					

Franklin County Commissioner Chair 		Printed Name and Title Robert Koch, Chair Franklin County Commissioners		Date Signed 2/20/08	
Benton County Commissioner Chair		Printed Name and Title Leo Bowman, Chair Benton County Commissioners		Date Signed	
DSHS Signature 		Printed Name and Title Christy R. Hoosier, ADSA Contract Manager Division of Developmental Disabilities		Date Signed	
Approved as to form: 		Approved as to form: 			
Eric Hsu Benton County Prosecuting Attorney		Ryan Verhulp Franklin County Prosecuting Attorney, Deputy			

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

1. The Total Maximum Contract Amount is hereby increased for a new Contract Amount of \$3,466,810.
2. Definitions 1.a. is replaced in its entirety to read:
 - a. "County" means the county or counties entering into this Program Agreement.
3. Statement of Work 5.b. is replaced in its entirety to read:
 - b. Biennial Spending Plan: The County shall submit for approval a Biennial Spending Plan (spending plan) within 120 days of execution of this County Program Agreement. The spending plan shall be allocated at the BARS sub-element service code level as well as allocated under State, State Proviso, Medicaid and Medicaid Proviso. The planned expenditures allocation for Consumer Support (BARS 60 series) should be based on clients and Proviso allocations. The state will provide a written response to the county's Biennial Spending Plan within 30 calendar days from time of receipt at the Regional office. Once approved, the spending plan may only be modified by mutual agreement of the parties.
4. Consideration 6.d. is replaced in its entirety to read:
 - d. Exhibit A – Budget: Budget amount listed in Exhibit A – The County may not exceed the state revenue dollar amount or the federal revenue dollar amount indicated on the Program Budget Agreement "Exhibit A".
5. Consideration 6.e. is replaced in its entirety to read:
 - e. Change Notification:

The DDD Region shall:

 - Inform and include the County in the discharge planning of individuals leaving institutions and returning to the community, and who will need program funding;
 - Inform the County of individuals who are no longer eligible;
 - Inform the County of individuals who have had their waiver status changed;
 - Work with the County when referring individuals for services;
 - Work with the County to document planned services; and
 - Work with the County when terminating services.

The County shall:

 - Work with the DDD Region when individuals are referred for services;
 - Work with the DDD Region to document planned services;
 - Inform the Region of any potential service level changes not documented in the individuals DD Assessment; and
 - Work with the DDD Region-regarding service termination.
6. Billing and Payment 7.c through 7.e. are replaced in its entirety to read:
 - c. Monthly Invoices with Documentation: All requests for reimbursement by the County for performance hereunder must be submitted on a DSHS A-19 invoice with required documentation

that includes the County Billing Summary generated through the DDD ADSA system. All requests for reimbursement amounts must be entered into the DDD ADSA system. The County may submit a combined claim of all programs/services covered by this agreement. DDD agrees to provide a helpline on the use of the data system.

- c. A claim for each individual occurs on the DDD ADSA system documents by indicating the number of service units delivered to each individual listed and the fee per unit. A unit is defined as:
- (1) A "Contact" is up to one (1) hour of direct service,
 - (2) An "Hour" is at least fifty (50) minutes of direct service,
 - (3) A "Day" is at least four (4) hours of direct service or assigned service responsibility;
 - (4) A "Month" is at least fifteen (15) days of direct service or assigned service responsibility.
 - (5) A "Project" is applicable to new services that don't easily fit into BARS codes. These services may be offered as projects involving an individual or a group of people.
- d. Timeliness of and Modification to Billings: All initial invoices with documentation must be received by the DDD Region within sixty (60) calendar days following the last day of the month for which the service is provided. Corrected invoices and documentation will be accepted throughout the fiscal year as long as they are received within sixty (60) calendar days of the associated fiscal year unless an extension is approved by the DDD Regional Administrator or designee. Payment will not be made on any invoice submitted past the 60 calendar days of the contract fiscal year.

7. Exhibit A – Budget is hereby replaced with the attached format:

**EXHIBIT A
2008-2009**

Program Agreement Budget

Agreed budget between Benton - Franklin County/Counties and the Division of Developmental Disabilities for Contract # 0763-21308-01. Original Budget x Budget Revision

REVENUES

Fiscal Year	BARS Revenue Code	Fund Source	Original	1 st Revision	2 nd Revision	3 rd Revision
2008	334	State		1,051,599		
	338	Federal		611,888		
		Total	\$1,128,597	1,663,487		
2009	334	State		1,155,440		
	338	Federal		647,883		
		Total	\$1,128,597	1,803,323		

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

P.

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED Executive Contract <u>xx</u> Pass Resolution <u>xx</u> Pass Ordinance Pass Motion Other	CONSENT AGENDA <u>xx</u> PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER
MEETING DATE: B/C 03-10-08 F/C 03-03-08		
SUBJECT: Amendment to Contract with Washington Collectors Tri-Cities, Inc		
Prepared By: Kathryn M. Phillips		
Reviewed By: Sharon Paradis		

BACKGROUND INFORMATION

Washington Collectors Tri-Cities, Inc. is a licensed collection agency with which Benton Franklin Juvenile Justice Center (BFJJC) has contracted with for several years to collect on past due parental payment accounts. Parents or legal guardian are charged a fee for Diversion, Detention and Work Crew. Unpaid accounts are submitted to Washington Collectors, Inc. for further collection efforts.

SUMMARY

The term of this Amendment to the Contract is for one year, January 1, 2008, through December 31, 2008. 100% of the face value of the account submitted will be returned to BFJJC upon payment of obligated party.

RECOMMENDATION

I recommend that the Boards of County Commissioners authorize their Chairs to sign the Collection Services Agreement as outlined above.

FISCAL IMPACT

There is not cost to the either county for collection. Washington Collectors Inc., charges the obligated parties above and beyond the face value of the account.

MOTION

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, the Collection Services Agreement between the Juvenile Justice Center and Washington Collectors Tri-Cities, Inc., for the period commencing January 1, 2008, and terminating December 31, 2008.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PERSONAL SERVICES CONTRACT AMENDMENT BETWEEN THE JUVENILE JUSTICE CENTER AND WASHINGTON COLLECTORS TRI-CITIES, INC., THUS AMENDING BENTON COUNTY RESOLUTION 07 041 AND FRANKLIN COUNTY RESOLUTION 2007 038, and and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Contract between Washington Collectors Tri-Cities, Inc. and Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing January 1, 2008 and terminating on December 31, 2008, **AND**

WHEREAS, approval then necessitates amending Benton County Resolution 07 041 and Franklin County Resolution 2007 038, **NOW, THEREFORE,**

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be and they hereby are authorized to sign, on behalf of their respective county, the Contract, thus, amending Benton County Resolution 07 041 and Franklin County Resolution 2007 038.

DATED this 10th day of March 2008
BENTON COUNTY BOARD OF COMMISSIONERS

DATED this 3rd day of March 2008
FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman of the Board

Chairman of the Board

Member

Chairman Pro Tem

Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board

Clerk of the Board

JUDGES

Hon. Dennis D. Yule
Hon. Craig J. Matheson
Hon. Vic L. VanderSchoor
Hon. Robert G. Swisher
Hon. Carrie Runge
Hon. Cameron Mitchell

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRI G. POTTS
Court Commissioners

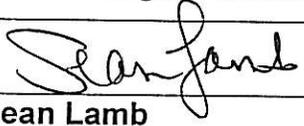
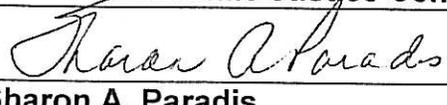
AMENDMENT TO CONTRACT BETWEEN BENTON AND FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND WASHINGTON COLLECTORS TRI-CITIES, INC.

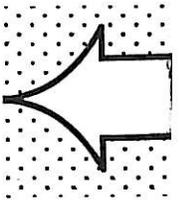
THIS CONTRACT AMENDMENT is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton/Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter collectively "Counties"), and Washington Collectors Tri-Cities, Inc., a Washington corporation and licensed collection agency under Chapter 19.16 RCW, with its principal offices at 510 North 20th Street, STE D, Pasco WA 99301 (hereinafter "Contractor").

In consideration of the mutual benefits and covenants contained herein and in the parties' Contract numbered as Benton County Resolution No. 07 041 and executed on January 22, 2007, and Franklin County Resolution No. 2007 038 and executed on January 29, 2007, the parties agree to extend that Contract for an additional one-year term (January 1, 2008, through December 31, 2008), in accordance with section 1 of that Contract.

Except as expressly provided in this Contract Amendment, all other terms and conditions of the original Contract, and subsequent written contract amendments remain in full force and effect.

The parties have caused this Contract Amendment to be signed as follows:

Washington Collectors Tri-Cities, Inc.	Benton Franklin Counties Juvenile Justice Center
 2/21/08	 2/11/08
Sean Lamb Date	Sharon A. Paradis Date
<p align="center">BENTON COUNTY APPROVAL</p> <p>Approved as to Form:</p> <p> 2/19/08</p> <p>Sarah Perry, Deputy Prosecuting Attorney Date</p> <p>By: _____ Name: <u>Claude M. Oliver</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest:</p> <p>Clerk of the Board: _____</p>	<p align="center">FRANKLIN COUNTY APPROVAL</p> <p>Approved as to Form:</p> <p><u>Agreed Review Performed by Benton County</u></p> <p>Ryan Verhulp, Civil Deputy Prosecuting Attorney Date</p> <p>By: _____ Name: <u>Robert E. Koch</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest:</p> <p>Clerk of the Board: _____</p>



RECEIVED

FEB 28 2008

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED	BENTON COUNTY COMMISSIONERS
MEETING DATE: B/C 03-03-08 F/C 02-27-08	Executive Contract <u>xx</u>	CONSENT AGENDA <u>xx</u>
SUBJECT: Contract with the City of Benton City for Graffiti Abatement Program	Pass Resolution <u>xx</u>	PUBLIC HEARING
Prepared By: Kathryn M. Phillips	Pass Ordinance	1ST DISCUSSION
Reviewed By: Sharon Paradis	Pass Motion	2ND DISCUSSION
	Other	OTHER

BACKGROUND INFORMATION

The Benton-Franklin Counties Juvenile Justice Center (BFJJC) has been providing the Graffiti Abatement Program (GAP) to the City of Benton City for a number of years. The purpose of GAP is the removal of graffiti caused by vandalism with juveniles sentenced to work crew.

SUMMARY

The City of Benton City feels it is in the best interest to continue the GAP through the Benton-Franklin Counties Juvenile Justice Center for the period of February 5, 2008 through December 31, 2008.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County sign the Fee for Services Contract between the City of Benton City and Benton-Franklin Counties Juvenile Justice Center.

FISCAL IMPACT

The fee for service rate is included in Juvenile Justice Center's Budget.

MOTION

I move that the Benton County Board of Commissioners and the Franklin County Board of Commissioners approve and sign the Fee for Services Contract between the City of Benton City and Benton-Franklin Juvenile Justice Center.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. 2008 076

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE FEE FOR SERVICES CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND THE CITY OF BENTON CITY, TO PROVIDE THE GRAFFITI ABATEMENT PROGRAM (GAP), and

WHEREAS, Sharon Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Benton-Franklin Counties Juvenile Justice Center that the proposed Fee for Services Contract between the Juvenile Court and City of Benton City be approved as presented for a term commencing February 5, 2008, and terminating on December 31, 2008, NOW, THEREFORE,

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

DATED this 3rd day of March 2008
BENTON COUNTY BOARD OF COMMISSIONERS

DATED this 25th day of February 2008
FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman of the Board



Chairman of the Board

Member



Chairman Pro Tem

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

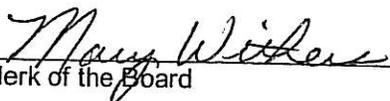


Member
Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board



Clerk of the Board

JUDGES
Hon. Dennis D. Yule
Hon. Craig J. Matheson
Hon. Vic L. VanderSchoor
Hon. Robert G. Swisher
Hon. Carrie Runge
Hon. Cameron Mitchell

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
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LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRI G. POTTS
Court Commissioners

FEE FOR SERVICES RENDERED CONTRACT FOR THE GRAFFITI ABATEMENT PROGRAM TERMS AND CONDITIONS

2008 076

This Contract is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350, and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties"), and the City of Benton City, with its principal offices at 708 Ninth ST, PO Box 70, Benton City, WA, 99320-0070 (hereinafter "City").

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

1. DURATION OF CONTRACT

The term of this Contract shall begin ~~January 1, 2008~~ ^{February 5th, 2008 RJC} and shall expire on December 31, 2008.

2. SERVICES PROVIDED

The Counties agree to provide the following services to the City:

- A. The Counties Work Crew Supervisor will coordinate and oversee all Graffiti Abatement Program (GAP) activities in a professional and responsible manner, keeping in mind that his/her actions reflect on both the Counties and City.
- B. The City will inform the Counties of the locations that need to be surveyed for graffiti and/or graffiti removal. The Counties will locate the sites, survey for graffiti, schedule the GAP crew to paint over and/or remove graffiti as needed, and complete its work in a timely manner.
- C. To the extent possible, in providing services under this Contract, the Counties will use donated materials. If those materials are not satisfactory to the City, the Counties agree to purchase materials, to the extent there are funds available to do so from the monies it receives from the City under the terms of this Contract.
- D. The Counties will ensure that GAP has a sufficient juvenile work force to accomplish the mission of GAP.

- E. The Counties shall provide transportation for the GAP work crew.
- F. The Counties shall confer with the City from time to time during the progress of the work. The Counties shall prepare work statistics and present status reports and other information that may be pertinent and necessary, or as may be requested by the City.

3. CONTRACT REPRESENTATIVES

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

A. For City: **Lloyd Carnahan, Mayor**
City of Benton City
PO Box 70
Benton City WA 99320-0070

B. For Counties: **Sharon Paradis**
Juvenile Court Administrator
5606 W Canal PL STE 106
Kennewick WA 99336

4. COMPENSATION

For the services performed hereunder, the City agrees to pay the Counties as follows:

- A. The City agrees to pay the Counties Three Hundred Thirty-Five and 25/100 Dollars (\$335.25) per quarter for services provided under this Contract. The first quarterly payment (~~7/01/08~~ ^{2/5/08} 3/31/08) of \$335.25 shall be paid on or before March 31, 2008. The second quarterly payment (4/01/08 – 6/30/08) of \$335.25 shall be paid on or before June 30, 2008. The third quarterly payment (7/01/08 – 9/30/08) of \$335.25 shall be paid on or before September 30, 2008. The fourth quarterly payment (10/01/08 – 12/31/08) of \$335.25 shall be paid on or before December 31, 2008.
- B. The maximum total amount payable by the City to the Counties under this Contract shall not exceed One Thousand Three Hundred Forty-one dollars (\$1,341.00).
- C. No payment shall be made for any work performed by the Counties, except for work identified and set forth in this Contract.
- D. The Counties will submit invoices to the City on a quarterly basis during the progress of the work. Invoices shall cover the time Counties performed work for the City during the billing period. The City shall pay the Counties for services rendered and will remit payment within thirty (30) days from the date of receipt.

5. AMENDMENTS AND CHANGES IN WORK

No amendment, modification or renewal shall be made to this Contract, unless set forth in a written Contract Amendment signed by authorized representatives of both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the Administrator of Benton-Franklin Juvenile Justice Center and both Benton and Franklin Counties Boards of County Commissioners and shall not be binding until so approved.

6. HOLD HARMLESS AND INDEMNIFICATION

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

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

7. TERMINATION

- A. Either party may terminate this Contract in its sole discretion upon giving forty-five (45) days written notice by certified mail to the other party.
- B. If either party breaches any of its obligations hereunder, including but not limited to timely payment of compensation to the Counties in accordance with Section 4 of this Contract, and fails to cure the breach within ten (10) days of written notice to do so, the other party may immediately terminate this Contract by providing written notice by certified mail to the breaching party.
- C. In the event this Contract is terminated by either party prior to December 31, 2008, the City shall pay the Counties on a pro-rated basis for services performed up to the termination date.

8. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

9. NON-WAIVER OF RIGHTS

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

10. COMPLIANCE WITH LAWS

Both parties agree to comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

11. NONDISCRIMINATION

The Contractor, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

12. DISPUTES

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

13. CHOICE OF LAW, JURISDICTION AND VENUE

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

14. SUCCESSORS AND ASSIGNS

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

15. SEVERABILITY

- A. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- B. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

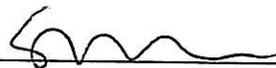
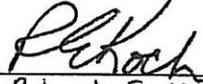
16. ENTIRE AGREEMENT

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

17. NOTICES

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

The parties have caused this Contract to be signed as follows:

City of Benton City	Benton Franklin Counties Juvenile Justice Center
	 2/7/08
Lloyd Carnahan, Mayor Date	Sharon A. Paradis Date
Approved as to Form: 	
Lee Kerr, City Attorney Date	
BENTON COUNTY APPROVAL	FRANKLIN COUNTY APPROVAL
Approved as to Form:  2/19/08	Approved as to Form:
Sarah Perry, Deputy Prosecuting Attorney Date	Agreed Review Performed by Benton County Date
	Ryan Verhulp, Civil Deputy Prosecuting Attorney Date
By: _____	By: 
Name: _____	Name: Robert E. Koch
Title: Chairman, Board of Commissioners	Title: Chairman, Board of Commissioners
Date: _____	Date: FEB. 25, 2008
Attest:	Attest:
Clerk of the Board: _____	Clerk of the Board: 

7.

AGENDA ITEM: Consent		TYPE OF ACTION NEEDED Executive Contract <u>xx</u> Pass Resolution <u>xx</u> Pass Ordinance Pass Motion Other	CONSENT AGENDA <u>xx</u> PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER
MEETING DATE: B/C 03-10-08 F/C 03-17-08			
SUBJECT: Fee for Services Contract with City of Pasco			
Prepared By:	Kathryn M. Phillips		
Reviewed By:	Sharon Paradis		

BACKGROUND INFORMATION

Since 2002, the Benton-Counties Juvenile Justice Center (BFJJC) and City of Pasco entered into an agreement whereby BFJJC would detain 16-year-old and 17-year-old juvenile offenders ordered to detention by the City Municipal Court for traffic and other misdemeanor offenses. The original term of the agreement was from May 13, 2002 through December 31, 2007. The City of Pasco wishes to continue this agreement beginning January 1, 2008 and renewing each January, with the understanding that either party may terminate this agreement with a 90-day written notice.

SUMMARY

This is a Fee For Service contract between the City of Pasco and the Benton-Franklin Counties Juvenile Justice Center, where the City will reimburse the Juvenile Justice Center for services rendered.

RECOMMENDATION

I recommend that the Boards of County Commissioners authorize their Chairs to sign the Fee For Service Contract as outlined above.

FISCAL IMPACT

This is a fee for service contract for services rendered.

MOTION

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, the Fee for Service Rendered Contract between the Juvenile Justice Center and City of Pasco for the period commencing January 1, 2008, and is renewable on an annual basis.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE FEE FOR SERVICES RENDERED CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND THE CITY OF PASCO, and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Fee For Services Rendered Contract between City of Pasco and Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing January 1, 2008 and renewable for a one year period on an annual basis, NOW, THEREFORE

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

DATED this 10th day of March 2008
BENTON COUNTY BOARD OF COMMISSIONERS

DATED this 17th day of March 2008
FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman of the Board

Chairman of the Board

Member

Chairman Pro Tem

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

Member
Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board

Clerk of the Board

JUDGES
Hon. Dennis D. Yule
Hon. Craig J. Matheson
Hon. Vic L. VanderSchoor
Hon. Robert G. Swisher
Hon. Carrie Runge
Hon. Cameron Mitchell

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE
JOSEPH R. SCHNEIDER
JERRI G. POTTS
Court Commissioners

FEE FOR SERVICES RENDERED CONTRACT BETWEEN BENTON AND FRANKLIN COUNTIES SUPERIOR COURT, JUVENILE DIVISION, AND THE CITY OF PASCO, WASHINGTON

This Contract is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties"), and the City of Pasco, a Washington Municipal Corporation (City) with its principal offices at 525 North Third Avenue, Pasco, Washington, 99301, (hereinafter "City").

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

1. DURATION OF CONTRACT

The term of this Contract shall begin January 1, 2008, and shall expire on December 31, 2008, and will renew for successive one-year periods on January 1 of each year unless the Counties notifies the City no later than October 1 that the Counties is not renewing this Contract for the following year. The Counties shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

2. SERVICES PROVIDED

- A. The City requires a facility to detain 16-year-old and 17-year-old juveniles offenders ordered to detention by the City Municipal Court for traffic and other misdemeanor offenses.
- B. The Counties is authorized and willing to detain such juveniles at the Juvenile Justice Center located at 5606 W Canal Place in Kennewick, Washington.
- C. To the extent that bed space is available, the Counties shall detain 16-year-old and 17-year-old juveniles ordered to detention by the City Municipal Court. The terms and conditions of detention shall be in strict compliance with the applicable Municipal Court Order.

- D. The Counties is not required to open new or unused facilities to house City referred juveniles, nor is it required to hire additional staff, above that level of staffing in existence on the effective date hereof.
- E. The City, at its own cost, shall transport its juveniles to and from the Benton-Franklin Counties Juvenile Justice Center.

3. CONTRACT REPRESENTATIVES

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

- A. For CITY: **Gary Crutchfield, City Manager**
City of Pasco
525 N Third AVE
Pasco WA 99301
Phone: (509) 544-3080
- B. For COUNTIES: **Sharon Paradis, Juvenile Court Administrator**
Benton-Franklin Counties Juvenile Justice Center
5606 W Canal PL STE 106
Kennewick WA 99336
Phone: (509) 736-2724

4. COMPENSATION

- A. The City shall pay \$50.00 per day, per juvenile detained in the Juvenile Detention Center.
- B. The Counties shall submit a monthly-itemized statement setting forth the number of City juveniles detained, the number of days each juvenile was detained in the center and the amount due from the City for service provided in the preceding month.
- C. The City shall pay the Counties for services rendered within thirty (30) days from the date of receipt of invoice.
- D. No payment shall be made for any work performed by the Counties, except for work identified and set forth in this Contract.

5. AMENDMENTS AND CHANGES IN WORK

No amendment, modification or renewal shall be made to this Contract, unless set forth in a written Contract Amendment signed by authorized representatives of both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the Administrator of Benton-Franklin Juvenile Justice Center and both Benton and Franklin Counties Boards of County Commissioner's Chairperson and shall not be binding until so approved.

6. HOLD HARMLESS AND INDEMNIFICATION

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

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

7. TERMINATION

- A. The Counties may terminate this Contract in whole or in part whenever the Counties determine, in its sole discretion, that such termination is in the best interests of the Counties. The Counties may terminate this Contract upon giving ninety (90) days written notice by certified mail to the City.
- B. If either party herein breaches any of its obligations hereunder and fails to cure the breach within ninety (90) days of written notice to do so by the non-breaching party, the non-breaching party may terminate this Contract by providing written notice by certified mail to the breaching party.
- C. In the event this Contract is terminated by either party prior to end of a calendar month, the City shall pay the Counties on a pro-rated basis for services performed up to the termination date.

8. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

9. NON-WAIVER OF RIGHTS

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

10. COMPLIANCE WITH LAWS

Both parties agree to comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

11. NONDISCRIMINATION

Both parties agree that each party, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status, the presence of any disability, or based on any other protected status.

12. DISPUTES

Differences between the City and the Counties, arising under and by virtue of this Contract, shall be brought to the attention of the parties at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the Counties shall be decided by the Counties' Contract Representative or designee. All rulings, orders, instructions and decisions of the Counties' Contract Representative shall be final and conclusive, subject to the City's right to seek judicial relief.

13. CHOICE OF LAW, JURISDICTION AND VENUE

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

14. SUCCESSORS AND ASSIGNS

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

15. SEVERABILITY

- A. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall

not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

- B. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

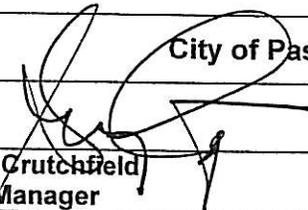
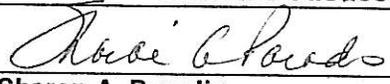
16. ENTIRE AGREEMENT

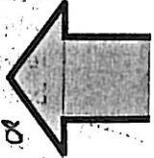
The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

17. NOTICES

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

The parties have caused this Contract to be signed as follows:

<p>City of Pasco</p>  <p style="text-align: right; margin-right: 50px;"><i>2-20-08</i></p> <p>Gary Crutchfield City Manager</p> <p style="text-align: right;">Date</p>	<p>Benton Franklin Counties Juvenile Justice Center</p>  <p style="text-align: right; margin-right: 50px;"><i>3/5/08</i></p> <p>Sharon A. Paradis Juvenile Court Administrator</p> <p style="text-align: right;">Date</p>
<p style="text-align: center;">BENTON COUNTY APPROVAL</p> <p>Approved as to Form: <u>Agreed Review Performed by Franklin County</u> Sarah Villanueva, Deputy Prosecuting Attorney Date</p> <p>By: _____ Name: _____ Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest: _____</p> <p>Clerk of the Board: _____</p>	<p style="text-align: center;">FRANKLIN COUNTY APPROVAL</p> <p>Approved as to Form: <u>TRUP</u> <i>03/03/2008</i></p> <p>Ryan Verhulp, Civil Deputy Prosecuting Attorney Date</p> <p>By: _____ Name: _____ Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest: _____</p> <p>Clerk of the Board: _____</p>



S.

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED	CONSENT AGENDA XX
MEETING DATE: B/C 03-10-08 F/C 03-17-08	Executive Contract XX	PUBLIC HEARING
SUBJECT: Interagency Agreement IAA08258 between Administrative Office of the Courts	Pass Ordinance XX	1 st DISCUSSION
	Pass Motion	2 nd DISCUSSION
Prepared By: Kathryn M. Phillips	Other	OTHER
Reviewed By: Sharon Paradis		

BACKGROUND INFORMATION

The State of Washington Administrative Office of the Courts is providing funds to the Benton-Franklin Counties Juvenile Justice Center (BFJJC) to improve the quality and availability of court interpreter services for Limited English Proficient (LEP), deaf and hard of hearing persons in accordance with RCW 2.242 and 2.43. The interpreter funding is targeted to reimburse Certified, Registered and Qualified interpreters for interpreter services in accordance with the Interpreter Services Funding requirements.

SUMMARY

The period of performance is from January 1, 2008 through June 30, 2008 with an option to extend for FY 2009 (July 1, 2008 - June 30, 2009) if both parties agree.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County sign the Interagency Agreement IAA08258 between the Benton-Franklin Counties Juvenile Justice Center and the State of Washington Administrative Office of the Courts.

FISCAL IMPACT

The compensation rate is for the period of January 1, 2008 through June 30, 2008 is \$11,972.00. Compensation for FY 2009 is \$23,943.00.

MOTION

I move that the Board of Commissioners sign the Interagency Agreement IAA08258 between the Benton-Franklin Counties Juvenile Justice Center and the State of Washington Administrative Office of the Courts.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE INTERAGENCY AGREEMENT IAA08258 BETWEEN THE JUVENILE JUSTICE CENTER AND THE STATE OF WASHINGTON, ADMINISTRATIVE OFFICE OF THE COURTS, and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Interagency Agreement IAA08258 between State of Washington Administrative Office of the Courts and Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing January 1, 2008 through June 30, 2008 with a renewable option for FY 2009 (July 1, 2008 through June 30, 2009), NOW, THEREFORE

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be and they hereby are authorized to sign, on behalf of their respective county, the Interagency Agreement IAA08258.

DATED this 10th day of March 2008
BENTON COUNTY BOARD OF COMMISSIONERS

DATED this 17th day of March 2008
FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman of the Board

Chairman of the Board

Member

Chairman Pro Tem

Member

Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board

Clerk of the Board

INTERAGENCY AGREEMENT IAA08258
between
STATE OF WASHINGTON
ADMINISTRATIVE OFFICE OF THE COURTS
1206 Quince Street SE
PO Box 41170
Olympia, Washington 98504-1170
and
BENTON/FRANKLIN COUNTY
BENTON/FRANKLIN COUNTIES JUVENILE COURT
5606 W Canal Pl Ste 106
Kennewick, WA 99336-1300

THIS CONTRACT is entered into by and between the Administrative Office of the Courts (“AOC”) and **BENTON/FRANKLIN COUNTY, BENTON/FRANKLIN COUNTIES JUVENILE COURT** (“Contractor”).

1. **PURPOSE** The purpose of this contract is to engage the services of the Contractor to improve the quality and availability of court interpreter services for Limited English Proficient (LEP), deaf and hard of hearing persons in accordance with RCW 2.42 and 2.43.

- a. These funds are intended to address the Contractor’s following needs:

Financial need – i.e., the gap between the Contractor’s available financial resources and the costs to meet its need for certified, registered and qualified interpreters; and

Interpreter need – i.e., the gap between the level of the LEP, deaf and hard of hearing public’s need for language access to the Contractor’s court(s) (i.e., the level of interpreter need) and the available interpreter pool (in particular, certified, registered and qualified interpreters in the applicant’s most frequently needed languages).

2. **DESCRIPTION OF SERVICES TO BE PROVIDED**

- a. The Contractor will ensure that the interpreter funding is targeted to improve the quality and availability of court interpreter services for Limited English Proficient (LEP), deaf and hard of hearing persons by reimbursing Certified, Registered and Qualified interpreters for interpreter services in accordance with the Interpreter Services Funding: Funding Conditions / Payment Structure, and Travel and Mileage Reimbursement requirements as set forth at:

<https://inside.courts.wa.gov/index.cfm?fa=controller.showPage&folder=courtInterpreter&file=InterpreterInformationforCourts> .

The AOC agrees that if it intends to make any changes to the Interpreter Services Funding: Funding Conditions/Payment Structure and/or the Travel and Mileage Reimbursement requirements prior to the expiration of this Agreement, the AOC will notify Contractor in writing prior to the effective date of those changes.

- b. The Contractor agrees to actively participate in the new vision and structure for state funding of interpreter services; and to track and provide the interpreter cost and usage data needed to demonstrate the impact of the funding. In particular, the Contractor agrees to submit electronically with each request for reimbursement a completed Interpreter Services Funding Data form, reflecting the interpreter services and costs for which the Contractor seeks reimbursement. The Interpreter Services Funding Data form (an Excel spreadsheet), and Instructions for completing it are set forth at: <https://inside.courts.wa.gov/index.cfm?fa=controller.showPage&folder=courtInterpreter&file=InterpreterInformationforCourts> .

The AOC agrees that if it intends to make any changes to the Interpreter Services Funding Data Form and/or Instructions for completing that form prior to the expiration of this Agreement, the AOC will notify Contractor in writing prior to the effective date of those changes.

- c. The Contractor agrees to partner closely with the AOC Interpreter Program and the Interpreter Commission to identify and implement innovations and best practices for providing interpreter services (e.g., innovations in scheduling of interpreters), with a view to improving interpreter services and the service infrastructure statewide.

3. PERIOD OF PERFORMANCE

The period of performance under this Contract shall be from January 1, 2008 through June 30, 2008. Option to extend for state FY 2009 (July 1, 2008 – June 30, 2009) must be mutually agreed upon by the AOC and the Contractor.

4. COMPENSATION

- a. Contractor shall be reimbursed a maximum of \$11,972.00 for costs incurred during the contract period. January 1, 2008 – June 30, 2008. If the AOC and the Contractor agree to extend the contract period for state FY 2009, the Contractor will be reimbursed a maximum of \$23,943.00 for the period July 1, 2008 through June 30, 2009.
- b. Contractor shall receive payment for its costs for interpreter services as set forth in Section 2.a.

- c. Contractor shall not be reimbursed until A-19 invoices are received and approved by AOC.
- d. If this agreement is terminated, Contractor shall only receive payment for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.
- e. In order to receive payment, Contractor shall submit a paper A-19 invoice to AOC, and shall additionally submit its A-19 invoice and its completed Interpreter Services Funding Data form (see Section 2.b) electronically to AOC (either by email or on CD).
- f. The Contractor shall submit its paper A-19 invoices to AOC Financial Services, PO Box 41170, Olympia, Washington 98504-1170 no more frequently than monthly. The contractor shall submit its A-19 invoices and completed Interpreter Services Funding Data forms electronically to AOC Court Services (contact information to be determined). Payment to the Contractor for approved and completed work will be made by warrant or account transfer by AOC within 30 days of receipt of a properly-completed invoice and the completed Interpreter Services Funding Data form. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.
- g. Contractor shall maintain sufficient backup documentation of expenses under this agreement.

5. ADDITIONAL INTERPRETER DATA

In addition to collecting and submitting to AOC the required interpreter data in order to support its requests for reimbursement as set forth in Section 2.b of this Agreement, the Contractor agrees to provide to AOC the amount Contractor spent on interpreter services for Contractor's fiscal years 2005 through 2008, and for the first half of Contractor's fiscal year 2009 (through June 30, 2009).

6. LANGUAGE ASSISTANCE PLAN(S)

As a condition of receiving funding under this Agreement, Contractor agrees to create and maintain an AOC-approved Language Assistance Plan.

- 7. **TREATMENT OF ASSETS AND PROPERTY:** The AOC shall be the owner of any and all fixed assets or personal property jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.
- 8. **RIGHTS IN DATA:** Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the AOC. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and video

and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. In the event that any of the deliverables under this contract include material not included within the definition of "works for hire," the Contractor hereby assigns such rights to the AOC as consideration for this contract.

Data which is delivered under this contract, but which does not originate therefrom, shall be transferred to the AOC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; Provided, that such license shall be limited to the extent which the Contractor has a right to grant such a license. The Contractor shall advise the AOC, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The AOC shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. The AOC shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

9. **INDEPENDENT CAPACITY:** The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.
10. **AGREEMENT ALTERATIONS AND AMENDMENTS:** This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
11. **RECORDS, DOCUMENTS, AND REPORTS:** The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the AOC, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other material relevant to this contract for six years after settlement, and make them available for inspection by persons authorized this provision.
12. **RIGHT OF INSPECTION:** The Contractor shall provide right of access to its facilities to the AOC, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.
13. **DISPUTES:** Disputes arising under this Agreement shall be resolved by a panel consisting of one representative from the AOC, one representative from the Contractor, and a mutually agreed upon third party. The dispute panel shall thereafter decide the dispute with the majority prevailing. Neither party shall have recourse to the courts unless there is a showing of noncompliance or waiver of this section.
14. **TERMINATION:** Either party may terminate this Agreement upon thirty (30) days written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for

performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

15. **GOVERNANCE:** This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Statement of work; and
- c. Any other provisions of the agreement, including materials incorporated by reference.

16. **ASSIGNMENT:** The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

17. **WAIVER:** A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

18. **SEVERABILITY:** If any provision of this Agreement, or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision and to this end the provisions of this Agreement are declared to be severable.

19. **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.

CONTRACT MANAGEMENT: The program managers noted below shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement:

<p>AOC Program Manager: Chris Ruhl</p> <p>PO Box 41170 Olympia, WA 98504-1170 (360) 705-5228 Chris.Ruhl@courts.wa.gov</p>	<p>Contractor Program Manager: Sharon Paradis Administrator 5606 W Canal Pl Ste 106 Kennewick, WA 99336-1300 509-736-2151 sharon_paradis@co.benton.wa.us</p>
---	--

AGREED:

THE ADMINISTRATIVE OFFICE
OF THE COURTS

BENTON/FRANKLIN JUVENILE
COURT

Dirk Marler, Director
Judicial Services Division

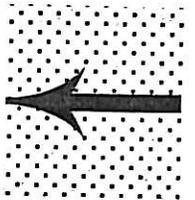
Sharon A. Paradis

Sharon A. Paradis
Juvenile Court Administrator

Date _____

Date 3/5/08

Benton County Approval	Franklin County Approval
Approved as to Form: <u><i>[Signature]</i></u> <u>3/5/08</u> _____ Sarah Perry, Civil Deputy Prosecuting Attorney Date	Approved as to Form: <u>Agreed Review Performed by Benton County</u> _____ Ryan Verhulp, Civil Deputy Prosecuting Attorney Date
By: _____ Name: <u>Claude L. Oliver</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____	By: _____ Name: <u>Robert E. Koch</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____
Attest: Clerk of the Board: _____	Attest: Clerk of the Board: _____



7.

RESOLUTION

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

**IN THE MATTER OF SUBSTANTIAL COMPLETION OF THE BENTON COUNTY
HIGGINS FIELD MAINTENANCE SHED**

WHEREAS, Benton County entered into a contract on April 16, 2007 with Fowler General Construction, 1820 Terminal Drive, Richland, WA 99354 for the construction of the Benton County Higgins Field Maintenance Shed; and

WHEREAS, the project architect, CWH, Architects PA, determined the project reached substantial completion as of the week ending February 29, 2008; **NOW, THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board accepts the Benton County Higgins Field Maintenance Shed as substantially complete.

Dated this _____ day of _____, 2008

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

CWH

ARCHITECTS P S

architecture ■ planning ■ design

March 5, 2008

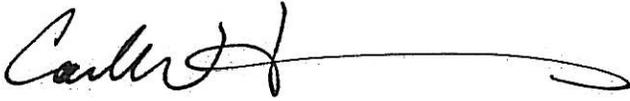
Benton County Commissioners
Attn: Roy Rogers, Facilities Manager
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336

Dear Roy:

RE: Notice of Substantial Completion of Benton County Higgins Field Maintenance Shed

Please accept this letter as our acknowledgement that work on the Benton County Higgins Field Maintenance Shed has been substantially completed as of the week ending February 29, 2008.

Thanks,



C. Wayne Hunsucker, AIA
Principal

CWH/pm

6320 W. Clearwater Avenue, Suite C
Kennewick, Washington
99336

phone: 509.736.0581

C. Wayne Hunsucker, A.I.A.

fax: 509.735.1420

www.cwharchitects.com

u.

RESOLUTION

IN THE MATTER OF RESCINDING RESOLUTION 07-587 ESTABLISHING A SALARY GRADE FOR THE TEMPORARY CLERICAL SUPPORT POSITION IN THE PERSONNEL OFFICE

WHEREAS, Resolution 07-587 establishing a salary grade for the temporary clerical support position in the Personnel Office must be rescinded, **NOW THEREFORE**,

BE IT HEREBY RESOLVED that Resolution 07-587 is hereby rescinded.

Dated this day of, 20

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

cc: Auditor, File, Personnel

SmithKelty

TOLL RECEIPT

\$1.00

BRIDGE OF THE GODS

Port of Cascade Locks
Cascade Locks, Oregon
Home of the Sternwheeler
Columbia Gorge
1-800-643-1354



www.sternwheeler.com

TOLL RECEIPT

\$1.00

BRIDGE OF THE GODS

Port of Cascade Locks
Cascade Locks, Oregon
Home of the Sternwheeler
Columbia Gorge
1-800-643-1354



www.sternwheeler.com

W.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: BITUMINOUS SURFACE TREATMENT
2008 - CE 1888 PRES

WHEREAS, by resolution dated February 4, 2008, the County Engineer was authorized to schedule a bid call for Bituminous Surface Treatment 2008 - CE 1888 PRES; and

WHEREAS, bids were received and opened on February 25, 2008; and

WHEREAS, bids are as set forth on the attached tabulation; and

WHEREAS, the low bid was submitted by Granite Northwest, Inc., dba Superior Asphalt, Yakima, Washington; and

WHEREAS, the County Engineer recommends award of the bid to Granite Northwest, Inc., dba Superior Asphalt; NOW, THEREFORE,

BE IT RESOLVED that the contract for Bituminous Surface Treatment 2008 - CE 1888 PRES be awarded to Granite Northwest, Inc., dba Superior Asphalt, Yakima, Washington in the amount of \$1,018,018.00.

Dated this 10th day of March, 2008.

Chairman.

Chairman Pro-Tem.

Member.

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

Attest: _____
Clerk of the Board

PROJECT: CE 1888 PRES - B S T 2008

LOCATION: BENTON COUNTY
 LET BY: BOARD OF COUNTY COMMISSIONERS
 DATE: February 25, 2008; 10:30 a.m., Local Time

GRANITE NORTHWEST, INC.
 dba SUPERIOR ASPHALT
 P O Box 10268
 Yakima, WA 98909

CENTRAL WASHINGTON
 ASPHALT, INC.
 P O Box 939
 Moses Lake, WA 98837

ENGINEER'S
ESTIMATE

ITEM NO	ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	BID AMOUNT	UNIT PRICE	BID AMOUNT
---------	------------------	-----	------	------------	------------	------------	------------

BITUMINOUS SURFACE TREATMENT 3/8" TO #10 BENTON COUNTY ROADS

1	ASPHALT CRS-2P	1,446	TON	415.65	601,029.90	460.00	665,160.00
2	MINERAL AGGREGATE FROM STOCKPILE SITE SP-133 FOR B.S.T. (3/8" TO #10)	9,910	C.Y.	16.00	158,560.00	16.75	165,992.50
3	PAINTED SKIP STRIPE YELLOW	20.24	MILE	85.00	1,720.40	135.00	2,732.40
4	PAINTED SOLID STRIPE YELLOW	22.26	MILE	340.00	7,568.40	475.00	10,573.50
5	PAINTED SOLID STRIPE WHITE	36.66	MILE	330.00	12,097.80	400.00	14,564.00
6	TRAFFIC CONTROL SPILL PREVENTION, CONTROL and COUNTER MEASURES (SPCC) PLAN	Lump Sum	L.S.	Lump Sum	32,681.50	Lump Sum	45,000.00
7		Lump Sum	L.S.	Lump Sum	250.00	Lump Sum	500.00
TOTAL BENTON COUNTY ROADS					813,908.00		904,622.40

BITUMINOUS SURFACE TREATMENT 3/8" TO #10 CITY OF KENNEWICK STREETS

8	ASPHALT CRS-2P	118	TON	430.00	50,740.00	460.00	54,280.00
9	FURNISH AND PLACE MINERAL AGGREGATE (3/8" TO #10)	810	C.Y.	42.00	34,020.00	33.00	26,730.00
10	TRAFFIC CONTROL	Lump Sum	L.S.	Lump Sum	4,000.00	Lump Sum	3,750.00
TOTAL CITY OF KENNEWICK					88,760.00		84,760.00

BITUMINOUS SURFACE TREATMENT 3/8" TO #10 CITY OF PROSSER STREETS

11	ASPHALT CRS-2P	150	TON	430.00	64,500.00	460.00	69,000.00
12	FURNISH AND PLACE MINERAL AGGREGATE (3/8" TO #10)	1,030	C.Y.	45.00	46,350.00	33.00	33,990.00
13	TRAFFIC CONTROL	Lump Sum	L.S.	Lump Sum	4,500.00	Lump Sum	5,500.00
TOTAL CITY OF PROSSER					115,350.00		108,490.00

TOTAL BID					1,018,018.00		1,097,872.40
							104,460.00
							2,500.00
							32,960.00
							69,000.00
							25,920.00
							54,280.00
							82,700.00
							1,007,787.70



RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: LOCAL AGENCY CONSULTANT
SUPPLEMENTAL AGREEMENT – C.E. 1619 CRP - PIERT ROAD EXTENSION

WHEREAS, a Local Agency Consultant Agreement with J-U-B Engineers, Inc.,
Kennewick, Washington for Piert Road Extension, S. R. 397 to Bowles Road, was
executed by the Board of County Commissioners on January 24, 2005; and

WHEREAS, Supplement No. 2 to the Consultant Agreement has been prepared; and

WHEREAS, the County Engineer recommends approval of Supplemental Agreement No.
2 to the Consultant Agreement for Piert Road Extension; NOW, THEREFORE,

BE IT RESOLVED that the Supplemental Agreement No. 1 to the Consultant Agreement
for Piert Road Extension is hereby approved, and the Chairman of the Board of County
Commissioners is authorized to sign the Agreement.

Dated this 10th day of March, 2008.

Chairman.

Chairman Pro-Tem.

Attest: _____
Clerk of the Board

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

RBD:SWB:dlh

Agency BENTON COUNTY		Supplement Number 2
Project Number FMSIB-FM 04 (003)	Agreement Number LA 5785	

This supplemental agreement is made and entered into SEPTEMBER 27, 2004

All provisions in the AGREEMENT identified above remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

Project Description No Change

Name PIERT ROAD EXTENSION / CE 1619 CRP

Location SR 397 NORTHERLY TO BOWLES ROAD

Description of Work No Change

Reason for Supplement

Obligate Construction Funding: FMSIB REDUCED APPROVED AMOUNT

\$ 51,520 = FMSIB for Preliminary Engineering:

\$ 14,000 = FMSIB for Construction

\$ 65,520 = Limit

Type of Work	Estimate of Funding				
	(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated State Funds
PE					
a. Agency	184,000.00		184,000.00	132,480.00	51,520.00
b. Other					
c. Other					
d. State					
e. Total PE Cost Estimate(a+b+c+d)	184,000.00		184,000.00	132,480.00	51,520.00
Right of Way					
f. Agency					
g. Other					
h. Other					
i. State					
j. Total R/W Cost Estimate (f+g+h+i)					
Construction					
k. Contract	1,673,143.00	-1,638,143.00	35,000.00	25,200.00	14,000.00
l. Other Non Participating	1,352,857.00	0.00	1,352,857.00	1,352,857.00	0.00
m. Other					
n. Other					
o. Agency					
p. State					
q. Total CN Cost Estimate(k+l+m+n+o+p)	3,026,000.00	-1,638,143.00	1,387,857.00	1,378,057.00	14,000.00
r. Total Project Cost Estimate (e+j+q)	3,210,000.00	-1,638,143.00	1,571,857.00	1,510,537.00	65,520.00

AGENCY

STATE

By: _____

By: _____

Title: Chairman, Board of County Commissioners

Director, Highways and Local Programs

Date: _____

Date: _____



RESOLUTION NO. _____
 Priority #14 - 08-13 6-Yr. Road Program

County Engineer Project No. 1620 CRP
 Arterial Access

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON
 IN THE MATTER OF COUNTY ROADS, RE: USBR CANAL REALIGNMENT WEBBER CANYON ROAD

IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the County Engineer is hereby authorized to proceed with the construction of the canal realignment for the Webber Canyon Road project according to the contract awarded December 10, 2007 to Rotschy, Inc., Yacolt, Washington

Length of Project: _____ ± miles; Width of Roadbed: _____ ft.; Surface: _____ ft.; Pavement: _____ ft.
 Type and depth of surfacing: _____
 Bridge _____ Irrigation Crossing: Length _____ ft.; Width _____ ft.
 Estimated date of beginning: December 28, 2007; Estimated date of completion: March 31, 2008

BE IT FURTHER RESOLVED, That for the foregoing proper county road purpose there is hereby appropriated sums in the following detail:

	<u>County Road Fund</u>	<u>RAP Funds</u>		<u>Total</u>
Prelim. Engr.	3,600.00	32,400.00		36,000.00
Right-of-Way	2,500.00	22,500.00		25,000.00
Mat. from Stkple				0.00
Day Labor				0.00
Contract	38,599.00	347,393.00		385,992.00
Const. Engr.	3,860.00	34,737.00		38,597.00
Contingencies	1,738.00	17,373.00		19,111.00
Total	50,297.00	454,403.00	0.00	504,700.00

The county road purpose herein described is HEREBY DECLARED to be a public necessity and the County Road Engineer is HEREBY ORDERED AND AUTHORIZED to report and proceed thereon as by law provided.

BE IT FURTHER RESOLVED, That this purpose be performed in accordance with the Standard Road and Bridge Specifications of the State of Washington as adopted by this Board.

ADOPTED this 10th day of March, 2008.

 Chairman

(SEAL)

 Chairman Pro-Tem

Attest:

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

 Clerk of the Board

RBD:BLT:LJM:dlh



RESOLUTION NO. _____

County Engineer Project No. 1888 PRES

Arterial Access

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON
IN THE MATTER OF COUNTY ROADS, RE: BITUMINOUS SURFACE TREATMENT 2008

IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, That it is their intention to improve County roads by application of Bituminous Surface Treatment according to the contract awarded March 10, 2008 to Granite Northwest, Inc. dba Superior Asphalt, Yakima, Washington.

Length of Project: _____ miles; Width of Roadbed: varies ft.; Surface: varies ft.; Pavement: varies ft.
Type and depth of surfacing: Bituminous Surface Treatment
Bridge Irrigation Crossings Length _____ ft.; Width _____ ft.
Estimated date of beginning: May 15, 2008; Estimated date of completion: August 31, 2008

BE IT FURTHER RESOLVED, That for the foregoing proper county road purpose there is hereby appropriated sums in the following detail:

	<u>County Road Fund</u>	<u>City of Kennewick</u>	<u>City of Prosser</u>	<u>Total</u>
Road Preserv.				\$0.00
Mat. from Stkple	\$70,000.00			\$70,000.00
Day Labor				\$0.00
Contract	813,908.00	88,760.00	115,350.00	\$1,018,018.00
Const. Engr.	28,487.00	4,438.00	5,768.00	\$38,693.00
Contingencies	14,243.00	2,219.00	2,882.00	\$19,344.00
Total	\$926,638.00	\$95,417.00	\$124,000.00	\$1,146,055.00

The county road purpose herein described is HEREBY DECLARED to be a public necessity and the County Road Engineer is HEREBY ORDERED AND AUTHORIZED to report and proceed thereon as by law provided.

BE IT FURTHER RESOLVED that this purpose be performed by contract in accordance with the State of Washington Standard Specifications for Road, Bridge, and Municipal Construction, as adopted by this Board.

ADOPTED this 10th day of March, 2008.

Chairman

(SEAL)

Chairman Pro-Tem

Attest:

Member

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

Clerk of the Board

aa.

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROAD PURCHASES RE: E. R. & R. PURCHASE OF REFINED PETROLEUM PRODUCTS - BULK DIESEL FUEL FOR 2008

WHEREAS, it is the intention of the Board of County Commissioners to purchase for the County Road Department Refined Petroleum Products - Bulk Diesel Fuel; NOW, THEREFORE,

BE IT RESOLVED that the County Engineer is hereby authorized to schedule and advertise a bid date for the purchase of Refined Petroleum Products - Bulk Diesel Fuel.

Dated this 10th day of March, 2008.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

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

RBD:LJM:dlh

bb.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE 2007 FEDERAL ANNUAL CERTIFICATION REPORT.

WHEREAS, the Benton County Sheriff's Office participates in the Federal Equitable Sharing Agreement with the federal government for the use of federally forfeited cash, property, proceeds, and any interest earned thereon, which are equitably-shared with participating law enforcement agencies. Pursuant to this agreement the Benton County Sheriff's Office is required to submit yearly the Federal Annual Certification Report.

WHEREAS, the yearly Federal Annual Certification Report must be signed by the Benton County Sheriff and the Benton County Commissioner, **NOW THEREFORE**,

BE IT RESOLVED, by the Board of Benton County Commissioners that the Chairman of the Board of Benton County Commissioners is authorized to sign, on behalf of the Board, the 2007 Federal Annual Certification Report.

Dated this 25 day of February, 2008.

Chairman of the Board

Member

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

J.Thompson

Attest: _____
CC: BCSO, Prosecutor (Rosemary),



Federal Annual Certification Report

This report must be submitted within 60 days after the close of your fiscal year to the:

Asset Forfeiture and Money Laundering Section
U.S. Department of Justice
10th and Constitution Avenue, NW
Bond Building, 10th Floor
Washington, DC 20530
Fax: (202) 616-1344
E-mail address: afmls.eca@usdoj.gov

Executive Office for Asset Forfeiture
U.S. Department of the Treasury
1341 G Street, NW
Suite 800
Washington, DC 20220
Fax: (202) 622-8610
E-mail address: treas.eca@eoaf.treas.gov



Law Enforcement Agency: Benton County Sheriff's Office

Police Department Sheriff's Office/Department Task Force (attach list of members) Prosecutor's Office Other _____

Contact Person: Julie Thompson E-mail Address: julie.thompson@co.benton.wa.us

Mailing Address: (Street) 7122 W. Okanogan Place Bldg. a (City) Kennewick (State) WA (Zip Code) 99336

Telephone Number: (509) 735-6555 ext. 3273 Fax Number: (509) 736-3895

Agency Fiscal Year Ends on: (Month/Day/Year) 12/31/07 NCIC/ORI/Tracking No.: WA00300000

Summary of Equitable Sharing Activity (Fiscal Year Ending 2007)

	Justice Funds ¹ (DEA, FBI, etc) ¹	Treasury Funds (IRS, ICE, etc) ²
1. Beginning Equitable Sharing Fund Balance (must match Ending Equitable Sharing Fund Balance from prior FY) ..	\$ _____	\$ _____
2. Federal Sharing Funds Received from the Department of Justice and the Department of the Treasury	\$ _____	\$ _____
3. Federal Sharing Funds Received from Other Law Enforcement Agencies and Task Forces (complete attachment)	\$ _____	\$ _____
4. Other Income	\$ _____	\$ _____
5. Interest Income Accrued (<input type="checkbox"/> check if non-interest-bearing account)	\$ _____	\$ _____
6. Total Equitable Sharing Funds (total of lines 1 - 5)	\$ _____	\$ _____
7. Federal Sharing Funds Spent (total of lines a - n)	\$ _____	\$ _____
8. Ending Equitable Sharing Fund Balance (subtract line 7 from line 6)	\$ (_____)	\$ (_____)
9. Appraised Value of Other Assets Received	\$ _____	\$ _____

Summary of Shared Monies Spent

a. Total spent on salaries for new, temporary, not to exceed 1-year employees	\$ _____	\$ _____
b. Total spent on overtime	\$ _____	\$ _____
c. Total spent on informant and "buy money"	\$ _____	\$ _____
Total spent on travel and training	\$ _____	\$ _____
Total spent on communications and computers	\$ _____	\$ _____
f. Total spent on firearms and weapons	\$ _____	\$ _____
g. Total spent on body armor and protective gear	\$ _____	\$ _____
h. Total spent on electronic surveillance equipment	\$ _____	\$ _____
i. Total spent on building and improvements	\$ _____	\$ _____
j. Total spent on drug education and awareness programs	\$ _____	\$ _____
k. Total spent on other law enforcement expenses (complete attachment)	\$ _____	\$ _____
l. Total transfers to other state and local law enforcement agencies (complete attachment)	\$ _____	\$ _____
m. Total permissible use transfers (complete attachment)	\$ _____	\$ _____
Amount of line (m) used for drug abuse treatment and prevention programs	\$ _____	\$ _____
n. Total spent on matching grants (complete attachment)	\$ _____	\$ _____
o. Your agency's budget for current fiscal year	\$ <u>24,429,394.00</u>	\$ _____
p. Your jurisdiction's budget for current fiscal year	\$ _____	\$ _____
q. Your agency's budget for prior fiscal year	\$ <u>22,848,910.00</u>	\$ _____
r. Your jurisdiction's budget for prior fiscal year	\$ _____	\$ _____

Under the penalty of perjury, the undersigned hereby certify that the information in this report is an accurate accounting of funds received and spent by the law enforcement agency under the federal equitable sharing program during this reporting period.

Name (Print or Type) Larry d. Taylor Date 2/20/2008
Law Enforcement Agency Head

Name (Print or Type) Claude Oliver Date 2/25/2008
Governing Body Head

Signature: *Larry Taylor*
Title: Benton County Sheriff

Signature: _____
Title: Benton County Commissioner

This form is subject to the Freedom of Information Act and may be released under 5 U.S.C. § 552. See www.usdoj.gov/criminal/afmls.html or www.treas.gov/offices/enforcement/eoaf for additional forms.

¹Include under Justice funds shared cash, proceeds, and property received from the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), U.S. Attorney's Office, U.S. Postal Inspection Service and Drug Administration, and U.S. Department of Agriculture.

²Include under Treasury funds shared cash, proceeds, and property received from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)*, Internal Revenue Service (IRS), U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection, U.S. Secret Service, and U.S. Coast Guard.

*The Bureau of Alcohol, Tobacco, Firearms and Explosives is a component of the Department of Justice, but ATF's equitable sharing is currently processed by the Department of the Treasury. Until further notice, please deposit all equitably shared cash and proceeds from ATF in your agency's Treasury fund.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN JAIL DEPRECIATION FUND NUMBER 0142-101, DEPARTMENT NUMBER 000.

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

Dated this _____ day of _____, 2008

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File, KAM

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Jail Depreciation Dept Nbr: 000

Fund Name: Jail Depreciation Fund Nbr: 0142-101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
594.230	6401	Capital Outlay	\$17,104	523.500	3135	Maintenance/Repair Supplies	\$17,104
TOTAL			\$17,104	TOTAL			\$17,104

TRANSFER TO:

Explanation:
Capital outlay appropriated funds to be transferred to maintenance/repair supplies for the payment of the URS Electronics voucher.

Prepared by: Keith Mercer Date: 04-Mar-2008

Approved Denied Date: _____

Chairman

Member

Member

dd

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: March 10, 2008 Subject: Authorization to Purchase Prepared By: Captain Steven Keane Reviewed By: Julie Thompson, Admin Asst.	Execute Contract Pass Resolution <u>XXXX</u> Pass Ordinance Pass Motion Other	Consent Agenda <u>X</u> Public Hearing 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION

In 2007 the Sheriff's Office shared a Justice Assistance Grant with the Kennewick Police Department in the amount of \$44,283. The Sheriff's Office share is \$22,141.50 – one half of the total amount. This grant was approved late in 2007 and was included in the Sheriff's Office 2008 expenditure budget.

The goal of the grant is provide technology upgrades for police agencies. A portion of the grant was to provide thirty (30) Wireless Portable Radio Microphones to the Sheriff's Office to enhance officer safety and improve communications.

The Sheriff's Office has determined that Freeline is a sole-source provider of this product. The Sheriff's Office sought and received a price quote to provide thirty (30) Free Mic 200 Speaker Microphones and accessories for \$13,237.96 price includes Washington State Sales Tax.

SUMMARY

The Sheriff's Office would like to purchase thirty (30) Free Mic 200 Speaker Microphones and accessories for \$13,237.96 Including Washington State Sales Tax.

RECOMMENDATION

Authorize purchase.

FISCAL IMPACT

-0- the amount is already budgeted for in the 2008 expenditure budget.

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF PURCHASING WIRELESS PORTABLE RADIO MICROPHONES FOR THE SHERIFF'S OFFICE

WHEREAS, the Benton County Sheriff's Office sought and received a Justice Assistance Grant (JAG) in the amount of \$22,241.50 in conjunction with Kennewick Police Department in 2007; and

WHEREAS, the JAG grant was written to provide thirty (30) Wireless Portable Radio Microphones to the Sheriff's Office, to enhance officer safety and improve communications; and

WHEREAS, the Sheriff's Office has determined that Freelinc is a sole-source provider of this product. The Sheriff's Office sought and received a price quote to provide thirty (30) Free Mic 200 Speaker Microphones and accessories for a total of \$13,237.96 including w.s.s.t.; and

WHEREAS, resolution 08-131 and RCW 36.32.245 authorize contracts for the purchase of materials, equipment and supplies valued at between \$5,000 and \$25,000 without advertisement and formal sealed bidding; and

WHEREAS, Captain Keene from the Sheriff's Office reviewed the quote and recommends Freelinc, 266 W. Center Street, Orem, Utah 84057 as the best responsible quote, **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, that the Sheriff's office proceed with the purchase of thirty (30) Wireless Portable Radio Microphones with accessories from Freelinc, 266 W. Center Street, Orem, Utah 84057 for \$13,237.96 including Washington state sales tax.

Dated this 10 day of March, 2008.

Chairman of the Board

Member

Member

Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____

Captain Steven Keane

CC: BCSO, Prosecutor (Rosemary), Auditor Office

ee.

<u>AGENDA ITEM</u> =====	<u>TYPE OF ACTION NEEDED</u> =====	
Meeting Date: March 10, 2008 Subject: Contract Prepared By: J. Thompson Reviewed By:	Execute Contract XXX Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda XXX Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY

Benton County and Evercom Systems Inc. entered into a professional service contract for providing inmate phone services on November 10, 2003. The Benton County Sheriff's Office is satisfied with the services provided by Evercom Systems, Inc. and wish to enter into a similar contract with an expiration date of December 31, 2010.

RECOMMENDATION

Execute Contract

FISCAL IMPACT

-0- Already in the 2008 budget.

OTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF REQUESTING APPROVAL OF THE CONTRACT BETWEEN EVERCOM SYSTEMS, INC AND BENTON COUNTY

WHEREAS, Benton County and Evercom Systems Inc. entered into a professional service contract for providing inmate phone services on November 10, 2003; and

WHEREAS, the Benton County Sheriff's Office is satisfied with the services provided by Evercom Systems, Inc. and wish to enter into a similar contract, **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby concurs with the recommendation and is hereby authorized to sign the contract between Benton County and Evercom Systems Inc. with an expiration date of December 31, 2010.

Dated this 10th day of March, 2008.

Chairman of the Board

Member

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

Attest: _____
Clerk of the Board

J. Thompson

**PERSONAL SERVICES CONTRACT
TERMS AND CONDITIONS**

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **Evercom Systems, Inc**, a corporation registered to do business in the State of Washington with its principal offices at **14651 Dallas Parkway, Dallas, Texas 75254-7476** (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of the following documents [This Section should list any exhibits and/or attachments used]:

- a. **Terms and Conditions**
- b. **Exhibit A, Scope of Work; and**
- c. **Exhibit B, Compensation.**

2. DURATION OF CONTRACT

The term of this Contract shall begin **immediately upon execution by all parties**, and shall expire on **December 31, 2010**. Upon mutual agreement of the parties, this Contract may be extended for additional one-year terms by written amendment and may be so extended a maximum of three times.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. **Comprehensive inmate telephone services for the Benton County Jail facility located at 7122 W. Okanogan Pl, Kennewick, WA 99336 ("Jail") including exclusive provision of pre-paid telephone calling services, and provision of collect calling based local interLATA, intraLATA, interstate and international calling capabilities. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit "A, Scope of Work", which is attached hereto and incorporated herein by reference.**
- b. **The CONTRACTOR shall provide all equipment, materials and**

software, and maintenance for same, necessary for the services. With the exception of electrical, data and telephone infrastructure integral to the Jail, no material, labor, or facilities shall be furnished by, or required of, the COUNTY. CONTRACTOR shall coordinate with COUNTY staff whenever installing equipment that interfaces with COUNTY owned electrical, data and telephone infrastructure (except for plugging in standard 110 volt equipment into wall sockets) and shall not modify such infrastructure except with the prior approval, and at the direction, of COUNTY.

- c. The CONTRACTOR shall perform the work specified in the Contract according to standard industry practice.
- d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- e. The CONTRACTOR shall confer with the COUNTY from time to time, and as reasonably requested by COUNTY during the term of the Contract. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.
- f. Notwithstanding anything to the contrary in the Agreement, for services related to any and all applications which may allow COUNTY to monitor and record inmate telephone calls, or transmit or receive inmate electronic messages ("e-mail"); by providing the application, CONTRACTOR makes no representation or warranty as to the legality of recording or monitoring inmate telephone calls or transmitting or receiving inmate e-mail messages. Further, COUNTY retains custody and ownership of all recordings, and inmate e-mail messages; however COUNTY grants CONTRACTOR a perpetual limited license to compile, store, and access recordings or inmate calls and access inmate e-mail messages for purposes of (i) complying with the requests of officials at the facility, (ii) disclosing information to requesting law enforcement and correctional officials as they may require for investigative, penological or public safety purposes, (iii) performing billing and collection functions, or (iii) maintaining equipment and quality control purposes. This license does not apply to recordings of inmate calls or e-mail messages with their attorneys or to recordings or e-mail messages protected

from disclosure by other applicable privileges.

- g. CONTRACTOR grants COUNTY a personal, non-exclusive, non-transferable license (without the right to sublicense) to access and use certain proprietary computer software products and materials in connection with the applications used to provide the services (the "Software"). The Software includes any upgrades, modifications, updates, and additions to existing features that are implemented in CONTRACTOR's discretion (the "Updates"). Updates do not include additional features and significant enhancements to existing features. COUNTY's rights to use any third-party software product that CONTRACTOR provides shall be limited by the terms of the underlying license that we obtained for such product. The Software is to be used solely for COUNTY'S internal business purposes in connection with the applications at the Jail. COUNTY will not (i) permit any parent, subsidiary, affiliated entity, or third party to use the Software, (ii) assign, sublicense, lease, encumber, or otherwise transfer or attempt to transfer the Software or any portion thereof, (iii) process or permit to be processed any data of any other party with the Software, (iv) alter, maintain, enhance, disassemble, decompile, reverse engineer or otherwise modify the Software or allow any third party to do so, (v) connect the Software to any products that CONTRACTOR did not furnish or approve in writing, or (vi) ship, transfer, or export the Software into any country, or use the Software in any manner prohibited by the export laws of the United States. CONTRACTOR is not liable with regard to any Software that COUNTY uses in a prohibited manner.

4. CONTRACT REPRESENTATIVES

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

- a. For CONTRACTOR: **Evercom Systems, Inc.**
c/o Securus Technologies, Inc.
14651 Dallas Parkway, Sixth Floor
Dallas, TX 75254
Attn: General Counsel

b. For COUNTY: Capt. Al Thompson
 Benton County Sheriff's Office
 Bureau of Corrections
 7122 W Okanogan Pl, Bldg B
 Kennewick, WA 99336

5. COMPENSATION

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

- a. A detailed description of the compensation to be paid by the COUNTY is set forth in Exhibit B, "Compensation", which is attached hereto and incorporated herein by reference.
- b. The CONTRACTOR shall, in accordance with Exhibit B, submit monthly statements to COUNTY detailing its gross receipts from collect call tolls, and COUNTY's commission therefrom including a breakdown of the following:
 - (1) The date range covered by the statement;
 - (2) The number of calls made during statement period.
 - (3) The number of minutes for each category of call: local; InterLATA; IntraLATA; Interstate; International
 - (4) Amount of commission;
 - (5) Date of commission transmittal;
- c. The CONTRACTOR may, in accordance with the provisions of Exhibit B, submit invoices to COUNTY on a per order basis for purchases of pre-paid telephone cards. Such invoices shall include the following:
 - (1) The date of order;
 - (2) Date order was fulfilled and shipped;
 - (3) The number and denominations of cards;
 - (4) The rate per minute;
 - (5) The price of the cards before and after the 30% discount to which COUNTY is entitled; and payment terms invoiced minus discount per order within 30 days with interest of 1.5% per month for untimely payment.
- d. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured

within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

- e. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, the CONTRACTOR shall not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.
- f. CONTRACTOR is responsible for recognizing, assessing and paying any applicable federal, state and local taxes or other assessments. CONTRACTOR may pass such taxes or other legitimate assessment on to the recipient of collect calls in the case of charges for collect calls, but shall not adjust gross total amounts for such taxes or assessments when calculating COUNTY's commission. In the case of pre-paid telephone cards, CONTRACTOR shall assess and remit applicable Washington State Sales Tax at the rate appropriate for sales within Benton County, but shall, in the absence of an amendment adjusting the rate, be responsible for paying any and all additional taxes or fees without passing such cost on to COUNTY, or to inmates (including in the form of deducting additional amounts per minute from their cards).
- g. CONTRACTOR shall bear responsibility for all costs and expenses related in any way to installation, replacement and repair/maintenance of any equipment, materials or software utilized in providing the services under this Contract whether or not such equipment, materials or software are kept on site at the Jail.
- h. Payments to COUNTY shall be, at COUNTY's election, either by check mailed to COUNTY, attention COUNTY's contract representative, or by automated clearing house (ACH) transaction. ACH transactions shall be made according to written instructions provided by COUNTY. Payment shall be made by the 30th of each month, for the period ending at the end of the previous month, unless a different date is authorized in writing by COUNTY. Time is of the essence in making payments to COUNTY and late payments

shall constitute a breach of this Contract.

6. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment, modification or renewal shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

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

immunity the CONTRACTOR might have had under such laws. By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL HAVE ANY LIABILITY FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES.

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

8. INSURANCE

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

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

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

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

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

- c. **Property Loss:** CONTRACTOR acknowledges that the property, equipment and software it maintains on site at the Jail are not covered by any type of insurance maintained by COUNTY. Accordingly, CONTRACTOR accepts full responsibility for loss or damage to equipment it maintains at the Jail for provision of services under this Contract and agrees to maintain insurance sufficient to repair or replace said equipment. Furthermore, CONTRACTOR irrevocably waives any right to claim or file suit against COUNTY for the cost of repairing or replacing damaged equipment including any right to subrogation or the recoupment of any insurance deductibles that may be applicable.

d. **Other Insurance Provisions:**

- (1) The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
- (2) The COUNTY, its officers, officials, employees and agents shall be named as additional insureds with

respect to performance of services on all required insurance policies, except for any required automobile liability policy.

- (3) The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
- (4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
- (5) The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (6) The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
- (7) The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
- (8) The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the CONTRACTOR'S liability coverage is written as a claims made policy, then the CONTRACTOR must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

- e. **Verification of Coverage and Acceptability of Insurers:**
All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's

Reports. Any exception to this requirement must be reviewed and approved by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

- (1) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this Contract. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the COUNTY. Any certificate or endorsement limiting or negating the insurer's obligation to notify the COUNTY of cancellation or changes shall be altered so as not to negate the intent of this provision.
- (2) The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.
- (3) Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.
- (4) The CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.
- (5) All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:

Risk Manager
Benton County Prosecuting Attorney's Office

7320 W. Quinault Avenue
Kennewick, WA 99336

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

9. TERMINATION

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.
- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within thirty (30) days of written notice to do so by the COUNTY, the COUNTY may terminate this Contract, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract.
- d. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines, in its sole

discretion, that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) days written notice by certified mail to the COUNTY. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

10. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section [Five] of this Contract, and the CONTRACTOR is not entitled to any

COUNTY benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to COUNTY employees.

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

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

a. All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract at COUNTY's direction and paid by COUNTY shall be "works for hire" ("COUNTY'S INTELLECTUAL PROPERTY") as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership of COUNTY'S Intellectual Property includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR. Notwithstanding, the parties acknowledge that CONTRACTOR, in the provision of the services uses certain proprietary tools, procedures, designs, drawings, models, software and other documentation, information and technology proprietary and trade secret to the CONTRACTOR ("CONTRACTOR INTELLECTUAL PROPERTY"), and such CONTRACTOR INTELLECTUAL PROPERTY shall remain CONTRACTOR's sole and exclusive property.

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken.

19. CONFIDENTIALITY

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

CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information. The CONTRACTOR INTELLECTUAL PROPERTY, CONTRACTOR systems, applications, and related call records shall at all times remain confidential to CONTRACTOR. COUNTY agrees that it will not disclose such confidential information to any third party without CONTRACTOR'S prior written consent.

20. CHOICE OF LAW, JURISDICTION AND VENUE

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

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

24. NOTICES

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

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

DATED: _____

BENTON COUNTY BOARD OF COMMISSIONERS

Chairman

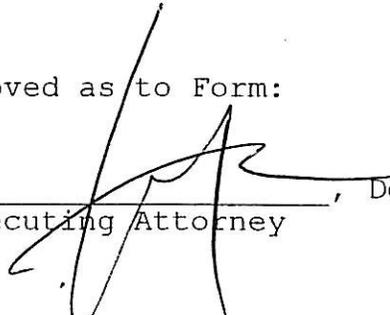
Member

Member

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

Attest: _____
Clerk of the Board

Approved as to Form:


_____, Deputy Prosecuting Attorney

DATED:

CONTRACTOR
EVERCOM SYTEMS INC.

[Print Name]

A handwritten signature in black ink, appearing to read "John J. Lolo". The signature is written in a cursive style with a large, prominent loop at the beginning.

Its

EXHIBIT A - SCOPE OF SERVICES

CONTRACTOR shall provide and maintain a turn-key inmate telephone system (ITS) including all necessary equipment, support and maintenance, to service the population of the Benton County Jail. This shall include providing the following services and equipment:

1. Secure call control software, and support for call origination, call routing, validation and billing and billed-to-party customer service as well as technical and investigative support for such calls;
2. Sufficient equipment, placed at the Benton County Jail, to support inmate telephone needs for the entire inmate population at the jail. This equipment shall consist of at least: one data server, two call processor CPUs, one router, one uninterruptible power supply (UPS), power strips sufficient for this equipment for the jail's telco room, one computer workstation (including monitor and keyboard) with audit and investigative access to call data as required by County to be located at the jail investigator's office, and 97 inmate station telephone sets to be located in detainee housing units;
3. Repair service, maintenance and technical support for all Contractor owned equipment utilized in providing the services detailed herein;
4. Automated information services including an off-site, hosted, interactive voice response system with facility data integration that shall provide facility specific and inmate specific information to outside callers and detainee callers as well as all client support, repair service, and maintenance for these services (the "Automated Information Services");
5. CONTRACTOR shall provide pre-paid telephone cards at a rate of \$0.50 a minute for inmate use. Such cards shall be capable of use at any inmate telephone at the Jail and shall be sold only directly to COUNTY (ie not to inmates or family members). COUNTY shall be entitled to a 30% discount on the cost of the pre-paid phone cards.

Furthermore, CONTRACTOR shall ensure that the provided services meet the following specifications:

1. If additional pods are activated for use, CONTRACTOR shall ensure that small pods continue to have no less than two inmate telephones and large pods continue to have no less than six inmate telephones.

2. CONTRACTOR shall ensure that at all times, reasonably adequate numbers of telephones are available for inmate use in the booking area and medical area;
3. All inmate telephones shall be capable of placing local or long-distance calls by either collect call or by CONTRACTOR supplied, proprietary, pre-paid phone cards;
4. CONTRACTOR shall provide a means by which "attorney" telephone numbers may be programmed into the inmate telephone system. If this requires off-site input, then CONTRACTOR shall provide support services that will accomplish such input, available by telephone to COUNTY, during business hours of 8 am to 5 pm, PST, Monday - Friday. This one contact telephone number shall be provided to COUNTY in writing and by use of this telephone number, COUNTY shall be able to accomplish the addition or deletion of telephone numbers from the "attorney" telephone number list within 1 hours from the time of the request;
5. All inmate telephone calls to "attorney" telephone numbers shall be at no charge to inmates or COUNTY, and shall not be monitored or recorded, regardless of the provisions of other portions of this Contract;
6. The inmate telephone system shall have the ability to assign identification numbers to individual inmates and track phone usage by inmates according to the following factors:
 - a. Telephone number called
 - b. Date and time of call
 - c. Duration of call
7. CONTRACTOR shall provide equipment to COUNTY that will permit COUNTY investigators or administrators to:
 - a. Perform administrative functions on the phone system including adding and deleting user ID profiles and blocking access to specific and unlimited numbers of telephone numbers;
 - b. Monitor telephone calls on a real time basis or by retrieving pre-recorded telephone calls;
 - c. Duplicate pre-recorded telephone calls utilizing either CD-R or DVD media;
 - d. Generate activity reports or respond to individual queries that will provide data based on variables including inmate ID, phone numbers called, dates of call, times of call, duration of calls, and numbers of calls in a daily or hourly basis by specific telephone number or inmate ID;

Such equipment shall be installed and maintained by CONTRACTOR at CONTRACTOR's expense, provided that CONTRACTOR shall coordinate with COUNTY information

technology personnel regarding any needed connections to COUNTY's telephone, electrical or data infrastructure.

8. CONTRACTOR shall provide and maintain hardware and software which shall record and permit real-time monitoring of all telephone calls made on the inmate telephone system except that CONTRACTOR shall ensure that the recording and monitoring system does not record or monitor any calls made to telephone numbers on the "attorney" telephone number list. The recording system shall provide archival capabilities that shall store no less than six months of telephone conversations locally and internally. Additionally, the system shall have the ability for removeable of an additional six months of conversation on a storable media format readily accessible by COUNTY at a location provided by CONTRACTOR.
9. CONTRACTOR shall provide service and repair on equipment utilized to provide the services contemplated by this Contract, and shall have a telephone number, staffed 24 hours a day, 7 days a week, whereby COUNTY may request service or repair of equipment or systems. Response time for service shall be no more than six (6) hours on business days and twelve(12) hours on non-business days. Regularly excessive response time, as determined solely by COUNTY, shall constitute a breach of this Contract.
10. The inmate telephone system shall detect and defeat attempts to use three-way calling attempts with a success rate of at least 85% and shall generate reports of such attempts by ID number in a format ,accessible by COUNTY utilizing CONTRACTOR provided equipment.

EXHIBIT B - COMPENSATION

CONTRACTOR shall be compensated as follows:

1. For telephone calls placed utilizing collect call services, CONTRACTOR shall be entitled to collect its standard fee from the recipient of the collect calls, for such services which amount shall comply with all applicable tariffs or laws regulating such. From this gross amount charged, CONTRACTOR shall, on a monthly basis by the due date indicated in the body of this Contract, remit the amount of **48%** to COUNTY as a commission. This commission shall be based on the gross amounts charged, and shall not be adjusted to reflect either applicable taxes, fees etc, or the actual amounts collected from the recipients of the collect calls if the actual amounts collected are lower than that charged. The amount CONTRACTOR charges, less COUNTY's commission, shall be CONTRACTOR's exclusive compensation for this type of services, and under no circumstances shall COUNTY be responsible for any additional payment to CONTRACTOR for this service, or for compensating CONTRACTOR for uncollected or uncollectable amounts billed to recipients of collect calls.
2. For telephone calls placed utilizing pre-paid telephone cards, CONTRACTOR's sole compensation shall be in the form of payment for such telephone cards. These cards shall be sold by CONTRACTOR to COUNTY only (ie no sales directly to inmates, their friends and families, or the general public for use within the Jail). COUNTY may place orders for these cards at whatever intervals it chooses provided that CONTRACTOR is entitled to payment for such orders as described in Article 5 of the Contract. The per-minute rate for these pre-paid telephone cards shall be \$.50 per minute. This shall be the rate at which card balances may be deducted from any given inmate's card, and is also the rate at which cards shall be sold to COUNTY, provided that in billing COUNTY, CONTRACTOR shall provide COUNTY with a 30% discount which shall constitute COUNTY's commission for the sale of such cards.
3. For the Automated Information Services, COUNTY will pay a monthly fee of \$4,200.00 payable in arrears during the term of the Agreement. The monthly fees will be deducted from the COUNTY's commission. If the fees and other amounts due exceed the commission for the relevant month or if, for any reason, the Agreement terminates or expires during the

relevant month, then CONTRACTOR will invoice COUNTY for the balance which shall be due within thirty (30) days after the date of the invoice.

The above constitutes the sole compensation to which CONTRACTOR shall be entitled pursuant to this Contract.

ff.

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 10 Mar 2008 Subject: South County study Memo Date: 05 Mar 2008 Prepared By: AJF Reviewed By: LSK	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Other	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY & BACKGROUND

After progressing though some other projects, and after working through contract negotiations with the Washington Department of Community, Trade, and Economic Development (CTED); staff is ready to proceed with the "South County Feasibility Study and Needs Assessment". The contract with CTED is presented for Commissioner acceptance, and a copy of the request for proposals (RFP) are attached for review. CTED has requested that a signed contract be back to them by March 17th, and staff is prepared to publish the RFP in the *Tri-City Herald*, *Seattle Daily Journal of Commerce*, and through other lines of distribution.

Resolution 07-754 is also attached, and is referred to in the new resolution. There was a little oversight on my part that leads to some redundancy and confusion now. Resolution 07-754 stated that the County accepts the *offer* of a grant from CTED, but did not mention the important step of signing a contract with CTED before initiating the RFP and further work. The new resolution authorizes signature of said contract by the Chair, then directs staff to complete the RFP process, and bring a contract back to the board for services.

This project is specifically cited as a desirable and needed project in the Overall Economic Development Plan; and a 75% matching grant has been offered to and accepted by the County.

FISCAL IMPACT

Total project budget will be published at \$30,000.00. Up to \$10,000 will be Benton County money. This County match would come from the Sustainable Development Fund.

ATTACHMENTS

- Copy of State-County contract from Washington DCTED
- Resolution authorizing contract signature and directing the RFP
- Resolution 07-754 – accepting the grant *offer*, and directing the RFP
- Request for proposals to be published

###

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A FEASIBILITY STUDY AND NEEDS ASSESSMENT
FOR THE PLYMOUTH AREA OF SOUTH BENTON COUNTY

WHEREAS, a feasibility study and needs assessment for the Plymouth area is identified in the County's Overall Economic Development Plan as a desired project to help determine the economic viability and community development potential of the Plymouth area; and,

WHEREAS, Benton County has accepted an offer of grant assistance from the State of Washington in the amount of \$25,000.00 to assist with such a study, provided that the County commits to matching the grant at the necessary amount (twenty-five percent);

WHEREAS, Resolution 07-754 recognized and accepted the offer of grant assistance from the State, and directed further action by staff; but did not specifically authorize signature of a contract between the County and the State; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of Commissioners that Benton County that contract conditions have been agreed-to by Benton County and the State of Washington for grant assistance with the "South County Feasibility Study and Needs Assessment". Benton County will match the state grant at the amount of twenty-five percent (25%) of the cost of the project up to but not to exceed \$10,000.00, to be paid from the Sustainable Development Fund. The Board of Commissioners authorizes the Chairman to sign said contract with the State of Washington, and directs staff to procure a vendor for the Study and develop a contract with that vendor for Commissioner review and action at a later time.

Dated this _____ day of _____, 2008.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

cc: Sustainable Development, file
Auditor
Planning

Prepared by: A.J. Fyall

RESOLUTION 07-754

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A FEASIBILITY STUDY AND NEEDS ASSESSMENT
FOR THE PLYMOUTH AREA OF SOUTH BENTON COUNTY

WHEREAS, a feasibility study and needs assessment for the Plymouth area is identified in the 2007 Overall Economic Development Plan as a desired project to help determine the economic viability and community development potential of the Plymouth area; and,

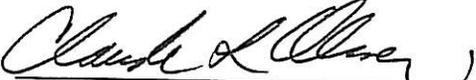
WHEREAS, Benton County has been offered grant assistance from the State of Washington in the amount of \$25,000.00 to assist with such a study, provided that the County commits to matching the grant at the necessary amount; **NOW THEREFORE,**

BE IT RESOLVED, by the Board of Commissioners that Benton County accepts the grant offer for assistance with the "South County Feasibility Study and Needs Assessment" at the amount of seventy-five percent (75%) of the cost of the project up to the cap of \$25,000.00. Benton County will match the state grant at the amount of twenty-five percent (25%) of the cost of the project up to but not to exceed \$10,000.00, to be paid from the Sustainable Development Fund.

BE IT FURTHER RESOLVED, that the Board of Commissioners directs staff to develop and publish a request for proposals for the "South County Feasibility Study and Needs Assessment" in order to solicit interest from qualified consultants; and to bring a recommendation for consulting services back before the Board of Commissioners for contract consideration at a later date.

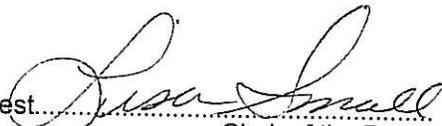
Dated this 15 day of October, 2007.


Chairman of the Board


Member


Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest... 
Clerk of the Board

cc: Sustainable Development, file
Auditor
Planning

Prepared by: A.J. Fyall

**WASHINGTON STATE COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
INTERNATIONAL TRADE AND ECONOMIC DEVELOPMENT DIVISION**

<p>1. GRANT RECIPIENT: Benton County 7122 West Okanogan Place Kennewick, Washington 99336</p>	<p>2. START DATE: March 3, 2008</p>	<p>3. END DATE: June 30, 2008</p>
<p>4. GRANT RECIPIENT REPRESENTATIVE: NAME: Adam Fyall PHONE: 509-736-3053 FAX: 509-736-2708 E-MAIL: adam.fyall@co.benton.wa.us</p>	<p>5. CTED REPRESENTATIVE: NAME: Bob Sandoval PHONE: 509-783-9201 FAX: 509-735-6609 E-MAIL: Roberts@cted.wa.gov</p>	
<p>6. SOURCE OF FUNDS: <u>State Rural Opportunity Fund - \$25,000</u></p>	<p>7. TAX IDENTIFICATION NUMBER: 91-6001296</p>	
<p>8. SUMMARY: Benton County will prepare a study/needs assessment of South Benton County (Plymouth Vicinity) to address present capacities and future needs to deal with growth in the area the "right way".</p> <p>The DEPARTMENT and GRANT RECIPIENT acknowledge and accept the terms of this GRANT CONTRACT and attachments and have executed this GRANT CONTRACT as of the date and year written below. The rights and obligations of both parties to this GRANT CONTRACT are governed by this GRANT CONTRACT and other documents incorporated by reference: GRANT CONTRACT Terms and Conditions including <u>Attachment A: Workplan</u>, <u>Attachment B: Budget</u>, and <u>Attachment C: Special Provisions</u>.</p>		
<p>FOR THE DEPARTMENT:</p> <p>_____ Larry Williams, Assistant Director International Trade and Economic Development</p> <p>DATE: _____</p> <p>APPROVED AS TO FORM ONLY:</p> <p><u>Sandra Adix (signature on file)</u> Assistant Attorney General</p> <p>DATE: <u>February 7, 2008</u></p>	<p>FOR THE GRANT RECIPIENT:</p> <p>_____ Claude Oliver, Chair Benton County Commissioners</p> <p>DATE: _____</p> <p>APPROVED AS TO FORM ONLY</p> <p>_____ Deputy Prosecuting Attorney</p> <p>DATE: _____</p>	
<p>S:\County Files\Benton County\Contracts 07-09\Benton County-Plymouth Vicinity FS\Grant\Plymouth Vicintiy Study-Needs Assessment Grant #S08-75105-125.doc</p>		

GRANT CONTRACT TERMS & CONDITIONS

SECTION 1 - PREAMBLE

This GRANT CONTRACT, entered into by Benton County, (hereinafter referred to as the GRANT RECIPIENT) and the Department of Community, Trade and Economic Development (hereinafter referred to as the DEPARTMENT), WITNESSES THAT:

WHEREAS, the DEPARTMENT has the responsibility under RCW 43.330.050(5) to provide financial and technical assistance to the communities of the state, to assist in improving the delivery of federal, state, and local programs; and to provide communities with opportunities for productive and coordinated development beneficial to the well-being of communities and their residents; and

WHEREAS, the DEPARTMENT has selected the GRANT RECIPIENT to receive funds and the GRANT RECIPIENT shall use the funds to undertake a project which furthers the goals and objectives of the DEPARTMENT'S Economic Development Division in accordance with its mission.

THEREFORE, the parties mutually agree to the following terms and conditions:

SECTION 2 - WORKPLAN

Over the course of the GRANT CONTRACT period, the GRANT RECIPIENT shall accomplish the activities described in Attachment "A": Workplan which is incorporated into the GRANT CONTRACT by reference.

SECTION 3 - FUNDING

The total funds to be reimbursed to the GRANT RECIPIENT for costs incurred during the GRANT CONTRACT period shall be a sum not to exceed \$25,000.

SECTION 4 - BUDGET

An approved budget by category of expenditure is included as Attachment "B" of this GRANT CONTRACT and is incorporated into the GRANT CONTRACT by reference. The total amount of transfers of funds between line item budget categories shall be as specified in Attachment "B". If the cumulative amount of these transfers is expected to exceed the amount specified in Attachment "B", the total project budget shall be subject to justification and negotiation of a GRANT CONTRACT amendment by the GRANT RECIPIENT and the DEPARTMENT in advance of expenditure.

SECTION 5 - GRANT CONTRACT PERIOD

- A. The effective date of this GRANT CONTRACT shall be the date all parties sign and complete execution of the GRANT CONTRACT. This GRANT CONTRACT shall terminate on June 30, 2008, except for any remaining obligations of the GRANT RECIPIENT as may exist under Section 7.
- B. Costs to be reimbursed by the DEPARTMENT under this GRANT CONTRACT are those eligible costs incurred during the performance of the GRANT CONTRACT work specified in Attachment "A" on or after March 3, 2008.

SECTION 6 - REIMBURSEMENT PROVISIONS

- A. Funds will be disbursed on a reimbursement basis only. Special reimbursement provisions or exceptions may be negotiated between the DEPARTMENT and the GRANT RECIPIENT and incorporated into Attachment "B".
- B. Only eligible project-related costs will be reimbursed. Ineligible costs include, but are not necessarily limited to: capital expenses, such as land acquisition or construction costs; purchase of machinery; hosting expenses, such as meals, lodging, or transportation incurred by persons other than staff and volunteers working directly on the project; lobbying or political influencing; and other costs which are not directly related to the project.
- C. In order to obtain reimbursement, the GRANT RECIPIENT shall submit, quarterly, a current invoice voucher on a form provided by the DEPARTMENT, which identifies the costs incurred for work performed since the previous voucher was submitted. Documentation of expenses is not required with each invoice, but must be available upon request.
- D. Within twenty (20) days after receiving and approving the voucher, the DEPARTMENT shall remit to the GRANT RECIPIENT a warrant covering the DEPARTMENT'S share of the costs incurred for work performed, unless the claim is challenged by the DEPARTMENT.
- E. The final invoice voucher covering costs incurred for work performed on or before June 30, 2008, must be submitted by the GRANT RECIPIENT prior to July 7, 2008 to allow the DEPARTMENT sufficient time to process it. Payment of the final voucher shall be contingent upon the DEPARTMENT'S receipt and approval of any products or deliverables designated in Attachment "A".

SECTION 7 - REPORTS

- A. The GRANT RECIPIENT shall submit a brief quarterly progress report on a form approved by the DEPARTMENT which describes the progress made on the work program outlined in Attachment "A". Progress reports will be submitted on a quarterly calendar cycle. The quarterly progress report or outcome report shall also provide detail on the dedicated matching funds.
- B. The GRANT RECIPIENT shall furnish, along with or prior to submitting the final invoice voucher, two copies of each final product designated in Attachment "A".

SECTION 8 - GRANT CONTRACT AMENDMENTS

- A. The DEPARTMENT or the GRANT RECIPIENT may request changes to the GRANT CONTRACT or its provisions. It is agreed and understood that no material or substantive alteration or variation of the terms of this GRANT CONTRACT shall be valid unless made in writing and signed by both parties. Any oral understanding or agreements shall not be binding unless made in writing and signed by both parties.
- B. GRANT CONTRACT amendments shall not be made which result in an extension of the GRANT CONTRACT period beyond June 30, 2008.

SECTION 9 - USE OF SUBCONTRACTS

- A. The GRANT RECIPIENT may enter into subcontract for any of the work contemplated under this GRANT CONTRACT without obtaining prior written approval of the DEPARTMENT. The GRANT RECIPIENT shall follow local policies regarding procurement, or in absence of local policies, shall use a competitive procurement process.
- B. Each CONTRACT that the GRANT RECIPIENT enters into with subcontractors, creditors and others shall contain a clause providing notice that the state and the DEPARTMENT are not responsible for any legal obligation, financial or otherwise, incurred by the GRANT RECIPIENT.
- C. The DEPARTMENT reserves the right to monitor the subcontractor selection process and subcontractors documents either during or following the selection process.
- D. The GRANT RECIPIENT is responsible for the performance of any subcontractors. The GRANT RECIPIENT shall require all subcontractors to follow the same rules and regulations as described in this document. All subcontractors must be monitored by the GRANT RECIPIENT to ensure fiscal accountability.

SECTION 10 - RECAPTURE PROVISIONS

- A. In the event that the GRANT RECIPIENT expends funds under this GRANT CONTRACT in violation of state laws and/or the provisions of this GRANT CONTRACT, the DEPARTMENT reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance.
- B. Such right of recapture shall exist for a period not to exceed six (6) years following GRANT CONTRACT termination. Repayment by the GRANT RECIPIENT of funds under this recapture provision shall occur within 30 days of demand. In the event that the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision and prevails, the DEPARTMENT shall be entitled to its costs thereof, including reasonable attorney's fees.

SECTION 11 - DOCUMENTATION, MONITORING AND AUDIT

- A. During the GRANT CONTRACT period and following its termination, the GRANT RECIPIENT shall follow accounting procedures and shall maintain books, records, documents, and other evidence which sufficiently and properly reflect all project specific costs expended in the performance of this GRANT CONTRACT. The Office of the State Auditor or any persons duly authorized by the DEPARTMENT shall have full access to and the right to inspect, excerpt, audit, or examine any of these materials at all reasonable times for a period of six (6) years after termination of the GRANT CONTRACT.
- B. The DEPARTMENT may require a copy of the GRANT RECIPIENT'S most recent audit and management letter.
- C. The DEPARTMENT may require the GRANT RECIPIENT to obtain an audit for specific expenditures under this GRANT CONTRACT. Costs of a required audit are an allowable expense.

SECTION 12 - ACKNOWLEDGMENT OF STATE FUNDING

- A. The GRANT RECIPIENT shall provide all project-related press releases to the DEPARTMENT. Press releases shall identify the DEPARTMENT as a project financier.
- B. Publications such as reports and pamphlets which are developed totally or in part with funds provided under this GRANT CONTRACT shall give credit to the funding source by including the following: "Funds made available through the Washington State Department of Community, Trade and Economic Development."

SECTION 13 - NONDISCRIMINATION CLAUSE

- A. During the performance of this GRANT CONTRACT, the GRANT RECIPIENT shall comply with all federal and state nondiscrimination laws, including but not limited to, chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq., the Americans with Disabilities Act (ADA).
- B. In the event of the GRANT RECIPIENT'S noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this GRANT CONTRACT may be rescinded, canceled, or terminated in whole or in part, and the GRANT RECIPIENT may be declared ineligible for further GRANT CONTRACTs with the DEPARTMENT. The GRANT RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with Section 21.

SECTION 14 - TERMINATION OF GRANT CONTRACT

- A. If the GRANT RECIPIENT fails to fulfill its obligations under this GRANT CONTRACT, the DEPARTMENT may terminate the GRANT CONTRACT upon written notice to the GRANT RECIPIENT specifying the reason for termination. The termination date shall be specified in the notice of termination. In the alternative, the DEPARTMENT may, in its sole discretion, provide notice to the GRANT RECIPIENT that termination will occur unless the GRANT RECIPIENT corrects the violation within a specified number of days.
- B. Notwithstanding any other provisions of this GRANT CONTRACT, either party may terminate this GRANT CONTRACT by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.
- C. Reimbursement for GRANT RECIPIENT work performed, and not otherwise paid for by the DEPARTMENT prior to the effective date of such termination, shall be as the DEPARTMENT reasonably determines.
- D. In the event funding from the state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this GRANT CONTRACT and prior to normal completion, the DEPARTMENT may unilaterally reduce the scope of work and budget or terminate this GRANT CONTRACT.

SECTION 15 - GRANT RECIPIENT NOT EMPLOYEE OF DEPARTMENT

The GRANT RECIPIENT, its employees, or agents performing under this GRANT CONTRACT are not deemed to be employees of the DEPARTMENT or agents of the DEPARTMENT in any manner whatsoever.

The GRANT RECIPIENT will not hold itself out as or claim to be an officer or employee of the DEPARTMENT or of the state of Washington and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the state of Washington.

SECTION 16 - TRAVEL AND SUBSISTENCE REIMBURSEMENT

Travel and subsistence reimbursement shall be made in accordance with the guidelines followed by the GRANT RECIPIENT in the course of normal operations. In the absence of local provisions, per diem rates and travel allowances shall be paid in accordance with rates set for state employees pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or hereafter amended.

SECTION 17 - OWNERSHIP OF PROJECT MATERIALS

- A. All finished or unfinished documents, data, studies, surveys, drawings, models, photographs, films, duplicating plates, computer disks and reports prepared by the GRANT RECIPIENT under this GRANT CONTRACT shall be works for hire under U.S. copyright law. The DEPARTMENT may duplicate, use, and disclose in any manner and for any purpose whatsoever, all materials prepared under this GRANT CONTRACT.
- B. The GRANT RECIPIENT must have prior approval of the DEPARTMENT to produce patents, copyrights, patent rights, inventions, original books, manuals, films, or other patentable or copyrightable materials, in whole or in part with funds received under this GRANT CONTRACT. The DEPARTMENT reserves the right to determine whether protection of inventions of discovery shall be disposed of and administered in order to protect the public interest. Before the GRANT RECIPIENT copyrights any materials produced with funds under this GRANT CONTRACT, the DEPARTMENT reserves the right to negotiate a reasonable royalty fee and agreement.

SECTION 18 - APPLICABLE LAWS AND REGULATIONS

The GRANT RECIPIENT shall comply with all existing applicable laws, ordinances, codes, regulations and policies of local, state, and federal governments, as now or hereafter amended.

SECTION 19 - SPECIAL PROVISION

The DEPARTMENT'S failure to insist upon the strict performance of any provision of this GRANT CONTRACT or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any obligation or right under this GRANT CONTRACT.

SECTION 20 - HOLD HARMLESS

The GRANT RECIPIENT agrees to defend, hold harmless, and indemnify the state of Washington and the DEPARTMENT, their officers, agents, employees, and assigns against any and all damages or claims for damages resulting or allegedly resulting from the GRANT RECIPIENT'S performance or lack of performance under the terms of this GRANT CONTRACT.

SECTION 21 - DISPUTE RESOLUTION

Except as otherwise provided in this GRANT CONTRACT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the GRANT RECIPIENT, and a third party mutually agreed upon by both parties. The team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

SECTION 22 - GOVERNING LAW AND VENUE

The GRANT CONTRACT shall be construed and enforced in accordance with, and the laws of the state of Washington hereof shall govern the validity and performance. Venue of any suit between the parties arising out of this GRANT CONTRACT shall be the superior court of Thurston County, Washington.

SECTION 23 - SEVERABILITY

In the event any term or condition of this GRANT CONTRACT or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this GRANT CONTRACT which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this GRANT CONTRACT are declared severable.

SECTION 24 - ENTIRE AGREEMENT

This GRANT CONTRACT, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this GRANT CONTRACT shall be deemed to exist or to bind any of the parties hereto.

The attachments to this agreement are as follows:

- ATTACHMENT A: Workplan, consisting of 1 page;
- ATTACHMENT B: Budget, consisting of 1 page; and
- ATTACHMENT C: Special Provisions, consisting of 1 page.

ATTACHMENT A: WORKPLAN

GRANT RECIPIENT: Benton County

Summary: Benton County will prepare a study/needs assessment of South Benton County (Plymouth Vicinity) to address present capacities and future needs to deal with growth in the area the "right way".

Activities to include, but not limited to:

- Hire a consultant.
- Determine and compile current needs and discernable trends.
- Complete community visioning.
- Prepare a twenty year outlook and strategy to include capacity and needs for, water and sewer, transportation, housing, utilities, parks and zoning and land use designation issues.

Products to be submitted by: June 30, 2008 (An electronic copy is preferred using MS Office. If an electronic version is not available, please submit two copies of each product.)

- A study/needs assessment that addresses present capacities and future needs and strategies to deal with the growth of the rural unincorporated area of Plymouth in South Benton County.

Quarterly Project Status Reports shall be submitted on the following dates:

- April 15, 2008
- June 30, 2008 (Final Report and study)

All reports and reimbursement requests should be submitted to:

Department of Community, Trade and Economic Development
International Trade and Economic Development Division
PO Box 42525
Olympia, Washington 98504-2525
ATTENTION: Barbara Yake
Email: barabaray@cted.wa.gov

ATTACHMENT B: BUDGET

The budget shall consist of the following elements:

1. Projected Expenditures of CTED Funds:*

	Amount
a. Personnel	\$0
b. Personal Services	25,000
c. Project Related Expenses	0
d. Travel	0
e. Other	0
TOTAL CTED AWARD	\$25,000

2. Budget Summary:

	State Funds	Federal Funds	Total
CTED Funds	\$25,000	\$0	\$25,000
Local Matching Resources	10,000	0	10,000
Other State Funds	0	0	0
Other Federal Funds	0	0	0
TOTAL BUDGET	\$35,000	\$0	\$35,000

*The grant recipient may request reimbursement in an amount up to 75 percent of project costs not to exceed a total reimbursement of \$25,000.

ATTACHMENT C: SPECIAL PROVISIONS

SECTION 1 – SPECIAL BUDGET PROVISIONS

- A. As a condition of receiving funds under this GRANT CONTRACT, the GRANT RECIPIENT agrees to document matching resources of 25 percent of the total project cost up to a maximum of \$10,000 in matching resources. These matching funds shall be used exclusively to perform the work described in Attachment "A" to this GRANT CONTRACT.
- B. The total amount of transfers of funds between line item budget categories shall not exceed twenty (20) percent of the Grant Award. If the cumulative amount of these transfers exceeds or is expected to exceed twenty percent, the total budget shall be subject to justification and negotiation of a GRANT CONTRACT amendment by the GRANT RECIPIENT and the DEPARTMENT.
- C. A sum of ten (10) percent of funds shall be withheld until activities and final products defined in Attachment "A" have been successfully completed by the GRANT RECIPIENT and accepted fully by the DEPARTMENT.

BENTON COUNTY, WASHINGTON OFFICE OF SUSTAINABLE DEVELOPMENT

REQUEST FOR PROPOSALS FOR CONSULTING SERVICES

FEASIBILITY STUDY AND NEEDS ASSESSMENT FOR "SOUTH BENTON COUNTY"

MARCH 2008

Introduction

Benton County is seeking professional assistance to assess the existing assets and identify the essential future infrastructure, employment, residential, educational, and recreational needs; and governance options that would enable the establishment a new "fully contained community", per RCW 36.70A.350, at Plymouth, which is an existing rural community in south-central Benton County.

Benton County is on a tight schedule with this project due to funding constraints, and needs to have most if not all of the contracted work completed by 30 June 2008.

The following subjects are discussed in this RFP to assist in proposal preparation:

- Background
- Workslope
- Need
- Deliverables
- Public Process
- Schedule
- Budget
- Insurance
- Response
- Selection
- Inquiries

Background

Plymouth is an unincorporated rural community lying on the north shore of the Columbia River near the junction of Interstate 82 and State Route 14, downstream of McNary Dam and across the river from the City of Umatilla, Oregon. It has a small residential community of approximately 300 people surrounded by approximately 1,450 acres of light and heavy industrial zoning, all surrounded by tens of thousands of acres of commercial agriculture, much of which has been recently (over the last decade) converted from dryland and rangeland to irrigated. It has a public water district with an established service boundary and capacity greatly in excess of current demands. Adjacent to it is Plymouth Park, a US Army Corps of Engineers managed waterfront park extending along the river-shore to the east and onto a large island. Via I-82, Plymouth is about 20 miles from the City of Kennewick. Major agri-industrial landowners and interests in Plymouth and its immediate vicinity are Agri-Northwest, Sunhaven Farms, and the Ports of Benton and Kennewick. Agri-Northwest recently added rail car loading facilities connecting to the main rail line just to the west of Plymouth. Williams Energy operates an adjacent gas transmission line with a liquefied natural gas storage facility just to the northwest.

In the last several years, the South County has observed a slow but steady upswing in interest and activity – particularly in the Plymouth area. Small-scale residential and commercial developments are occurring. Large-scale agricultural processing, storage, and shipping facilities are being constructed at Plymouth and to the west in Paterson. Taking advantage of the road and rail transportation assets and the energy facilities in Plymouth, there have been proposals by Windsett Farms for 80-acres of greenhouses for growing hydroponic tomatoes, which would have employed 300 workers, another proposal was for a gas-fired electricity production plant with co-generation capability for industry; still another was Washington Wind's proposal to site wind farms in the area. Finally, there have been other expressions of interest on a different scale, including a proposal for an recreational vehicle park and an inquiry about constructing a small apartment complex in Plymouth. To date, though some of the major proposals have progressed far enough to receive County approval, other considerations (e.g., changing market conditions, legal-labor disputes) have prevented the realization of any of the larger projects. However, the County is certain that it is just a matter of time before a major project is realized, with a concomitant demand for housing and services in the immediate vicinity. Presently there is a significant un-met need for local housing for agricultural workers and managers.

While the scope of this proposed study is specific to the immediate Plymouth area, many of the trends and background apply to the entire "South County" area between the crest of the Horse Heaven Hills and the Columbia River, including the communities of Paterson and Alderdale. It is the intent of the County to focus the resources of this study specifically on the Plymouth area, but also to speak generally about all of southern Benton County when applicable and appropriate.

Need

The County recognizes the need for proper advanced planning for growth and growth supporting infrastructure to accommodate an inexorable though as of yet unrealized economic potential in Plymouth. This potential is provided by the location of Plymouth on three interstate transport corridors (the Columbia River, railroad and I-82) and with recreation, potable water energy, industrial lands and agricultural-product, assets. Local land-owners and industrial and agricultural interests have convened with County staff and a representative of CTED in the recent past to discuss the need for a joint planning effort.

Not only does the County want to see the essential work done to accommodate coming growth in Plymouth and the South County, but to see it done well with community visioning and attention paid to capacity, design, vitality, and quality of life. There are not many opportunities to plan these sort of things from [nearly] the beginning, but Plymouth offers a chance to get out in front of the wave *before* it crashes ashore.

The product must be a report that provides a thorough recitation of existing conditions and assets, discernable growth trends, governance and service limitations relative to accommodating growth, and options for addressing limitations. The work should result in a tool that helps the County to prioritize capital improvements, identify viable projects, seek future capital funding, and work with our public and private partners in the Plymouth community.

Workscope

The following scope of work indicates the broad areas of consideration. A more refined workscope will be negotiated with the selected consultant during the contracting phase. Elements to be addressed in the feasibility study and needs assessment should include but are not limited to:

- Describe existing conditions and identify the full range of existing and potential community assets in the Plymouth vicinity, including land and shoreline resources.
- Community vision, County staff will arrange for and assist the consultant with community interests to update the current vision for Plymouth that is in the Comprehensive Plan. Due to time and budget constraints, probably only one community meeting will be possible.
- Development trends in the Plymouth area. What is the twenty-year outlook?
- Describe the kinds of commerce and industry that the Plymouth area is best suited to support.
- Water and sewer – what is the current situation? What would be the minimum population and water resources capacity required to cost effectively construct a package or “starter” waste-water plant that would also be capable, for example, to be expanded for accommodation of process-water from agricultural processing plants.
- Describe the options for water and sewer systems/districts administration.
- Describe the approximate costs to sewer the existing residential and commercial developments, and service revenues from them, as a part of building a plant for a new population.
- Identify optimal locations for a waste water plant.
- Housing – describe capacity and needs.
- Describe transportation/local circulation plan options.
- Utilities other than water and sewer – capacity and needs.
- Parks, recreation, and open space needs.
- Education/school needs.
- Identify the gross acreage need for a small community with the characteristics and assets inherent in this list at Plymouth, with estimated acreage needs per land use and residential density at an average of 6 dwelling units per acre.

Deliverables

- A report to the County in the form of a bound document (5 copies), and in the form of a PDF document that can easily be posted on the County website and burned to compact discs for wider distribution.
- An oral report to the Board of County Commissioners detailing the process and the findings.

Public Process

At this time, one public meeting is foreseen to understand community vision and gain insights on existing and future conditions.

Schedule

Important dates:

- RFP advertised in THC and SDJC: Mar 10, 2008
- Submittals due: Mar 28, 2008
- Candidate selection announced Apr 02, 2008
- Project completion: Jun 30, 2008

Before awarding a contract for services, Benton County must receive copies of the successful proponent's current business license and certificates of insurance. Thereafter, work will begin immediately upon execution of an agreement.

Budget

The County's budget for the project is a maximum of \$30,000.00.

Insurance

1. Worker's Compensation insurance in accordance with the statutory coverages required by the State of Washington and Employer's Liability insurance with limits not less than \$1,000,000 each' accident for bodily injury by accident or bodily injury by disease and, where applicable, insurance in compliance with any other statutory obligations, whether state or federal, pertaining to the compensation of injured employees assigned to the work.
2. Commercial General Liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage, including coverage for premises and operations liability, broad form property damage liability and personal injury liability.
3. Commercial Automobile Liability on all owned, non-owned, hired, and rented vehicles with limits of liability of not less than \$1,000,000 combined single limit for bodily injury and property damage per each accident or loss.
4. Umbrella/Excess Liability insurance coverage of not less than \$1,000,000 per occurrence and annual aggregate providing coverage in excess of General Liability, Automobile Liability, and Employer's Liability.
5. Professional Liability insurance with limits of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.

Each policy of insurance required by this section shall provide for no less than thirty (30) days advance notice to Benton County prior to cancellation.

In addition, the County, its officers, employees, and volunteers shall be named as "Additional Insured" by all contractors and subcontractors and a "Waiver of Subrogation" shall be included in favor of the County.

The insurance shall be placed with insurers with a Best's rating of at least VII. Certificates of insurance, including all of these requirements, are required prior to signature of the contract.

Response

In submitting proposals, each respondent acknowledges that Benton County shall not be liable to any person for the costs incurred therewith or in connection with costs incurred by any respondent in anticipation of County action approving or not approving any proposed agreement. The County may accept or reject any proposal or proposed agreement without limitation. Nothing in this RFP or in subsequent negotiations creates any vested rights in any person.

Submittals should include four essential pieces:

1. Letter of Transmittal

2. Narrative

Brief resumes of the "principal-in-charge" and the key technical personnel to be assigned to this project. Discuss the experience of these persons and relate that experience to this project. (maximum 3 pages)

A proposed work program designed to satisfy the requirements listed in the Workscope section. Include the schedule you intend to follow in order to complete the project and a work plan. (maximum 5 pages)

3. Portfolio of Prior Work

A copy of work from a previous similar project completed by your team.

4. References

Provide contact information for at least three references who can attest to your team's ability to complete this project on time and within budget.

Respondents should submit 3 copies of their proposal.

Submittals must be in the form of hard copy and may be hand-delivered, mailed via post, or delivered via courier. No facsimile will be accepted. Submittals shall be delivered in a sealed manner and clearly marked on the outside of the package. Submittals should be made to:

**Adam J. Fyall
Benton County Facilities and Parks Department
7122 West Okanogan Place, Building A
Kennewick, Washington 99336**

Submittals must be received by 4:00pm, Friday, March 28, 2008. No exceptions.

Selection

A review panel will be assigned by the County Commissioners to evaluate the submittals based on parameters described above in the Response and Workslope sections. The review panel's evaluation will result in a recommendation to the Board of County Commissioners of a consultant to whom the County should offer a contract. The Board of County Commissioners will make the final decision during a regular business meeting in Prosser. No in-person interviews are anticipated.

Inquiries

All questions and comments regarding the RFP should be directed to Adam J. Fyall, Benton County Community Development Coordinator, on 509-736-3053, or at the addresses listed above.

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RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN TRIAL COURT IMPROVEMENT FUND NUMBER 0156101, DEPARTMENT NUMBER 000.

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

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

cc: L. Ivey; Auditor; File

SmithKelty

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Trial Court Improvement Dept Nbr: 000
 Fund Name: Trial Court Improvement Fund Nbr: 0156101

TRANSFER FROM: _____ TRANSFER TO: _____

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.815.	4103	Professional Services	\$21,000	512.815	2102	Social Security (FICA)	\$1,500
				512.815	1905	Temporary Help	19,500
TOTAL			\$21,000	TOTAL			\$21,000

Position budgeted in 2008 within the Current Expense Fund - Superior Court Department, when it should have been budgeted in 2008 within the Trial Court Improvement Fund.

Prepared by: Loretta Smith Kelly Date: 10-Mar-2008
 Approved Denied Date: _____

Chairman

Member

Member

hh.

RESOLUTION

IN THE MATTER OF RESCINDING RESOLUTION 07-405 ESTABLISHING A SALARY GRADE FOR THE EXTENDED TEMPORARY PART TIME JUDICIAL LAW CLERK IN THE SUPERIOR COURT ADMINISTRATOR'S OFFICE

WHEREAS, Resolution 07-405 establishing a salary grade for the extended temporary part time judicial law clerk in the Superior Court Administrator's Office must be rescinded, **NOW THEREFORE**,

BE IT HEREBY RESOLVED that Resolution 07-405 is hereby rescinded.

Dated this day of, 20

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County
Commissioners of Benton County,
Washington

Attest:
Clerk of the Board

9:05 am

Legislative Update

Comnr. Bowman

9:20

AGENDA ITEM MTG. DATE: March 10, 2008 SUBJECT: Fee schedule revisions for the Benton County Building Department Memo Date: March 5, 2008 Prepared By: Carel Hiatt Reviewed By: Terry A. Marden	<u>TYPE OF ACTION NEEDED</u> Execute Contract Pass Resolution X Pass Ordinance Pass Motion X Other	Consent Agenda Public Meeting X 1st Discussion 2nd Discussion Other
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BACKGROUND INFORMATION

The Commissioners on August 18, 2003 conducted a public meeting and approved the eliminating of the processing fee schedule (Resolution 03-478) as the Building Department was collecting excess fees do to the amount of building activity. When the processing fees were eliminated in 2003 our discussion with the Home Builders Association was that if needed in the future the fee may be reinstated. The Board on March 10, 2008 at 9:20 a.m. will be conducting a public meeting with regards to the reinstatement of the processing fee schedule in the amount of ten percent (10%). As indicated in the attached information every year for the last four years the beginning balance funds have been decreasing. The projected budget for 2008 including the beginning balance from 2007 provides for only an estimated \$50,000 beginning balance for 2009. We need at least a \$150,000 to \$200,000 beginning balance each year to accommodate anticipated expenditures early in the year until revenues pick up. Re-implementing the ten per cent processing fee should allow the building department to rebuild revenues over the next several years to a more comfortable beginning yearly balance. This is providing the building activity remains at the current yearly level and legislation is unchanged regarding building fees.

Staff from the Building Department met with Jeff Losey, Duane LaPierre and Kyle LaPierre from the Home Builders Association of Tri-Cities on Tuesday, March 4th. As a result of that meeting, they indicated that they would send correspondence indicating no objection to the implementation of the processing fee at this time with the understanding that if the revenues increase substantially over the next several years that the processing fee may be eliminated again.

The attached legal for the public meeting was published in the Tri-City Herald on Tuesday, February 26, 2008. Attached is a copy of the proposed fee schedule for the Benton County Building Department labeled as Exhibit "A".

SUMMARY

A public meeting has been set for 9:20 a.m. on March 10, 2008, to discuss the Benton County Building Department implementing the ten percent (10%) processing fee schedule that was eliminated in August of 2003.

RECOMMENDATION

The recommendation of the Benton County Building Department is to have the Board receive comments on the draft fee schedule implementing the ten percent (10%) processing fee. Staff recommends approval of the fee schedule as proposed by the building department to be effective on April 1, 2008.

FISCAL IMPACT

The fiscal impact to the County would be an increase in revenue due to the proposed ten percent (10%) processing fee schedule.

MOTION

At the conclusion of the public meeting the Board will need to pass a motion approving the fee schedule regarding the implementation of the ten percent (10%) processing fee as proposed by the Building Department or as revised by the Board to begin April 1, 2008.

ATTACHMENTS: Building Department Fee Schedule – Exhibit "A"
Legal notice
Treasurer's Financial Statements for 1/2005 thru 1/2008

EXHIBIT "A"

BUILDING AND FAS PERMIT FEE SCHEDULE AS AUTHORIZED BY RESOLUTION OF THE BENTON COUNTY COMMISSIONERS

BUILDING PERMIT FEE SCHEDULE: Table 1-A 1997 Uniform Building Code (Valuation is based on 88% of the building valuation data schedule published by the Uniform Building Standards).

Plumbing systems:	Table 1-1 1997 UPC
Mechanical systems:	Table 1-A 1997 UMC
Address posts:	\$25.00
H2O Heater:	\$27.00
Fences:	\$51.50
Special Inspection:	\$47.00
Reinspection Fee:	\$47.00
Grading Fee:	Table 33-A & B 1997 UBC
Wood or Pellet Stove:	\$34.00
Gas Stove Insert:	\$34.00
Gas Piping only:	\$25.00
Fuel Tank Decommission/Abandonment:	\$47.00
Heat Pump:	\$34.00
A/C:	\$34.00
Furnace Gas/Elec:	\$38.00
Swimming pool (In-ground)	\$69.50
Swimming pool (Above ground)	\$39.50
Title Elimination Fee:	\$50.00
City Sewer:	\$35.00
City Sewer with backflow:	\$42.00
Railroad cars Shipping Containers:	\$51.50
Pre -Fab Sheds Stick Steel:	\$51.50
Propane Tank Installed Abandonment:	\$51.50
Reroofing:	\$51.50
Demolition fee:	\$ 4.50

PERMIT FEES ARE BASED ON THE FOLLOWING VALUATIONS:

Single Family Dwelling (up to and including 2500 sq.ft.)	\$58.00 per sq.ft.
Single Family Dwelling (2501 sq.ft. or more)	\$80.00 per sq.ft.
Moved Single Family Dwelling:	\$29.00 per sq.ft.
Unheated Bonus Room:	\$21.00 per sq.ft.
Heated Basement:	\$58.00 per sq.ft.
Unheated Basement:	\$29.00 per sq.ft.
Addition - Residential:	\$58.00 per sq.ft.
Remodel - Residential:	\$29.00 per sq.ft.
Stick Frame Residential Garage:	\$21.00 per sq.ft.
Steel Building Shed with slab and elec.	\$21.00 per sq.ft.
Steel Building Shed without slab:	\$13.00 per sq.ft.
Quanset Hut enclosed with slab:	\$18.50 per sq.ft.

Quanset Hut - open:	\$11.00 per sq.ft.
Concrete Block Residential:	\$23.50 per sq.ft.
Pole Building Residential – enclosed 3 or more sides:	\$12.50 per sq.ft.
Pole Building Residential – open:	\$11.00 per sq. ft.
Decks – covered:	\$12.50 per sq.ft.
Decks – open and 30" or more above grade:	\$11.00 per sq.ft.

Factory Assembled Structure/Mobile Homes (FAS)

Single Wide:	\$187.50
Double Wide:	\$250.00
Triple Wide:	\$312.50
Each Section over three(3)	\$50.00

All permits will be charged a 10% processing fee.

All commercial and industrial permits will be charged a 65% plan review fee plus a 10% processing fee. Valuation is based on 88% of the Building Valuation Data Schedule published by the 1997 Uniform Building Standards. In the event the project is not covered, a contract bid shall be provided.

A State Building Code (currently \$4.50) fee will be charged for each permit when required per the most recent RCW adoption. REF.19.27.

Exempted permits from the State Building code Fee's are – Excavation and grading, plumbing, mechanical, special inspections and reinspections, FAS and FAS reapplications that do not meet the IBC standards. Permits issued pursuant to the International Fire Code.

L/33/08

Benton County Planning/Building Department

Terry A. Marden, Director

PLANNING
Planning Annex
P.O. Box 910, 1002 Dudley Avenue
Prosser WA 99350
Prosser Office: (509) 786-5612
Tri-Cities: (509) 736-3086
Fax: (509) 786-5629

BUILDING
Kennewick Annex
5600 W. Canal Drive, Suite C 105A
Kennewick WA 99336
Tri-Cities Office: (509) 735-3500
From Prosser: (509) 786-5622
Fax: (509) 736-2732

NOTICE OF PUBLIC MEETING

The Benton County Board of Commissioners will be conducting a public meeting on Monday, March 10, 2008 at 9:20 a.m. in the Commissioners' Meeting Room, Third Floor, Courthouse, Prosser, Washington to discuss and review revisions to the Building Department fee schedule. The Building Department is proposing to implement the ten percent (10%) processing fee schedules. The Board of County Commissioners' will, at this time, receive any comments and make a decision on the fees to be imposed by the Benton County Building Department. THE MEETING IS OPEN TO THE PUBLIC SHOULD A MEMBER OF THE PUBLIC WISH TO COMMENT.

The proposed fee schedule will be available upon request from the Benton County Building Department – 5600 West Canal Drive – Kennewick, WA 99336 or by calling 735-3500 or the Benton County Planning Department at P O Box 910 – Prosser, WA 99350 or by calling Prosser at 509-786-5612 or Tri-Cities 736-3086 or by visiting our web site at www.co.benton.wa.us.

Benton County welcomes full participation in public meetings by citizens. No qualified individual with a disability shall be excluded or denied the benefit of participating in such meetings. If you wish to use auxiliary aids or require assistance to comment at this public meeting, please contact the Benton County Planning Department at the above stated phone numbers and/or address at least ten days prior to the date of the meeting to make arrangements for special needs.

Dated this 21st day of February, 2008

PUBLICATION DATE: TUESDAY, FEBRUARY 26, 2008

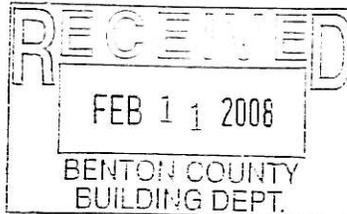
RUN DATE: 02/05/08
Run Time: 14:24

BENTON COUNTY TREASURER
Duane A. Davidson
Financial Statement
1/1/2008 through 1/31/2008

Report
Page: 42

0149-101 PROTECTIVE INSPECTION & SERVICES
CASH ACCOUNT

Beginning Balance		\$245,664.80
Taxes Collected	\$0.00	
General Receipts	42,407.43	
Transfer of Funds(+)	0.00	
Miscellaneous Collections	0.00	
Total Receipts		42,407.43
Warrants Issued	69,554.24	
Warrants Redeemed	0.00	
Bond Redeemed	0.00	
Coupon Interest Paid	0.00	
Transfer of Funds(-)	0.00	
Remittances	20,311.72	
Less: Total Disbursements		89,865.96
Ending Balance		\$198,206.27



Bldg

RUN DATE: 02/05/07
Run Time: 10:51

BENTON COUNTY TREASURER
Duane A. Davidson
Financial Statement
1/1/2007 through 1/31/2007

Report
Page: 43

0149-101 PROTECTIVE INSPECTION & SERVICES
CASH ACCOUNT

Beginning Balance		\$328,330.06
Taxes Collected	\$0.00	
General Receipts	50,339.84	
Transfer of Funds(+)	0.00	
Miscellaneous Collections	0.00	
Total Receipts		50,339.84
Warrants Issued	73,507.55	
Warrants Redeemed	0.00	
Bond Redeemed	0.00	
Coupon Interest Paid	0.00	
Transfer of Funds(-)	0.00	
Remittances	18,345.34	
Less: Total Disbursements		91,852.89
Ending Balance		\$286,817.01

FEB - 2007

RUN DATE: 02/02/06
Run Time: 16:02

BENTON COUNTY TREASURER
Duane A. Davidson
Financial Statement
1/1/2006 through 1/31/2006

Report
Page: 47

0149-101 PROTECTIVE INSPECTION & SERVICES
CASH ACCOUNT

Beginning Balance		\$545,619.06
Taxes Collected	\$0.00	
General Receipts	32,307.50	
Transfer of Funds(+)	0.00	
Miscellaneous Collections	0.00	
Total Receipts		32,307.50
Warrants Issued	130,462.85	
Warrants Redeemed	0.00	
Bond Redeemed	0.00	
Coupon Interest Paid	0.00	
Transfer of Funds(-)	0.00	
Remittances	11,010.25	
Less: Total Disbursements		141,473.10
Ending Balance		\$436,453.46

FEB 02 2006

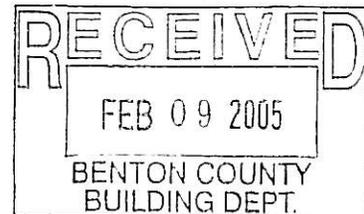
RUN DATE: 02/04/05
Run Time: 10:44

BENTON COUNTY TREASURER
Duane A. Davidson
Financial Statement
1/1/2005 through 1/31/2005

Report
Page: 50

0149-101 PROTECTIVE INSPECTION & SERVICES
CASH ACCOUNT

Beginning Balance		\$633,233.55
Taxes Collected	\$0.00	
General Receipts	31,602.00	
Transfer of Funds(+)	0.00	
Miscellaneous Collections	0.00	
Total Receipts		31,602.00
Warrants Issued	61,396.15	
Warrants Redeemed	0.00	
Bond Redeemed	0.00	
Coupon Interest Paid	0.00	
Transfer of Funds(-)	0.00	
Remittances	10,065.75	
Less: Total Disbursements		71,461.90
Ending Balance		\$593,373.65



<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	<u>Consent Agenda</u>
MTG. DATE: March 10, 2008	Execute Contract	Public Hearing X
SUBJECT: Appeal of Admin. Decision - SHPA 08-03 – Troy Sanchez	Pass Resolution X	1st Discussion
MEMO DATE: March 4, 2008	Pass Ordinance	2nd Discussion
Prepared By: Michael Shuttleworth	Pass Motion X	Other
Reviewed By: Terry A. Marden	Other	

BACKGROUND INFORMATION

On February 6, 2008, our office received a written appeal letter from Troy & Jill Sanchez to the Board of County Commissioners regarding the Short Plat Administrator's requirement to provide a 40-foot access easement for their short plat approval. On January 11, 2008 Mr. & Mrs. Sanchez submitted to the Planning Department a short plat application SHP 08-01 to subdivide 20 acres into 2 lots. On January 30, 2008, Mr. & Mrs. Sanchez were sent a letter from this office indicating that the Short Plat would be approved provided 13 conditions were satisfied. Condition No. 5 stated that the private road easement must have a width of at least 40 feet not including any utility and irrigation easements. The Short Plat map submitted with the application showed the width of the road and utility easement as 33 feet. The 33-foot easements were dedicated as part of the Section 8 plat created by the Federal Government. While this proposed short plat is within unincorporated Benton County, the access to the property is within the City of West Richland. Also using the existing 33-foot road and utility easement are three existing lots two of which are part of a short plat approved by the City of West Richland.

Attached to this memo are copies of comments from the City of West Richland, Janet Clark Gunter and James D. Clark. Also attached to this memo are: the appeal letter from the applicant; copy of the proposed short plat; aerial photo of the site; and, an amended local roadway plan from the City of West Richland adopted December 4, 2006

SUMMARY

Troy & Jill Sanchez are requesting that the Board grant their appeal to the Short Plat Administrator's decision that a 40-foot access easement be provided to serve this plat prior to the recording of the short plat. The Board following the public hearing may affirm or reverse the Short Plat Administrator's decision or remand the application back to the Short Plat Administrator with instructions to approve the same upon compliance with the conditions imposed by the Board, if any.

RECOMMENDATION

The Planning Department recommends that the Board approve the applicant's request to serve the proposed short plat with the existing 33 foot access easement and remand the application back to the Short Plat Administrator with instruction that Short Plat Application 08-01 be approved with all the conditions except condition number 5 be modified so that the short plat can be served by a 33 access and utility easement.

FISCAL IMPACT

None

MOTION

The Planning Department recommends the following motion: The Board of County Commissioners approve Troy & Jill Sanchez's request to serve their short plat with the existing 33 foot access easement and remand the application to the Short Plat Administrator with instructions to modify item number 5 in the January 30, 2008 letter to read as follows: "A recorded or patented 33-foot access and utility easement must serve this short plat from Northlake Dr. to the west property line of Lot 1. Please be sure the appropriate width and AF number of each easement is shown on the short plat."

February 19, 2008

Benton County Facilities & Parks
Attn: Roy Rogers
7122 W. Okanogan Pl.
Kennewick, WA 99336

Roy:

Re: Benton County Countywide Physical Storage Needs Study

The following report is provided for your use per the scope of work that we discussed following the direction we were given in the County Commissioner's hearing Monday, July 23, 2007.

We were asked to conduct a countywide study to determine the total physical storage needs of all departments. This study was to cover all department locations – both in Prosser and in the Kennewick area.

The study process consisted of visits with all department heads or their representatives. The first task was to identify and evaluate existing physical storage use. This information was compared to the similar information we obtained in the 2004 study of space needs with the department heads. The next task was to compare the two findings. From this, projections of future needs were made. Based on that information, we developed a five year and a ten year projection of physical storage needs. It was difficult to define a twenty year projection of physical storage space needs due to the development of new digital technology and the uncertainty of the future rules that will be developed to allow or disallow the use of a more paperless records retention system for all departments. Therefore, no twenty year projections were made.

There are two major areas of physical storage needs. They center on the function of the County Judicial and Administrative functions in Prosser and those in Kennewick.

In the Prosser area:

When the building was constructed for the County Public Works Road Maintenance shop, a large physical storage area was included to take care of their immediate and foreseeable future needs. Some additional physical storage capacity exists in this facility.

The overall physical storage needs and solutions for the remaining County functions in Prosser are somewhat difficult to tie down. A proposed addition to the existing Courthouse building has been in the evaluation/study design stage. A final decision has not been made to build the addition. Various plan layouts have been developed. Any of these proposed additions to the Courthouse will require the brick building to be torn down. This is the current primary physical storage for the County offices in Prosser.

If a two story addition is built, the Planning Department and the WSU Extension offices would be able to move into the addition. This will free up the WSU and Planning buildings to be used as physical storage facilities. These two buildings, and the additional physical storage space planned in the two story addition, will accommodate the current and ten year needs for the County's storage in Prosser.

If a one story addition is constructed just to take care of the life safety concerns of the present courtroom and support facilities, the brick storage building will still need to be torn down. The WSU Extension offices would be able to be moved into the remodeled Courthouse. This will free up the WSU building to be used as a physical storage facility. As mentioned above, there is some additional physical storage space built into the Roads Maintenance facility. This could be used, but it is not a convenient physical storage area for the Departments in the Courthouse and the Planning Department. Public physical storage areas could be rented if the facility can provide a secure, temperature and humidity controlled environment. There are sensitive documents stored in the old building. Again, this would not be adjacent to the Courthouse.

For this reason, a one story addition with remodeling in Prosser and a new Kennewick Administration Building will better accommodate the space and physical storage needs.

In the Kennewick area:

The new County Health Department building has been designed to accommodate their physical storage needs on site. Currently, they are renting public physical storage units off site. This will be eliminated when they move into the new building.

Accompanying this report is a spreadsheet that addresses the current, five year and ten year physical storage needs of the Judicial and Administrative needs of the County in Kennewick. In most cases, the current physical storage for the Prosecuting Attorney, Clerk, Superior and District Courts are housed in the 2001 addition to the Benton County Justice Center. Large numbers of files are being stored on the unfinished second floor area of the addition where the floor structure was not designed for heavy file storage loading. The files stored in this area are overflow from the physical storage areas originally designed into the 2001 addition. The increased volume of court cases has surpassed the estimated need used in the original design.

The Jail currently has a shortage of physical storage space for records, evidence and general supplies. There are physical storage rooms throughout the new Jail on all floors. Most of them are fully utilized at this time. The growth in evidence storage is a reflection of the number of cases handled. The amount of evidence and confiscated items has used

Page 3 – Benton County Countywide Physical Storage Needs Study

almost all available physical storage that was designed into the 2001 addition. General supplies are housed throughout the facility, but a bulk storage area for the large shipments would allow for more control. Records and general supplies can be housed in areas outside the secured perimeter of the Jail and Sheriff's area. Evidence storage needs to be in a tight security environment.

A new building dedicated for storage is shown on the attached drawings. It consists of three floors with 8,000 SF on each floor. Stairs, restrooms and an elevator are shown on each floor. The building as drawn would have a covered walk to the Justice Center that would allow access to the main level of the new building. The drawing also shows an elevated walk with a lightweight roof cover to keep off rail and snow from the two walks below.

The total projected additional storage requirements in Kennewick in five years are estimated to be 14,868 SF net space. In ten years, it is estimated to be 17,862 SF net space. The three story proposed building, if constructed, will add a total of 17,412 SF net storage space.

The building is shown on the attached site plan. It is located in the sunken area that was once the main entrance to the Justice Center. It is seldom used and is not a public access point to the Justice Center. It is a good site for the proposed building since it can provide immediate access to the first and second floors of the Center.

Please provide your comments on this report and proposed building. I will be happy to make any revisions you may require.

Thank you for allowing us to perform this project for the County.



Wayne Hunsucker, AIA
CWH Architects, PS

Attachments

BENTON COUNTY JUSTICE CENTER STORAGE NEEDS EVALUATION

Completed, Feb. 6, 2008

EXISTING STORAGE AREA / LOCATION	SF	GROWTH		AREA		USE OF EXISTING SPACE
		FACTOR	SF	PROVIDED	FLOOR	
PROSECUTING ATTORNEY BCJC 2nd floor vacant space	1502	3	4506	4680	SECOND	VACANT/FUTURE OFFICES
SUPERIOR COURT BCJC 2nd floor vacant space	1121	2	2242	2206	MAIN	VACANT/FUTURE OFFICES
FACILITY/GENERAL and central services BCJC 2nd floor vacant space	850	1.5	1275	1228	LOWER	VACANT/FUTURE OFFICES
COURTS ARCHIVAL STORAGE BCJC 2nd floor room 625b	624	2	1248	1147	MAIN	COURTS STORAGE
FACILITY - DRAWING & FILE ARCHIVES BCJC 2nd floor storage room 625h	240	3	720	725	SECOND	FACILITY STORAGE
SHERIFF RECORDS Sheriff's office by conference room	375	2	750	725	LOWER	RECORDS/EVIDENCE
JAIL RECORDS / INMATE FILES Jail - misc. storage rooms	1000	2	2000	1902	LOWER	GENERAL JAIL STORAGE
JAIL GENERAL SUPPLIES Jail - misc. storage areas	800	1.5	1200	1190	LOWER	JAIL GENERAL SUPPLIES
SHERIFF CONFISCATED ITEMS Sheriff old sallyport & shed	430	2	860	892	LOWER	EVIDENCE STORAGE
DISTRICT COURT	706	2	1412	1260	MAIN	DISTRICT COURT
COURTS EVIDENCE STORAGE 625a BCJC 2nd floor room 625b	599	1	599	535	SECOND	COURTS EVIDENCE STO.
BUILDING DEPARTMENT VARIOUS	525	1.5	788	922	MAIN	VARIOUS CONTINUED
		TOTAL NET	17600	17412	SF	

ESTIMATED CONSTRUCTION COST	24000 SF	\$82	\$1,968,000
CONSTRUCTION CONTINGENCY		5.00%	\$98,400
WSST		8.30%	\$163,344
FFE, AE, FEES, SURVEY, PERMITS, PRINTING , ETC		15.00%	\$295,200
TOTAL ESTIMATED PROJECT COST			\$2,524,944

Prepared BY:



C. Wayne Hunsucker, AIA
CWH Architects, PS

9:55

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>3-10-08</u> Subject: _____ Prepared by: <u>LSK</u> Reviewed by: _____	Execute Contract Pass Resolution Pass Ordinance Pass Motion Board Direction	Consent Agenda Public Hearing 1st Discussion X 2nd Discussion Workshop

SUMMARY BACKGROUND INFORMATION

In 2006 NACo launched the Prescription Drug Discount Card Program. Since then, nine Washington State counties are participating: Clallam, Clark, Jefferson, Okanogan, Skagit, Skamania, Snohomish, Walla Walla, and Whitman.

Included in your packet is the following information.

Exhibit C – contract that attaches the County to the overall NACo contract.

Memo from Ryan Brown – legal analysis.

Agreement pages 1-11, Exhibit A page 12, Exhibit B pages 13-15 and Exhibit D pages 16-29 are for informational purposes only.

CAREMARKPCS HEALTH, L.P.
NATIONAL ASSOCIATION OF COUNTIES
MANAGED PHARMACY BENEFIT SERVICES AGREEMENT
FOR MEMBER COUNTY

This Managed Pharmacy Benefit Services Agreement for Member County effective _____
is entered into by and between CaremarkPCS Health, L.P. ("Caremark") and _____

("Member County"). Reference is hereby made to the Managed Pharmacy Benefit Services Agreement Consumer Card Program dated as of March 1, 2006 (the "Agreement") among National Association of Counties ("Customer"), Member County, and Caremark under which Customer has engaged Caremark to provide services to prescription drug plans for Customer and its Member Counties.

MEMBER COUNTY does hereby agree to be bound by, and to assume and perform, each and all of the terms, covenants and conditions of the Agreement as Member County (as defined in the Agreement) in the same manner and to the same extent as if it were a party thereto. Member County acknowledges and agrees that Customer and Caremark may amend all or any portion of the Agreement, except with respect to the Initial Term, and Member County hereby agrees to be bound by any such amendment. Customer shall give Member County reasonable notice prior to the effective date of any such amendment. If such amendment is adverse to Member County or its Participants, Member County may, within ninety (90) days of receiving such notice from Customer, terminate its participation in the Agreement by giving prior written notice to Customer and Caremark.

Each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement. Further, Caremark shall ensure that individuals meeting the definition of "Covered Persons" (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and AdvancePCS) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. In addition, Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at <http://www.caremark.com/wps/portal/s.155/3370?cms=CMS-2-007764>.

Customer and Caremark, by their signatures hereto, accept and agree to Member County's participation with the Agreement under the terms and conditions of the Agreement. By signing this Managed Pharmacy Benefit Services Agreement for Member County, Member County acknowledges and agrees that the terms of the Agreement have been completely read, fully understood and voluntarily accepted and further agrees to be bound thereby.

NATIONAL ASSOCIATION OF COUNTIES

By: _____

Title: _____

Date: _____

CAREMARKPCS HEALTH, L.P.

**By: CaremarkPCS Health Systems, LLC, its
General Partner**

MEMBER COUNTY:

By: _____

[County Name]

Title: _____

By: _____

Date: _____

Title: _____

Date: _____

CAREMARKPCS HEALTH, L.P.

MANAGED PHARMACY BENEFIT SERVICES AGREEMENT

CONSUMER CARD PROGRAM

THIS RESTATED AGREEMENT (the "Agreement") is effective beginning March 1, 2006 (the "Effective Date") among National Association of Counties ("Customer"), counties that are members of the National Association of Counties ("Member County") and CaremarkPCS Health, L.P., formerly known as AdvancePCS Health, L.P. ("Caremark"), for the purpose of delineating the terms and conditions under which Caremark will provide certain managed pharmacy benefit services to Member County and Customer. This restated agreement will amend and replace all existing Member County Agreements.

Customer agrees that it will require each Member County to execute an individual agreement with Caremark in the form attached hereto as Exhibit C (the "Member County Agreement") prior to Caremark's providing Services to such Member County. Caremark will not provide Services to Member County prior to the receipt of the Member County's execution of the Member County Agreement.

1. STATEMENT OF SERVICES / OBLIGATIONS.

1.1 **Services.** Caremark will provide Member County the services as set forth in this Section 1, and the services described in any attachment, addendum or amendment hereto (collectively the "Services"). Caremark may make changes to the Services from time to time so long as such changes do not materially alter any of the provisions of this Agreement.

1.2 **Participating Pharmacies.** Caremark has created a network of Participating Pharmacies, which will perform pharmacy services for Participants.

1.3 **Pharmacy Help Desk and Voice Response Unit.** Caremark will provide Participating Pharmacies with help desk assistance and access to Caremark's voice response unit during Caremark's hours of operation.

1.4 **Claims Processing.**

a. **Submission of Claims.** Caremark will adjudicate Claims submitted by Participating Pharmacies to Caremark in accordance with the Participating Pharmacy's agreement with Caremark and the Consumer Card Program.

b. **Collection at Point of Sale.** Customer and Member County acknowledge that Participating Pharmacies will collect from the Participant one hundred percent (100%) of the applicable prescription price, discounted at the rates set forth on Exhibit B as applicable, plus a transaction fee from the Participant.

1.5 **Customer Service.** Caremark will make available to Customer, Member County and Participants a toll free number during those hours of operation maintained by Caremark. Staff will be available to answer questions on the Consumer Card Program and Consumer Card Program guidelines.

1.6 **Identification Cards.** Caremark will, at its own cost, produce identification cards for Participants, which contain Member County's and Customer's logo(s). Identification cards will be available to any individual the Member County or Customer deem appropriate. Caremark will work with Member County on the distribution method for identification cards; provided, however if Member County requests that Caremark mail the identification cards to Members, postage and handling charges will apply. The Participant shall be responsible for paying for any prescriptions obtained while using the identification card.

1.7 **Clinical Services and Drug Utilization Review ("DUR").**

a. **Clinical Services.** Caremark may provide to Member County its member compliance programs and other programs designed to ensure proper drug utilization and encourage the use of cost-effective

RECEIVED

FEB 28 2008

BENTON COUNTY COMMISSIONERS

BENTON COUNTY PROSECUTOR 7122 W. Okanogan Place, Bldg. A Kennewick WA 99336 Telephone: 735-3591 Fax: 736-3066	
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Max	<input checked="" type="checkbox"/>
Leo	<input checked="" type="checkbox"/>
Claude	<input checked="" type="checkbox"/>
David	<input checked="" type="checkbox"/>
Loretta	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

TO: Loretta Smith-Kelty, Deputy County Administrator

FROM: Ryan Brown, Chief Deputy PA (Civil) *RKB*

DATE: February 27, 2008

RE: Caremark Prescription Discount Card Program

We understand that you intend to present the details of this program to the Board of Commissioners to determine whether the Board would like the county to participate in this program facilitated through NaCo.

You have asked our office to advise of any concerns we may have regarding the terms of the Managed Pharmacy Benefit Services Agreement with Caremark RX, Inc. that the County would have to execute in order to become a participant. Generally speaking, under the agreement Caremark agrees to provide to the County prescription drug discount cards. The County then agrees to distribute such cards to interested County residents. The card holders then can use the cards at participating pharmacies to obtain prescription drugs at a reduced price. Caremark in return obtains rebates or fees from certain drug manufacturers.

Our understanding is that the terms of this agreement with Caremark are non-negotiable. Obviously, you, the Board and any other County employee that may ever be assigned any responsibility regarding the implementation of this program should carefully read through the entire agreement. Set forth below are the provisions we believe you should pay particular attention to from a legal standpoint both when considering whether to enter into the agreement and in the implementation of the agreement if you choose to proceed.

General Observations. Although it does not appear that the County will necessarily incur any significant out of pocket costs in connection with this program, there certainly will be costs in the form of human resources. Some County employee will have to "take ownership" of this project both to insure contract compliance by the County and to insure program success. The contract compliance issues will be discussed below as they pertain to specific contract provisions.

Loretta Smith-Kelty
February 27, 2008
Page 2

The success of the program will also greatly depend on one or more County employees taking ownership of the program. A marketing plan must be developed (in accordance with contract terms) and implemented in order to recruit county residents to make use of the program. Obviously, this will require a fair amount of someone's time in order to get the program up and running.

Additionally, a County employee will need to devote time to organizing and managing the distribution of the ID Cards as well as to responding to the inevitable questions from those contemplating entering the program or from those who have questions after they have entered the program.

ID Cards. Under the agreement, the cost of creating the ID cards will be borne by Caremark. It appears that the County will have to pay for shipping and handling to obtain the cards. Section 1.6.

Fees. Section 2.1 and Exhibit B describe the fees involved with the program. These provisions are not written very clearly, but they appear to provide that no fees will be charged to the County (other than possibly shipping and postage of ID cards) unless the County asks for some sort of custom tailored program. Caremark earns money by retaining rebates offered by manufacturers of the drugs sold under the program.

Marketing Materials. The County agrees in Section 3.1 to only use marketing materials approved by Caremark." Caremark will provide, free of charge, its standard marketing brochures and advertising materials for this program. If the County desires to use any other marketing materials or tools it must first obtain approval from Caremark and pay Caremark if it assists in the creation of such materials.

Confidentiality/Non-Disclosure. Caremark apparently believes that certain information in the agreement is proprietary, so it does not want the terms of the agreement disseminated to third parties. Consequently, under the agreement the County must agree to keep the terms of the agreement and related materials confidential and not to voluntarily disclose such documents to third parties. Sections 5.1 through 5.8. Furthermore, the County must agree to disclose the terms of the agreement only to County employees with a need to know, who have been informed of the confidential nature of the agreement and related materials, and who have agreed not to disclose the information.

Any unauthorized disclosure could, as referenced in Section 5.8,

Loretta Smith-Kelty
February 27, 2008
Page 3

subject the County to legal action and obligate it to pay Caremark's legal fees.

The agreement does acknowledge that the County may be legally required to disclose the agreement and related materials in response to a subpoena or a public records request. Section 5.1 and 5.4. However, by entering into the agreement the County promises that prior to any such disclosure it will give Caremark notice of the request or subpoena and an opportunity to object.

These provisions are somewhat concerning to us. This program could run for a number of years, during which County employees may come and go. If you decide to execute this agreement, it will be very important for whoever is tasked with managing this program to set up some procedure for maintaining institutional memory regarding these important terms, so that if a records request comes in five years from now, for instance, every County employee that could be responsible for processing that request knows these terms and conditions.

Compliance with All Laws. Under Section 6.4, the County must agree that it will abide by all laws applicable to this prescription drug benefit plan, including without limitation, HIPPA, ERISA and the ADA. Our concern here is not that the County would intentionally violate any applicable law, but that there is some applicable law of which we are unaware that could unintentionally be violated.

Our office has no experience with health care or insurance laws. Therefore, if this provision is of concern to you and you would like to obtain advice from counsel that specializes in these areas of the law, please let us know.

Termination. The County cannot terminate the agreement whenever it chooses. Under Sections 7.1 and 7.2, the agreement will run for one year periods commencing every August 1st. If the County enters into the agreement and later desires to end the agreement without cause, it can only do so effective the following August 1st by giving notice prior to June 1st of that year. Termination for cause is allowed if a notice of breach is given and the breach is not cured within 60 days.

If you have questions about these or any other provisions in the agreement, please let us know.

cc: David Sparks
Board of County Commissioners

CAREMARKPCS HEALTH, L.P.

MANAGED PHARMACY BENEFIT SERVICES AGREEMENT

CONSUMER CARD PROGRAM

THIS RESTATED AGREEMENT (the "Agreement") is effective beginning March 1, 2006 (the "Effective Date") among National Association of Counties ("Customer"), counties that are members of the National Association of Counties ("Member County") and CaremarkPCS Health, L.P., formerly known as AdvancePCS Health, L.P. ("Caremark"), for the purpose of delineating the terms and conditions under which Caremark will provide certain managed pharmacy benefit services to Member County and Customer. This restated agreement will amend and replace all existing Member County Agreements.

Customer agrees that it will require each Member County to execute an individual agreement with Caremark in the form attached hereto as Exhibit C (the "Member County Agreement") prior to Caremark's providing Services to such Member County. Caremark will not provide Services to Member County prior to the receipt of the Member County's execution of the Member County Agreement.

1. STATEMENT OF SERVICES / OBLIGATIONS.

1.2 **Services.** Caremark will provide Member County the services as set forth in this Section 1, and the services described in any attachment, addendum or amendment hereto (collectively the "Services"). Caremark may make changes to the Services from time to time so long as such changes do not materially alter any of the provisions of this Agreement.

1.3 **Participating Pharmacies.** Caremark has created a network of Participating Pharmacies, which will perform pharmacy services for Participants.

1.4 **Pharmacy Help Desk and Voice Response Unit.** Caremark will provide Participating Pharmacies with help desk assistance and access to Caremark's voice response unit during Caremark's hours of operation.

1.5 **Claims Processing.**

a. **Submission of Claims.** Caremark will adjudicate Claims submitted by Participating Pharmacies to Caremark in accordance with the Participating Pharmacy's agreement with Caremark and the Consumer Card Program.

b. **Collection at Point of Sale.** Customer and Member County acknowledge that Participating Pharmacies will collect from the Participant one hundred percent (100%) of the applicable prescription price, discounted at the rates set forth on Exhibit B as applicable, plus a transaction fee from the Participant.

1.5 **Customer Service.** Caremark will make available to Customer, Member County and Participants a toll free number during those hours of operation maintained by Caremark. Staff will be available to answer questions on the Consumer Card Program and Consumer Card Program guidelines.

1.6 **Identification Cards.** Caremark will, at its own cost, produce identification cards for Participants, which contain Member County's and Customer's logo(s). Identification cards will be available to any individual the Member County or Customer deem appropriate. Caremark will work with Member County on the distribution method for identification cards; provided, however if Member County requests that Caremark mail the identification cards to Members, postage and handling charges will apply. The Participant shall be responsible for paying for any prescriptions obtained while using the identification card.

1.7 **Clinical Services and Drug Utilization Review ("DUR").**

a. **Clinical Services.** Caremark may provide to Member County its member compliance programs and other programs designed to ensure proper drug utilization and encourage the use of cost-effective

medications. These programs may include mailings to Participants with active prescriptions for targeted drug products or drug classes or to let Participants know that they may qualify for participation in a clinical trial program. Such mailings may include Participant and drug specific information and/or general educational material. Participants, by notifying Caremark, may opt-out of such programs.

b. **DUR Services.** Caremark will provide its automated concurrent DUR Services for Claims. The information generated in connection with DUR Services is intended as an economical supplement to, and not as a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other health care providers in providing patient care. Providers are individually responsible for acting or not acting upon information generated and transmitted through the DUR Services, and for performing services in each jurisdiction consistent with the scope of their licenses. Notwithstanding anything set forth in this Agreement, Caremark will have no obligation to acquire information concerning any Participant beyond the information that is included in Caremark's eligibility records or the Claims submitted by Participating Pharmacies in connection with the Consumer Card Program.

1.8 **Formulary Services.** Caremark will administer an open formulary for the Member County and will provide certain Services that are designed to provide useful clinical information to physicians (the "Formulary Services"). Caremark may make changes to the Formulary Services described in this Agreement from time to time, and will notify Member County and Customer of any material changes to any formulary management programs. In all cases, the prescribing physician shall have final authority over the drug that is prescribed to the Participant.

a. **Rebate Contracts.** Caremark contracts with certain Manufacturers for Rebate programs.

b. **Disclosure of Manufacturer Fees.** Caremark may receive fees or other compensation from Manufacturers, including, without limitation, administrative fees not exceeding three percent of the aggregate cost of the pharmaceutical products dispensed to participants, and fees for property provided or services rendered to a Manufacturer (which may include providing physicians clinical messages consistent with the Performance Drug List, as defined below). Caremark's specialty pharmacies may also receive fees from Manufacturers for products and services provided. In addition, Caremark's mail order and specialty pharmacies may negotiate on their own behalf directly with Manufacturers for discounts, including rebated discounts based on market share or other factors. The term Rebates as used in this Agreement does not include these fees and discounts which belong exclusively to Caremark or Caremark's mail order or specialty pharmacies, respectively.

c. **Participant Authorizations and Disclosures.** Customer and Member County shall comply with all Laws applicable to it as a sponsor of the Services or as otherwise consistent with its obligations under this Agreement.

d. **Additional Participant Discounts.** Caremark may provide a program that will provide Participants with additional manufacturer discounts on certain drugs at the point of sale. From time to time, Caremark may revise the list of drugs that have additional participant discounts. The current list of drugs on which Participants may receive additional discounts is available upon request. Caremark will timely notify Member County and Customer of any revisions to this list of drugs.

1.9 **Management Reports.** Caremark will provide Member County and Customer with Caremark's standard management reports in connection with the Services, which reports may change from time to time at Caremark's discretion. Member County and Customer may elect to receive a reasonable number of the standard management reports made available by Caremark.

1.10 **Mail Service Program.** Caremark may provide to Member County mail order pharmacy services through its mail order pharmacy facilities. For the duration of this Agreement, Member County agrees that it will offer only Caremark mail order pharmacy services for its Participants covered under this Agreement, as further described below.

Caremark shall fill prescriptions for Participants and shall mail such drugs or medications to such Participants subject to the following terms and conditions:

a. **Distribution of Information.** Caremark shall provide Participants with its standard informational material explaining the mail service and the forms necessary for Participants to utilize mail service. Participants will have toll-free telephone access to a pharmacist and customer service representative. Access to a pharmacist will be available 24 hours per day, seven days per week.

b. **Delivery and Dispensing.** Caremark shall dispense through its mail service pharmacy new or refill prescription orders upon receipt from a Participant of (i) a valid prescription order or a completed refill order form and (ii) the applicable payment. Caremark shall cause the filled prescriptions to be mailed to each Participant via common carrier at the address appearing on the face of the prescription so long as such addresses are in the United States. Caremark shall not be liable to Member County, Customer or Participant for any delay in delivery resulting from circumstances beyond Caremark's control as set forth in Section 6.2.

Caremark's mail order pharmacies may dispense drugs even if the prescription is not accompanied by the correct amount however, Member County and Customer acknowledge and agree that Caremark may refuse to fill any prescription that is either not accompanied by the correct amount and/or for any Participant who has an unpaid balance with Caremark.

1.11 Preferred Drug Program. Caremark and the retail Participating Pharmacies will work together to encourage the use of Preferred Drugs by (i) identifying appropriate opportunities for converting a prescription from a non-Preferred Drug to a Preferred Drug, and (ii) contacting the Participant and the prescriber to request that the prescription be changed to the Preferred Drug. A Preferred Drug is one on the Performance Drug List, which has been developed by Caremark as a clinically appropriate and economically advantageous subset of the Caremark Formulary, as revised by Caremark from time to time.

1.12 Specialty Pharmacy. Caremark's specialty pharmacy service will be provided by a Caremark specialty pharmacy entity or its affiliate ("Caremark SpecialtyRx"), and offers a distribution channel for certain pharmaceutical products that are generally biotechnological in nature, are given by injection, or otherwise require special handling ("Specialty Medications").

Caremark SpecialtyRx shall provide prescription fulfillment and distribution of Specialty Medications and supplies, pharmaceutical care management services, as well as the types of Service that Member County receives under this Agreement, including but not limited to customer services, utilization and clinical management, integrated reporting and Claims processing ("SpecialtyRx Services").

Caremark SpecialtyRx may receive prescriptions from Participants through an affiliated Caremark mail facility or directly via the U.S. Mail or commercial carrier at the address specified by Caremark from time to time and may also receive prescriptions from physicians by fax or by U.S. Mail/commercial carrier. In accordance with the Consumer Card Program, Caremark SpecialtyRx shall dispense Covered Items in accordance with those prescriptions and mail the Covered Items to Participants at the designated address, so long as such address is located within the United States. Caremark SpecialtyRx may not dispense drugs to Participants who fail to submit the correct payment with their prescription.

Caremark SpecialtyRx pharmaceutical care management services include but may not be limited to: (1) patient profiling focusing on the appropriateness of Specialty Medication therapy and care and the prevention of drug-drug interactions; (2) patient education materials; and (3) disease management and compliance programs with respect to Specialty Medications. As part of these services, Participants will be asked to participate in various surveys.

Caremark will provide Member County and Customer with a list of the Specialty Medications and their corresponding rates (which may vary from Network Rates) upon request. Routine supplies (needles, syringes, alcohol swabs) in a sufficient quantity will be included at no additional expense.

2. FEES AND PAYMENT.

2.1 **Fees.** The parties agree that, in lieu of billing Member County a "per Claim" fee for Services, Caremark shall retain 100% of the Rebates as reasonable compensation for the Services. Customer and Member County understand and agree that neither they nor any Participant will share in the Rebate monies collected from Manufacturers by Caremark.

2.2 **Remedies.** In the event Member County or Customer incurs any fee, as identified in Exhibit B, it will pay Caremark such fees as reasonable compensation. In the event any such fees apply and Member County or Customer fails to pay Caremark by the due date any amount owing, Caremark, after making a reasonable effort to collect and upon notice to such Member County or Customer may, in addition to its remedies under this Agreement, at Law or in equity, do any or all of the following: (i) suspend performance of any or all of Caremark's obligations under or in connection with this Agreement with respect to such Member County or Customer, including Caremark's obligation to process Claims or (ii) set off against any amounts payable to such Member County or Customer by any amounts due Caremark from such Member County or Customer.

2.3 **Pricing Changes.** After the Initial Term of this Agreement, as set forth in Section 7.1, Caremark may change the fees applicable to the Consumer Card Program. Caremark will give Customer sixty days' written notice of any change, and such change will take effect on the first day of the month following the sixty-day notice period. Customer may object to an increase in fees by providing written notice to Caremark at least thirty days before the expiration of the sixty-day notice period. If the parties cannot agree on an appropriate fee, this Agreement will terminate at the end of the sixty-day notice period. If Customer does not timely object, Customer will have no right to terminate this Agreement based on the pricing change.

3. CUSTOMER AND MEMBER COUNTY OBLIGATIONS.

3.1 **Marketing Materials.** The parties agree to use only those marketing brochures and other advertising materials pertaining to Customer's Consumer Card Program (in any medium, including, but not limited to, written communications, verbal communications and web based marketing) that have been approved by the other. Member County and Customer further agree that they will communicate such requirements to its clients or groups and will ensure that such clients or groups comply with the requirements of this Section 3.1. Caremark may terminate this Agreement immediately in the event Member County or Customer fails to comply with the provisions of this Section 3.1.

Caremark will provide its standard marketing brochures, advertising materials and mail order forms, as applicable, to Member County at no cost. Caremark will work with and support each Member County in marketing the Consumer Card Program at no cost. If the cost associated with providing such materials is determined by Caremark to be unreasonable or excessive, Customer or Member County shall pay for the costs of the materials at a rate to be mutually agreed to by the parties in writing. If Member County or Customer elects to use customized brochures or advertising materials (in any medium, including but not limited to written communications, verbal communications and web based marketing), Member County and Customer will (i) obtain Caremark's approval on such forms, and (ii) pay a reasonable charge, as established by Caremark, for such materials if created or provided by Caremark.

3.2 **Support of Consumer Card Program.** Customer will recommend and support the Consumer Card Program in accordance with the terms of this Agreement.

4. USE OF AND ACCESS TO INFORMATION.

4.1 **Use of Participant Information.** Caremark, Customer and Member County may use, disclose, reproduce or adapt information obtained in connection with this Agreement, including Claims ("Claims Information") as well as Eligibility Information, in any manner they deem appropriate, except that each party and its agents, employees and contractors shall maintain the confidentiality of this information to the extent required by applicable Law, and may not use the information in any way prohibited by Law. Any work, compilation, processes or inventions developed by Caremark, Customer, Member County or their respective agents, employees or contractors, is deemed Confidential Information of such party under this Agreement.

4.2 **Right to Audit Rebates.** Customer, at its sole expense, may audit a reasonable sample of records directly related to Customer's Rebates once in each twelve-month period (following sixty (60) days written notice to

Caremark). Such records shall be limited to information necessary for validating the accuracy of the Rebate amounts distributed to Member County by Caremark. The parties agree that an independent third-party auditor agreeable to Customer and Caremark shall conduct such audit, and that such firm will sign a Caremark confidentiality agreement ensuring that all details and terms of all Manufacturer Rebate contracts with Caremark (except the total aggregate amount due to Customer) will be treated as confidential to Caremark and will not be revealed in any manner or form by or to any person or entity. Furthermore, such audit shall be conducted at Caremark's office where such records are located, during normal business hours, without undue interference with business activities, and in accordance with reasonable audit procedures.

5. CONFIDENTIALITY AND INTELLECTUAL PROPERTY.

5.1 Confidential and Proprietary Information. In connection with this Agreement, each party may disclose to the other party certain proprietary or confidential technical and business information, databases, trade secrets, and innovations belonging to the disclosing party ("**Confidential Information**"), the value of which might be lost if the proprietary nature or confidentiality of such Confidential Information is not maintained. For the purposes of this Section, the contents of this Agreement and of any exhibits, amendments, or addenda attached hereto are deemed Confidential Information. Furthermore, any work, compilation, processes or inventions developed by Caremark, Member County or Customer, or their respective agents, employees or contractors, is deemed Confidential Information of such party under this Agreement. Notwithstanding the foregoing, Confidential Information may be disclosed by Member County in response to a request made pursuant to the Member County's applicable state Public Records Law, insofar as disclosure is required by that Law. Member County shall provide Caremark with (i) notice of its intent to disclose Confidential Information and (ii) an opportunity for Caremark to object to such disclosure in accordance with Law. Attached hereto as Exhibit D is a copy of this Agreement which redacts certain pricing information. Notwithstanding the foregoing, the parties agree that as a matter of convenience, Exhibit D may be disclosed by Member County as required by Member County's applicable Public Records Law without providing Caremark an opportunity to object. Member County agrees to provide Caremark with reasonable notice of its disclosure of Exhibit D.

5.2 Non-Disclosure of Confidential Information. The parties will not (except to the extent expressly authorized by this Agreement) disclose Confidential Information of any other to anyone outside of Caremark, Member County or Customer, nor will they copy or reproduce any Confidential Information of another unless expressly authorized to do so by such party in writing. Each party will disclose Confidential Information of another only to its employees who have a need to know the Confidential Information in order to accomplish the purpose of this Agreement and who (i) have been informed of the confidential and proprietary nature of the Confidential Information, and (ii) have agreed not to disclose it to others. In order to preserve and protect the confidential or proprietary nature of any Confidential Information and to prevent it from falling into the public domain or into the possession of persons not bound to maintain its confidentiality, each party will handle the Confidential Information of any other party with the same degree of care that it applies with respect to its own information that it considers as confidential and proprietary, but in no event with less than reasonable care.

5.3 Exceptions and Permitted Disclosures. The receiving party of Confidential Information will not be liable for any disclosure or use of Confidential Information which is publicly available or later becomes publicly available other than through a breach of this Agreement, or if the Confidential Information is shown by written documentation to be known to the receiving party on the date of execution of this Agreement, having been received from a source (other than a party to this Agreement) that had the right to disclose the Confidential Information.

5.4 Subpoena. Confidential Information may be disclosed pursuant to a bona fide subpoena if the party receiving the bona fide subpoena has given the other party prompt written notice of receipt of the subpoena so that the other party can object or otherwise intervene as it deems proper.

5.5 Return or Destruction of Information. All Confidential Information will remain the property of the disclosing party, and the receiving party will return all written or tangible materials, and all copies thereof, upon request of the disclosing party. If and to the extent feasible, upon termination of this Agreement, Caremark will destroy or will return to Member County or Customer all PHI obtained pursuant to this Agreement and shall retain no copies thereof; provided however, that if such return or destruction is not reasonably feasible, the provisions of Section 4 of this Agreement shall continue to apply to such information after the termination hereof.

5.6 Proprietary to Caremark. Member County and Customer acknowledge that the Formulary is proprietary to Caremark. Further, all Caremark databases, as well as the software, hard coding, and logic used to generate the compilations of information contained in Caremark's Claims adjudication system and in all other databases developed by Caremark or its designees in connection with performing Services including identifiers assigned by Caremark, and the format of all reports, printouts, and copies there from, and any prior and future versions thereof by any name, are the property of Caremark and are protected by copyright which shall be owned by Caremark.

5.7 Tradenames; Trademarks; and Service Marks. None of the parties hereto may use any tradenames, trademarks or service marks of another, or any word or symbol likely to be confused with such tradenames, trademarks or service marks, unless authorized in writing or as expressly permitted by this Agreement.

5.8 Remedies. Any unauthorized disclosure or use of Confidential Information would cause Caremark, Member County or Customer immediate and irreparable injury or loss that cannot be adequately compensated with money damages. Accordingly, if any party hereto fails to comply with this Section 5, the other(s) will be entitled to specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for damages (including reasonable attorneys' fees) caused by the breach, and to any other remedies provided by Law.

6. LIMITATION OF LIABILITY; COMPLIANCE WITH LAW.

6.1 Warranty. This Agreement is not a contract for the sale of goods. Caremark will perform the Services in a good and workmanlike manner in accordance with the customs, practices, and standards of providers skilled in the industry. EXCEPT AS WARRANTED IN THIS SECTION 6.1, CAREMARK DISCLAIMS ALL EXPRESS AND ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE SUITABILITY FOR ANY PARTICULAR PURPOSE OF THE DATA GENERATED THROUGH THE CAREMARK SYSTEM. CAREMARK RELIES ON FIRST DATABANK, MEDI-SPAN, OR INDUSTRY COMPARABLE DATABASES IN PROVIDING CUSTOMER, MEMBER COUNTY AND PARTICIPANTS WITH DRUG UTILIZATION REVIEW SERVICES. CAREMARK HAS UTILIZED DUE DILIGENCE IN COLLECTING AND REPORTING THE INFORMATION CONTAINED IN THE DATABASES AND HAS OBTAINED SUCH INFORMATION FROM SOURCES BELIEVED TO BE RELIABLE. CAREMARK, HOWEVER, DOES NOT WARRANT THE ACCURACY OF REPORTS, ALERTS, CODES, PRICES, OR OTHER DATA CONTAINED IN THE DATABASES. THE CLINICAL INFORMATION CONTAINED IN THE DATABASES AND THE FORMULARY IS INTENDED AS A SUPPLEMENT TO, AND NOT A SUBSTITUTE FOR, THE KNOWLEDGE, EXPERTISE, SKILL, AND JUDGMENT OF PHYSICIANS, PHARMACISTS, OR OTHER HEALTH-CARE PROFESSIONALS INVOLVED IN PARTICIPANT'S CARE. THE ABSENCE OF A WARNING FOR A GIVEN DRUG OR DRUG COMBINATION SHALL NOT BE CONSTRUED TO INDICATE THAT THE DRUG OR DRUG COMBINATION IS SAFE, APPROPRIATE OR EFFECTIVE FOR ANY PARTICIPANT. CAREMARK DOES NOT WARRANT THAT ITS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

6.2 Force Majeure. Except for the payment obligations set forth in Section 2 of this Agreement, the parties are excused from performance under this Agreement to the extent that a party is prevented from performing any obligation, in whole or in part, as a result of causes beyond its reasonable control, including, acts of God, war, civil disturbance, court order, governmental intervention, Change in Law, nonperformance by the other party or any third party, failures or fluctuations in electrical power, heat, light, air conditioning, or telecommunications equipment. Any nonperformance under this Section 6.2 will not constitute a default or a ground for termination of this Agreement.

6.3 Indemnity. To the extent permitted by applicable Law applicable to Customer and each Member County, Customer and Member County shall indemnify and hold harmless Caremark and its officers, directors, employees, agents, successors, and assigns ("Caremark Indemnitees") for, from and against any damages, costs, or attorney's fees, actually incurred by Caremark a Caremark Indemnitee, as the result of a claim brought by any third party or a participant or beneficiary relating to the Services, provided that the Caremark Indemnitee has acted in a manner that is consistent with this Agreement and applicable standards of care. The foregoing indemnification shall not apply and shall not be enforceable to the extent any applicable Law prohibits a Member County from providing such indemnification. Caremark shall indemnify and hold harmless Member County, Customer and their officers, directors, employees, agents, successors, and assigns (collectively "Customer Indemnitees") for, from and against any damages, costs, or attorney's fees, actually incurred by any Customer Indemnitee, as the result of a third party claim that

Caremark, its officers, directors, employees, agents, successors, or assigns acted with negligence, willfully, and/or in violation of applicable standards of care, provided that the Customer Indemnitee has acted in a manner that is consistent with this Agreement, the Consumer Card Program and applicable standards of care. However, nothing in this Agreement is to be construed as a waiver of governmental immunity as offered by the court or state law.

6.4 Compliance with Law. Customer and Member County will comply with all Laws applicable to its prescription drug benefit plan, including without limitation insurance licensing, antitrust, consumer protection, and any other Laws that may apply. Caremark has no responsibility to advise Member County or Customer about the applicability of or compliance with any applicable Law including, without limitation, HIPAA, the Employee Retirement Income Security Act, or the Americans with Disabilities Act.

Caremark will comply with all Laws applicable to it and to the Services it provides under this Agreement. Member County and Customer have no responsibility to advise Caremark regarding its compliance with any applicable Law.

Effective as of September 8, 2005, each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement. Further, Caremark shall ensure that individuals meeting the definition of "Covered Persons" (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and AdvancePCS) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. In addition, Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at <http://www.caremark.com/wps/portal/s.155/3370?cms=CMS-2-007764>.

6.5 Change in Law. The parties will attempt to equitably adjust the terms of this Agreement to take into account any Change in Law or any material change in drug industry practice that materially alters the rights or obligations of either party under this Agreement. If the parties are unable to agree upon an equitable adjustment within sixty days after either party notifies the other of such a Change in Law or material change in drug industry practice, this Agreement will automatically terminate.

6.6 Limitations. In no event shall either party be liable to the other party, nor shall Caremark be liable to any Participant for any indirect, special, or consequential damages or lost profits, arising out of or related to performance of this Agreement or a breach of this Agreement, even if advised of the possibility of such damages or lost profits.

Caremark (and its affiliates, directors, employees, agents, successors or assigns) will not be liable for any claim which is asserted by Member County or Customer more than ninety days after Member County or Customer is or reasonably should have been aware of such claim, and will in no event be liable for any claim which is asserted more than twelve months after the event resulting in damages or loss.

Caremark does not direct or exercise any control over the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. Participating Pharmacies are independent contractors, not subcontractors or agents of Caremark, and Caremark shall have no liability to Member County or Customer for a claim arising out of any act or omission of any Participating Pharmacy or its agents or employees.

7. TERM AND TERMINATION OF AGREEMENT.

7.1 Term. This Agreement is for an initial term of two years and four months from the Effective Date, through July 31, 2008 (the "Initial Term"), and will automatically continue in effect for successive one year terms thereafter, subject to the remaining provisions of this Section.

7.2 Termination. This Agreement may be terminated as follows:

a. By any party, with or without cause, at the end of the Initial Term or any renewal term, by giving written notice to the others at least 60 days prior to the end of such Initial Term or renewal term;

b. Automatically, if the parties are unable to agree on an equitable adjustment under Section 6.5 of this Agreement;

c. By any party if another materially defaults in its performance of this Agreement and such default continues without cure for a period of sixty days after the terminating party provides written notice to the defaulting party specifying the nature of the default;

d. By any party, at its option, if any court, or governmental or regulatory agency issues to another party an order or finding of impairment or insolvency, or an order to cease and desist from writing business. The party receiving notice of an order or finding must provide the others written notice within two business days of receipt;

e. By any party if another party: (i) makes an assignment for the benefit of creditors; (ii) has a petition filed (whether voluntary or involuntary) under Title 11 of the United States Code, or any other similar statute now or hereafter in effect; (iii) has a receiver, custodian, conservator, or trustee appointed with respect to all or a substantial part of its property; or (iv) has a proceeding commenced against it which substantially impairs performance hereunder; or

f. By Caremark, immediately on written notice to Member County or Customer, if (i) either fails to comply with the provisions of Section 3.1 of this Agreement, or (ii) Caremark determines, in its sole discretion that Member County or Customer's program may not fully comply with all applicable Laws.

7.3 Effect of Termination and Survival.

Sections 4, 5 and 6 of this Agreement, and obligations arising under this Agreement prior to the effective date of any termination, will survive termination.

8. NOTICES.

All notices under this Agreement must be in writing, delivered in person, sent by certified mail, delivered by air courier, or transmitted by facsimile and confirmed in writing (by air courier or certified mail) to a party at the facsimile number and address shown in this Agreement. A party may notify the other party of any changes in the listed address or facsimile number in accordance with the provisions of this Section. All notices are effective upon receipt.

Notices to Caremark must be addressed as follows:

Vice President, Client Contract Services
Caremark Inc.
2211 Sanders Road, NBT9
Northbrook, IL 60062
Fax No.: 847-559-4302

With a copy to:

Managing Counsel, Client and Account Services
Caremark Inc.
2211 Sanders Road, NBT9
Northbrook, IL 60062
Fax No.: 847-559-4879

Notices to Customer must be addressed as follows:

National Association of Counties
440 First Street, NW
Washington, DC 20001
Attn: Mr. Andrew Goldschmidt, Director, Membership Marketing

9. MISCELLANEOUS.

9.1 Entire Agreement; Interpretation; Amendment; Counterparts. This Agreement (including exhibits, schedules, attachments, or any addendum to this Agreement) constitutes the entire understanding and obligation of the parties with respect to the Services and supersedes any prior agreements, writings, or understandings, whether oral or written. The headings in this Agreement are used only for convenience of reference and do not affect the meaning or interpretation of any provision. The parties may amend this Agreement only through a properly executed writing authorized by both parties. This Agreement may be executed in several counterparts, all of which taken together constitute a single agreement between the parties.

9.2 Binding Effect; Assignment. This Agreement is binding on the parties and their respective successors and permitted assigns. None of the parties may assign this Agreement, in whole or in part, without the prior written consent of the others (which consent will not be unreasonably withheld); except that Caremark may assign this Agreement, in whole or in part, to any entity that controls, is controlled by, or is under common control with Caremark.

9.3 Independent Contractor; Third Parties. The parties to this Agreement are independent contractors, and have no other legal relationship under or in connection with this Agreement. No term or provision of this Agreement is for the benefit of any person who is not a party hereto (including, without limitation, any Participant or broker), and no such party will have any right or cause of action hereunder.

9.4 Waivers. Any failure by a party to comply with any covenant, agreement, or condition herein or in any other agreements or instruments executed and delivered hereunder may be waived in writing by the party in whose favor such obligation or condition runs; except that failure to insist upon strict compliance with any such covenant, agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

9.5 Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

9.6 Enforcement Costs. If any party hereto institutes an action or proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding will be paid all reasonable attorneys' fees and costs to enforce such rights by the other party, such fees and costs to be set by the court, not by a jury, and to be included in the judgment entered in such proceeding.

9.7 Authority. Each party represents and warrants that it has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

9.8 Exclusivity. Member County and Customer hereby grant Caremark during the term of this Agreement, and any renewals hereof, the exclusive right to provide a Consumer Card Program to Member County and Customer. This exclusive right is solely applicable to Participants designated by Member County as eligible for the Member County's discount consumer card program and shall not affect any other benefits or programs provided to Participants by Member County. Member County and Customer further agree that, during the term of this Agreement and any renewals hereof, it will not negotiate, contract, or agree with any drug manufacturer for the purpose of obtaining Rebates or other discounts related to Participants under this Agreement. Member County and Customer also agree to cancel any existing agreements or contracts with any drug manufacturers related to such drug Rebates or discounts as of the Effective Date of this Agreement. In the event of a breach of this Section by Member County or Customer, Caremark may terminate this Agreement. By entering into this Agreement, Customer does not endorse, and Caremark will not represent Customer's endorsement of any other programs or services which Caremark may offer to a Member County or Participant.

9.9 Drug Classification and Pricing. Caremark shall use the latest edition of the First DataBank Blue Book (with supplements), the Medi-Span Master Drug Pricing Source (with supplements), or any other nationally

recognized pricing source as the source for purposes of pricing and classifying drugs (e.g., legend vs. over the counter, brand vs. generic) in connection with this Agreement.

10. **DEFINITIONS.** The following terms and phrases, when capitalized, have the meanings set forth below.

- a. **"AWP"** means the average wholesale price of the drug dispensed as set forth in the latest edition of the First DataBank Blue Book (with supplements), the Medi-Span Prescription Pricing Guide (with supplements) or any other similar nationally recognized reference selected by Caremark.
- b. **"Change in Law"** means any (i) change in or adoption of any Law, (ii) change in the judicial or administrative interpretation of any Law, or (iii) change in the enforcement of any Law, occurring after the date Customer is implemented or the Effective Date, whichever is earlier.
- c. **"Claim(s)"** mean those claims processed through the Caremark on-line claims adjudication system or otherwise transmitted or processed in accordance with the terms of this Agreement in connection with the Consumer Card Program.
- d. **"Covered Items"** mean the prescription drug benefits for which Participants are eligible pursuant to Member County's drug benefit plan.
- e. **"Law"** means any federal, state, local or other constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, specified standards or objective criteria contained in any applicable permit or approval, or other legislative or administrative action of the United States of America, or any state or any agency, department, authority, political subdivision or other instrumentality thereof or a decree or judgment or order of a court.
- f. **"Manufacturer"** means a pharmaceutical company that has contracted with Caremark (or its affiliate or agent) to offer discounts for pharmaceutical products in connection with Caremark's Formulary Services.
- g. **"Maximum Allowable Cost (MAC)"** means the then current maximum allowable cost for a prescription drug listed as a drug available from more than one Manufacturer in Caremark's pharmaceutical MAC pricing formula, including but not limited to formulas utilizing the Medi-Span Master Drug Pricing Source or First Data Bank.
- h. **"Participant"** means an individual designated by Member County as eligible for Covered Items under the terms of the Consumer Card Program.
- i. **"Participating Pharmacy"** means a pharmacy that has agreed to provide certain pharmacy services to Participants in accordance with the terms of its agreement with Caremark. A list of Participating Pharmacies can be accessed via Caremark's Internet website, which is subject to change from time to time.
- j. **"Rebate(s)"** means, for any period, all rebates, reimbursements, or other discounts received under a pharmaceutical manufacturer's discount program with respect to pharmaceutical products dispensed to a Participant under the Consumer Card Program for such period.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers or agents as of the date first above written.

NATIONAL ASSOCIATION OF COUNTIES

CAREMARKPCS HEALTH, L.P.
By: CaremarkPCS Health Systems, LLC,
its General Partner

By: _____
Larry E. Naake

Title: Executive Director

Title: _____

Date: _____

Date: _____

EXHIBIT A
ADDITIONAL SERVICES

Caremark will provide the following services if selected by Customer or Member County for an additional fee as set forth in Exhibit B. The Services are subject to change as provided for in the Agreement. Capitalized terms not defined herein will have the meanings used in the Agreement.

1. **Customer-Specific Programming.** If Customer or Member County requests services or changes to Services that require customized programming or systems work, Caremark will attempt to estimate the time and cost for completion of such work. If Customer or Member County authorizes Caremark to perform such work, it will pay Caremark the cost of performing such work at the programming rate set forth in Exhibit B.

National Association of Counties
Effective March 1, 2006

As consideration for the Services selected by Member County in accordance with the Agreement, Member County will pay to Caremark the fees set forth below:

Administrative Fees

Per Processed Retail Claim	\$0.00
Per Processed Mail Claim	\$0.00

As consideration for the Consumer Card Program selected by Member County in accordance with this Agreement, Member County will pay to Caremark 100% of the Rebates collected from Manufacturers pursuant to this Agreement.

Consumer Card Program Retail Network Rates¹

Brand: AWP-13% + \$3.50 transaction fee or Usual & Customary
Generic: AWP-13% + \$3.50 transaction fee, MAC + \$3.50 transaction fee or Usual & Customary

Mail Service Rates¹

Brand: AWP-19% + \$1.00 dispensing fee
Generic: AWP-50% + \$1.00 dispensing fee

Specialty Pharmacy Rates²

AWP-13% + \$3.50 dispensing fee

Other Fees

Section 1.6 - Card Issuance	No charge
Exhibit A(1) - Customer Specific Programming	\$150.00/Hour

Note: Charges or Services not identified above will be quoted upon request.

1. All claims may be aggregated for purposes of this rate. Actual rates may vary by Participating Pharmacy. Certain retail and mail Claims may be excluded from these rates, including but not limited to (i) Select Generics, which are generic drugs that enter the market with supply limitations or competitive restrictions that limit marketplace competition and (ii) Claims for select injectable drugs and select oral drugs that are bio-technological in nature, compound drugs and those requiring special handling.

2. This rate will apply to Claims for certain drugs filled by Caremark SpecialtyRx, including but not limited to Claims for select injectable drugs and select oral drugs that are bio-technological in nature, compound drugs and those requiring special handling. All Claims may be aggregated for purposes of this rate. Rates for such drugs may vary if filled by a pharmacy other than Caremark SpecialtyRx. Certain drugs will be priced separately from, and not be subject to the contracted rate for prescription Claims due to, among other things, specialized manufacturer processes, limited availability or extraordinary shipping requirements.

Finance Charges. Invoices are assessed finance charges on the amounts not paid within the terms set forth on the invoice. The finance charge shall be in an amount equal to one and one-half percent per month, unless such rate exceeds the maximum rate allowable by applicable Law, in which case such amounts shall bear interest at the maximum legally allowable rate.

Contingency. All prices are contingent upon Member County's full adoption of Caremark's Performance Drug List and formulary management and intervention programs.

*EXHIBIT B
ADMINISTRATIVE FEES*

Handling Costs. Customer or Member County is in all events responsible for any postage costs or other mailing and handling-related costs incurred by Caremark in connection with the provision of Services or additional services, except as to costs associated with standard Consumer Card Program materials that are shipped by bulk mail to Customer or Member County.

Taxes. It is the understanding of the parties that Participating Pharmacies shall collect from Participants all applicable taxes for Covered Items, and that Caremark is not liable for the payment of applicable taxes. Any other taxes associated with the operation of Member County's Consumer Card Program are the responsibility of Member County.

medications. These programs may include mailings to Participants with active prescriptions for targeted drug products or drug classes or to let Participants know that they may qualify for participation in a clinical trial program. Such mailings may include Participant and drug specific information and/or general educational material. Participants, by notifying Caremark, may opt-out of such programs.

b. **DUR Services.** Caremark will provide its automated concurrent DUR Services for Claims. The information generated in connection with DUR Services is intended as an economical supplement to, and not as a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other health care providers in providing patient care. Providers are individually responsible for acting or not acting upon information generated and transmitted through the DUR Services, and for performing services in each jurisdiction consistent with the scope of their licenses. Notwithstanding anything set forth in this Agreement, Caremark will have no obligation to acquire information concerning any Participant beyond the information that is included in Caremark's eligibility records or the Claims submitted by Participating Pharmacies in connection with the Consumer Card Program.

1.8 **Formulary Services.** Caremark will administer an open formulary for the Member County and will provide certain Services that are designed to provide useful clinical information to physicians (the "Formulary Services"). Caremark may make changes to the Formulary Services described in this Agreement from time to time, and will notify Member County and Customer of any material changes to any formulary management programs. In all cases, the prescribing physician shall have final authority over the drug that is prescribed to the Participant.

a. **Rebate Contracts.** Caremark contracts with certain Manufacturers for Rebate programs.

b. **[REDACTED DUE TO PROPRIETARY AND CONFIDENTIAL INFORMATION OF CAREMARK.]**

c. **Participant Authorizations and Disclosures.** Customer and Member County shall comply with all Laws applicable to it as a sponsor of the Services or as otherwise consistent with its obligations under this Agreement.

d. **Additional Participant Discounts.** Caremark may provide a program that will provide Participants with additional manufacturer discounts on certain drugs at the point of sale. From time to time, Caremark may revise the list of drugs that have additional participant discounts. The current list of drugs on which Participants may receive additional discounts is available upon request. Caremark will timely notify Member County and Customer of any revisions to this list of drugs.

1.9 **Management Reports.** Caremark will provide Member County and Customer with Caremark's standard management reports in connection with the Services, which reports may change from time to time at Caremark's discretion. Member County and Customer may elect to receive a reasonable number of the standard management reports made available by Caremark.

1.10 **Mail Service Program.** Caremark may provide to Member County mail order pharmacy services through its mail order pharmacy facilities. For the duration of this Agreement, Member County agrees that it will offer only Caremark mail order pharmacy services for its Participants covered under this Agreement, as further described below.

Caremark shall fill prescriptions for Participants and shall mail such drugs or medications to such Participants subject to the following terms and conditions:

a. **Distribution of Information.** Caremark shall provide Participants with its standard informational material explaining the mail service and the forms necessary for Participants to utilize mail service. Participants will have toll-free telephone access to a pharmacist and customer service representative. Access to a pharmacist will be available 24 hours per day, seven days per week.

b. **Delivery and Dispensing.** Caremark shall dispense through its mail service pharmacy new

or refill prescription orders upon receipt from a Participant of (i) a valid prescription order or a completed refill order form and (ii) the applicable payment. Caremark shall cause the filled prescriptions to be mailed to each Participant via common carrier at the address appearing on the face of the prescription so long as such addresses are in the United States. Caremark shall not be liable to Member County, Customer or Participant for any delay in delivery resulting from circumstances beyond Caremark's control as set forth in Section 6.2.

Caremark's mail order pharmacies may dispense drugs even if the prescription is not accompanied by the correct amount however, Member County and Customer acknowledge and agree that Caremark may refuse to fill any prescription that is either not accompanied by the correct amount and/or for any Participant who has an unpaid balance with Caremark.

1.11 Preferred Drug Program. Caremark and the retail Participating Pharmacies will work together to encourage the use of Preferred Drugs by (i) identifying appropriate opportunities for converting a prescription from a non-Preferred Drug to a Preferred Drug, and (ii) contacting the Participant and the prescriber to request that the prescription be changed to the Preferred Drug. A Preferred Drug is one on the Performance Drug List, which has been developed by Caremark as a clinically appropriate and economically advantageous subset of the Caremark Formulary, as revised by Caremark from time to time.

1.12 Specialty Pharmacy. Caremark's specialty pharmacy service will be provided by a Caremark specialty pharmacy entity or its affiliate ("Caremark SpecialtyRx"), and offers a distribution channel for certain pharmaceutical products that are generally biotechnological in nature, are given by injection, or otherwise require special handling ("Specialty Medications").

Caremark SpecialtyRx shall provide prescription fulfillment and distribution of Specialty Medications and supplies, pharmaceutical care management services, as well as the types of Service that Member County receives under this Agreement, including but not limited to customer services, utilization and clinical management, integrated reporting and Claims processing ("SpecialtyRx Services").

Caremark SpecialtyRx may receive prescriptions from Participants through an affiliated Caremark mail facility or directly via the U.S. Mail or commercial carrier at the address specified by Caremark from time to time and may also receive prescriptions from physicians by fax or by U.S. Mail/commercial carrier. In accordance with the Consumer Card Program, Caremark SpecialtyRx shall dispense Covered Items in accordance with those prescriptions and mail the Covered Items to Participants at the designated address, so long as such address is located within the United States. Caremark SpecialtyRx may not dispense drugs to Participants who fail to submit the correct payment with their prescription.

Caremark SpecialtyRx pharmaceutical care management services include but may not be limited to: (1) patient profiling focusing on the appropriateness of Specialty Medication therapy and care and the prevention of drug-drug interactions; (2) patient education materials; and (3) disease management and compliance programs with respect to Specialty Medications. As part of these services, Participants will be asked to participate in various surveys.

Caremark will provide Member County and Customer with a list of the Specialty Medications and their corresponding rates (which may vary from Network Rates) upon request. Routine supplies (needles, syringes, alcohol swabs) in a sufficient quantity will be included at no additional expense.

2. FEES AND PAYMENT.

2.1 [REDACTED DUE TO PROPRIETARY AND CONFIDENTIAL INFORMATION OF CAREMARK.]

2.2 Remedies. In the event Member County or Customer incurs any fee, as identified in Exhibit B, it will pay Caremark such fees as reasonable compensation. In the event any such fees apply and Member County or Customer fails to pay Caremark by the due date any amount owing, Caremark, after making a reasonable effort to collect and upon notice to such Member County or Customer may, in addition to its remedies under this Agreement, at Law or in equity, do any or all of the following: (i) suspend performance of any or all of Caremark's obligations under

or in connection with this Agreement with respect to such Member County or Customer, including Caremark's obligation to process Claims or (ii) set off against any amounts payable to such Member County or Customer by any amounts due Caremark from such Member County or Customer.

2.3 Pricing Changes. After the Initial Term of this Agreement, as set forth in Section 7.1, Caremark may change the fees applicable to the Consumer Card Program. Caremark will give Customer sixty days' written notice of any change, and such change will take effect on the first day of the month following the sixty-day notice period. Customer may object to an increase in fees by providing written notice to Caremark at least thirty days before the expiration of the sixty-day notice period. If the parties cannot agree on an appropriate fee, this Agreement will terminate at the end of the sixty-day notice period. If Customer does not timely object, Customer will have no right to terminate this Agreement based on the pricing change.

3. CUSTOMER AND MEMBER COUNTY OBLIGATIONS.

3.1 Marketing Materials. The parties agree to use only those marketing brochures and other advertising materials pertaining to Customer's Consumer Card Program (in any medium, including, but not limited to, written communications, verbal communications and web based marketing) that have been approved by the other. Member County and Customer further agree that they will communicate such requirements to its clients or groups and will ensure that such clients or groups comply with the requirements of this Section 3.1. Caremark may terminate this Agreement immediately in the event Member County or Customer fails to comply with the provisions of this Section 3.1.

Caremark will provide its standard marketing brochures, advertising materials and mail order forms, as applicable, to Member County at no cost. Caremark will work with and support each Member County in marketing the Consumer Card Program at no cost. If the cost associated with providing such materials is determined by Caremark to be unreasonable or excessive, Customer or Member County shall pay for the costs of the materials at a rate to be mutually agreed to by the parties in writing. If Member County or Customer elects to use customized brochures or advertising materials (in any medium, including but not limited to written communications, verbal communications and web based marketing), Member County and Customer will (i) obtain Caremark's approval on such forms, and (ii) pay a reasonable charge, as established by Caremark, for such materials if created or provided by Caremark.

3.2 Support of Consumer Card Program. Customer will recommend and support the Consumer Card Program in accordance with the terms of this Agreement.

4. USE OF AND ACCESS TO INFORMATION.

4.1 Use of Participant Information. Caremark, Customer and Member County may use, disclose, reproduce or adapt information obtained in connection with this Agreement, including Claims ("Claims Information") as well as Eligibility Information, in any manner they deem appropriate, except that each party and its agents, employees and contractors shall maintain the confidentiality of this information to the extent required by applicable Law, and may not use the information in any way prohibited by Law. Any work, compilation, processes or inventions developed by Caremark, Customer, Member County or their respective agents, employees or contractors, is deemed Confidential Information of such party under this Agreement.

4.2 Right to Audit Rebates. Customer, at its sole expense, may audit a reasonable sample of records directly related to Customer's Rebates once in each twelve-month period (following sixty (60) days written notice to Caremark). Such records shall be limited to information necessary for validating the accuracy of the Rebate amounts distributed to Member County by Caremark. The parties agree that an independent third-party auditor agreeable to Customer and Caremark shall conduct such audit, and that such firm will sign a Caremark confidentiality agreement ensuring that all details and terms of all Manufacturer Rebate contracts with Caremark (except the total aggregate amount due to Customer) will be treated as confidential to Caremark and will not be revealed in any manner or form by or to any person or entity. Furthermore, such audit shall be conducted at Caremark's office where such records are located, during normal business hours, without undue interference with business activities, and in accordance with reasonable audit procedures.

5. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY.**

5.1 **Confidential and Proprietary Information.** In connection with this Agreement, each party may disclose to the other party certain proprietary or confidential technical and business information, databases, trade secrets, and innovations belonging to the disclosing party ("**Confidential Information**"), the value of which might be lost if the proprietary nature or confidentiality of such Confidential Information is not maintained. For the purposes of this Section, the contents of this Agreement and of any exhibits, amendments, or addenda attached hereto are deemed Confidential Information. Furthermore, any work, compilation, processes or inventions developed by Caremark, Member County or Customer, or their respective agents, employees or contractors, is deemed Confidential Information of such party under this Agreement. Notwithstanding the foregoing, Confidential Information may be disclosed by Member County in response to a request made pursuant to the Member County's applicable state Public Records Law, insofar as disclosure is required by that Law. Member County shall provide Caremark with (i) notice of its intent to disclose Confidential Information and (ii) an opportunity for Caremark to object to such disclosure in accordance with Law. Attached hereto as Exhibit D is a copy of this Agreement which redacts certain pricing information. Notwithstanding the foregoing, the parties agree that as a matter of convenience, Exhibit D may be disclosed by Member County as required by Member County's applicable Public Records Law without providing Caremark an opportunity to object. Member County agrees to provide Caremark with notice of its disclosure of Exhibit D.

5.2 **Non-Disclosure of Confidential Information.** The parties will not (except to the extent expressly authorized by this Agreement) disclose Confidential Information of any other to anyone outside of Caremark, Member County or Customer, nor will they copy or reproduce any Confidential Information of another unless expressly authorized to do so by such party in writing. Each party will disclose Confidential Information of another only to its employees who have a need to know the Confidential Information in order to accomplish the purpose of this Agreement and who (i) have been informed of the confidential and proprietary nature of the Confidential Information, and (ii) have agreed not to disclose it to others. In order to preserve and protect the confidential or proprietary nature of any Confidential Information and to prevent it from falling into the public domain or into the possession of persons not bound to maintain its confidentiality, each party will handle the Confidential Information of any other party with the same degree of care that it applies with respect to its own information that it considers as confidential and proprietary, but in no event with less than reasonable care.

5.3 **Exceptions and Permitted Disclosures.** The receiving party of Confidential Information will not be liable for any disclosure or use of Confidential Information which is publicly available or later becomes publicly available other than through a breach of this Agreement, or if the Confidential Information is shown by written documentation to be known to the receiving party on the date of execution of this Agreement, having been received from a source (other than a party to this Agreement) that had the right to disclose the Confidential Information.

5.4 **Subpoena.** Confidential Information may be disclosed pursuant to a bona fide subpoena if the party receiving the bona fide subpoena has given the other party prompt written notice of receipt of the subpoena so that the other party can object or otherwise intervene as it deems proper.

5.5 **Return or Destruction of Information.** All Confidential Information will remain the property of the disclosing party, and the receiving party will return all written or tangible materials, and all copies thereof, upon request of the disclosing party. If and to the extent feasible, upon termination of this Agreement, Caremark will destroy or will return to Member County or Customer all PHI obtained pursuant to this Agreement and shall retain no copies thereof; provided however, that if such return or destruction is not reasonably feasible, the provisions of Section 4 of this Agreement shall continue to apply to such information after the termination hereof.

5.6 **Proprietary to Caremark.** Member County and Customer acknowledge that the Formulary is proprietary to Caremark. Further, all Caremark databases, as well as the software, hard coding, and logic used to generate the compilations of information contained in Caremark's Claims adjudication system and in all other databases developed by Caremark or its designees in connection with performing Services including identifiers assigned by Caremark, and the format of all reports, printouts, and copies there from, and any prior and future versions thereof by any name, are the property of Caremark and are protected by copyright which shall be owned by Caremark.

5.7 **Tradenames; Trademarks; and Service Marks.** None of the parties hereto may use any

tradenames, trademarks or service marks of another, or any word or symbol likely to be confused with such tradenames, trademarks or service marks, unless authorized in writing or as expressly permitted by this Agreement.

5.8 Remedies. Any unauthorized disclosure or use of Confidential Information would cause Caremark, Member County or Customer immediate and irreparable injury or loss that cannot be adequately compensated with money damages. Accordingly, if any party hereto fails to comply with this Section 5, the other(s) will be entitled to specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for damages (including reasonable attorneys' fees) caused by the breach, and to any other remedies provided by Law.

6. LIMITATION OF LIABILITY; COMPLIANCE WITH LAW.

6.1 Warranty. This Agreement is not a contract for the sale of goods. Caremark will perform the Services in a good and workmanlike manner in accordance with the customs, practices, and standards of providers skilled in the industry. EXCEPT AS WARRANTED IN THIS SECTION 6.1, CAREMARK DISCLAIMS ALL EXPRESS AND ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE SUITABILITY FOR ANY PARTICULAR PURPOSE OF THE DATA GENERATED THROUGH THE CAREMARK SYSTEM. CAREMARK RELIES ON FIRST DATABANK, MEDI-SPAN, OR INDUSTRY COMPARABLE DATABASES IN PROVIDING CUSTOMER, MEMBER COUNTY AND PARTICIPANTS WITH DRUG UTILIZATION REVIEW SERVICES. CAREMARK HAS UTILIZED DUE DILIGENCE IN COLLECTING AND REPORTING THE INFORMATION CONTAINED IN THE DATABASES AND HAS OBTAINED SUCH INFORMATION FROM SOURCES BELIEVED TO BE RELIABLE. CAREMARK, HOWEVER, DOES NOT WARRANT THE ACCURACY OF REPORTS, ALERTS, CODES, PRICES, OR OTHER DATA CONTAINED IN THE DATABASES. THE CLINICAL INFORMATION CONTAINED IN THE DATABASES AND THE FORMULARY IS INTENDED AS A SUPPLEMENT TO, AND NOT A SUBSTITUTE FOR, THE KNOWLEDGE, EXPERTISE, SKILL, AND JUDGMENT OF PHYSICIANS, PHARMACISTS, OR OTHER HEALTH-CARE PROFESSIONALS INVOLVED IN PARTICIPANT'S CARE. THE ABSENCE OF A WARNING FOR A GIVEN DRUG OR DRUG COMBINATION SHALL NOT BE CONSTRUED TO INDICATE THAT THE DRUG OR DRUG COMBINATION IS SAFE, APPROPRIATE OR EFFECTIVE FOR ANY PARTICIPANT. CAREMARK DOES NOT WARRANT THAT ITS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

6.2 Force Majeure. Except for the payment obligations set forth in Section 2 of this Agreement, the parties are excused from performance under this Agreement to the extent that a party is prevented from performing any obligation, in whole or in part, as a result of causes beyond its reasonable control, including, acts of God, war, civil disturbance, court order, governmental intervention, Change in Law, nonperformance by the other party or any third party, failures or fluctuations in electrical power, heat, light, air conditioning, or telecommunications equipment. Any nonperformance under this Section 6.2 will not constitute a default or a ground for termination of this Agreement.

6.3 Indemnity. To the extent permitted by applicable Law applicable to Customer and each Member County, Customer and Member County shall indemnify and hold harmless Caremark and its officers, directors, employees, agents, successors, and assigns ("Caremark Indemnitees") for, from and against any damages, costs, or attorney's fees, actually incurred by Caremark a Caremark Indemnitee, as the result of a claim brought by any third party or a participant or beneficiary relating to the Services, provided that the Caremark Indemnitee has acted in a manner that is consistent with this Agreement and applicable standards of care. The foregoing indemnification shall not apply and shall not be enforceable to the extent any applicable Law prohibits a Member County from providing such indemnification. Caremark shall indemnify and hold harmless Member County, Customer and their officers, directors, employees, agents, successors, and assigns (collectively "Customer Indemnitees") for, from and against any damages, costs, or attorney's fees, actually incurred by any Customer Indemnitee, as the result of a third party claim that Caremark, its officers, directors, employees, agents, successors, or assigns acted with negligence, willfully, and/or in violation of applicable standards of care, provided that the Customer Indemnitee has acted in a manner that is consistent with this Agreement, the Consumer Card Program and applicable standards of care. However, nothing in this Agreement is to be construed as a waiver of governmental immunity as offered by the court or state law.

6.4 Compliance with Law. Customer and Member County will comply with all Laws applicable to its prescription drug benefit plan, including without limitation insurance licensing, antitrust, consumer protection, and any

other Laws that may apply. Caremark has no responsibility to advise Member County or Customer about the applicability of or compliance with any applicable Law including, without limitation, HIPAA, the Employee Retirement Income Security Act, or the Americans with Disabilities Act.

Caremark will comply with all Laws applicable to it and to the Services it provides under this Agreement. Member County and Customer have no responsibility to advise Caremark regarding its compliance with any applicable Law.

Effective as of September 8, 2005, each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement. Further, Caremark shall ensure that individuals meeting the definition of "Covered Persons" (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and AdvancePCS) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. In addition, Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at <http://www.caremark.com/wps/portal/s.155/3370?cms=CMS-2-007764>.

6.5 Change in Law. The parties will attempt to equitably adjust the terms of this Agreement to take into account any Change in Law or any material change in drug industry practice that materially alters the rights or obligations of either party under this Agreement. If the parties are unable to agree upon an equitable adjustment within sixty days after either party notifies the other of such a Change in Law or material change in drug industry practice, this Agreement will automatically terminate.

6.6 Limitations. In no event shall either party be liable to the other party, nor shall Caremark be liable to any Participant for any indirect, special, or consequential damages or lost profits, arising out of or related to performance of this Agreement or a breach of this Agreement, even if advised of the possibility of such damages or lost profits.

Caremark (and its affiliates, directors, employees, agents, successors or assigns) will not be liable for any claim which is asserted by Member County or Customer more than ninety days after Member County or Customer is or reasonably should have been aware of such claim, and will in no event be liable for any claim which is asserted more than twelve months after the event resulting in damages or loss.

Caremark does not direct or exercise any control over the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. Participating Pharmacies are independent contractors, not subcontractors or agents of Caremark, and Caremark shall have no liability to Member County or Customer for a claim arising out of any act or omission of any Participating Pharmacy or its agents or employees.

7. TERM AND TERMINATION OF AGREEMENT.

7.1 Term. This Agreement is for an initial term of two years and four months from the Effective Date, through July 31, 2008 (the "Initial Term"), and will automatically continue in effect for successive one year terms thereafter, subject to the remaining provisions of this Section.

7.2 Termination. This Agreement may be terminated as follows:

a. By any party, with or without cause, at the end of the Initial Term or any renewal term, by giving written notice to the others at least 60 days prior to the end of such Initial Term or renewal term;

b. Automatically, if the parties are unable to agree on an equitable adjustment under Section 6.5 of this Agreement;

c. By any party if another materially defaults in its performance of this Agreement and such default continues without cure for a period of sixty days after the terminating party provides written notice to the defaulting party specifying the nature of the default;

d. By any party, at its option, if any court, or governmental or regulatory agency issues to another party an order or finding of impairment or insolvency, or an order to cease and desist from writing business. The party receiving notice of an order or finding must provide the others written notice within two business days of receipt;

e. By any party if another party: (i) makes an assignment for the benefit of creditors; (ii) has a petition filed (whether voluntary or involuntary) under Title 11 of the United States Code, or any other similar statute now or hereafter in effect; (iii) has a receiver, custodian, conservator, or trustee appointed with respect to all or a substantial part of its property; or (iv) has a proceeding commenced against it which substantially impairs performance hereunder; or

f. By Caremark, immediately on written notice to Member County or Customer, if (i) either fails to comply with the provisions of Section 3.1 of this Agreement, or (ii) Caremark determines, in its sole discretion that Member County or Customer's program may not fully comply with all applicable Laws.

7.3 Effect of Termination and Survival.

Sections 4, 5 and 6 of this Agreement, and obligations arising under this Agreement prior to the effective date of any termination, will survive termination.

8. NOTICES.

All notices under this Agreement must be in writing, delivered in person, sent by certified mail, delivered by air courier, or transmitted by facsimile and confirmed in writing (by air courier or certified mail) to a party at the facsimile number and address shown in this Agreement. A party may notify the other party of any changes in the listed address or facsimile number in accordance with the provisions of this Section. All notices are effective upon receipt.

Notices to Caremark must be addressed as follows:

Vice President, Client Contract Services
Caremark Inc.
2211 Sanders Road, NBT9
Northbrook, IL 60062
Fax No.: 847-559-4302

With a copy to:

Managing Counsel, Client and Account Services
Caremark Inc.
2211 Sanders Road, NBT9
Northbrook, IL 60062
Fax No.: 847-559-4879

Notices to Customer must be addressed as follows:

National Association of Counties
440 First Street, NW
Washington, DC 20001
Attn: Mr. Andrew Goldschmidt, Director, Membership Marketing
Fax No.: (202) 393-2630

9. MISCELLANEOUS.

9.1 **Entire Agreement; Interpretation; Amendment; Counterparts.** This Agreement (including

exhibits, schedules, attachments, or any addendum to this Agreement) constitutes the entire understanding and obligation of the parties with respect to the Services and supersedes any prior agreements, writings, or understandings, whether oral or written. The headings in this Agreement are used only for convenience of reference and do not affect the meaning or interpretation of any provision. The parties may amend this Agreement only through a properly executed writing authorized by both parties. This Agreement may be executed in several counterparts, all of which taken together constitute a single agreement between the parties.

9.2 Binding Effect; Assignment. This Agreement is binding on the parties and their respective successors and permitted assigns. None of the parties may assign this Agreement, in whole or in part, without the prior written consent of the others (which consent will not be unreasonably withheld); except that Caremark may assign this Agreement, in whole or in part, to any entity that controls, is controlled by, or is under common control with Caremark.

9.3 Independent Contractor; Third Parties. The parties to this Agreement are independent contractors, and have no other legal relationship under or in connection with this Agreement. No term or provision of this Agreement is for the benefit of any person who is not a party hereto (including, without limitation, any Participant or broker), and no such party will have any right or cause of action hereunder.

9.4 Waivers. Any failure by a party to comply with any covenant, agreement, or condition herein or in any other agreements or instruments executed and delivered hereunder may be waived in writing by the party in whose favor such obligation or condition runs; except that failure to insist upon strict compliance with any such covenant, agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

9.5 Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

9.6 Enforcement Costs. If any party hereto institutes an action or proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding will be paid all reasonable attorneys' fees and costs to enforce such rights by the other party, such fees and costs to be set by the court, not by a jury, and to be included in the judgment entered in such proceeding.

9.7 Authority. Each party represents and warrants that it has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

9.8 Exclusivity. Member County and Customer hereby grant Caremark during the term of this Agreement, and any renewals hereof, the exclusive right to provide a Consumer Card Program to Member County and Customer. This exclusive right is solely applicable to Participants designated by Member County as eligible for the Member County's discount consumer card program and shall not affect any other benefits or programs provided to Participants by Member County. Member County and Customer further agree that, during the term of this Agreement and any renewals hereof, it will not negotiate, contract, or agree with any drug manufacturer for the purpose of obtaining Rebates or other discounts related to Participants under this Agreement. Member County and Customer also agree to cancel any existing agreements or contracts with any drug manufacturers related to such drug Rebates or discounts as of the Effective Date of this Agreement. In the event of a breach of this Section by Member County or Customer, Caremark may terminate this Agreement. By entering into this Agreement, Customer does not endorse, and Caremark will not represent Customer's endorsement of any other programs or services which Caremark may offer to a Member County or Participant.

9.9 Drug Classification and Pricing. Caremark shall use the latest edition of the First DataBank Blue Book (with supplements), the Medi-Span Master Drug Pricing Source (with supplements), or any other nationally recognized pricing source as the source for purposes of pricing and classifying drugs (e.g., legend vs. over the counter, brand vs. generic) in connection with this Agreement.

10. DEFINITIONS. The following terms and phrases, when capitalized, have the meanings set forth below.

- a. **"AWP"** means the average wholesale price of the drug dispensed as set forth in the latest edition of the First DataBank Blue Book (with supplements), the Medi-Span Prescription Pricing Guide (with supplements) or any other similar nationally recognized reference selected by Caremark.
- b. **"Change in Law"** means any (i) change in or adoption of any Law, (ii) change in the judicial or administrative interpretation of any Law, or (iii) change in the enforcement of any Law, occurring after the date Customer is implemented or the Effective Date, whichever is earlier.
- c. **"Claim(s)"** mean those claims processed through the Caremark on-line claims adjudication system or otherwise transmitted or processed in accordance with the terms of this Agreement in connection with the Consumer Card Program.
- d. **"Covered Items"** mean the prescription drug benefits for which Participants are eligible pursuant to Member County's drug benefit plan.
- e. **"Law"** means any federal, state, local or other constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, specified standards or objective criteria contained in any applicable permit or approval, or other legislative or administrative action of the United States of America, or any state or any agency, department, authority, political subdivision or other instrumentality thereof or a decree or judgment or order of a court.
- f. **"Manufacturer"** means a pharmaceutical company that has contracted with Caremark (or its affiliate or agent) to offer discounts for pharmaceutical products in connection with Caremark's Formulary Services.
- g. **"Maximum Allowable Cost (MAC)"** means the then current maximum allowable cost for a prescription drug listed as a drug available from more than one Manufacturer in Caremark's pharmaceutical MAC pricing formula, including but not limited to formulas utilizing the Medi-Span Master Drug Pricing Source or First Data Bank.
- h. **"Participant"** means an individual designated by Member County as eligible for Covered Items under the terms of the Consumer Card Program.
- i. **"Participating Pharmacy"** means a pharmacy that has agreed to provide certain pharmacy services to Participants in accordance with the terms of its agreement with Caremark. A list of Participating Pharmacies can be accessed via Caremark's Internet website, which is subject to change from time to time.
- j. **"Rebate(s)"** means, for any period, all rebates, reimbursements, or other discounts received under a pharmaceutical manufacturer's discount program with respect to pharmaceutical products dispensed to a Participant under the Consumer Card Program for such period.

EXHIBIT D
REDACTED CONTRACT

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers or agents as of the date first above written.

NATIONAL ASSOCIATION OF COUNTIES

CAREMARKPCS HEALTH, L.P.
By: CaremarkPCS Health Systems, LLC,
its General Partner

By: - Signature on File -
Larry E. Naake

- Signature on File -

Title: Executive Director

Title: _____

Date: _____

Date: _____

*EXHIBIT D
REDACTED CONTRACT*

*EXHIBIT A
ADDITIONAL SERVICES*

Caremark will provide the following services if selected by Customer or Member County for an additional fee as set forth in Exhibit B. The Services are subject to change as provided for in the Agreement. Capitalized terms not defined herein will have the meanings used in the Agreement.

1. **Customer-Specific Programming.** If Customer or Member County requests services or changes to Services that require customized programming or systems work, Caremark will attempt to estimate the time and cost for completion of such work. If Customer or Member County authorizes Caremark to perform such work, it will pay Caremark the cost of performing such work at the programming rate set forth in Exhibit B.

EXHIBIT D
REDACTED CONTRACT

EXHIBIT B
FEES

[REDACTED DUE TO PROPRIETARY AND CONFIDENTIAL INFORMATION OF CAREMARK.]

CAREMARKPCS HEALTH, L.P.
NATIONAL ASSOCIATION OF COUNTIES
MANAGED PHARMACY BENEFIT SERVICES AGREEMENT
FOR MEMBER COUNTY

This Managed Pharmacy Benefit Services Agreement for Member County effective _____
is entered into by and between CaremarkPCS Health, L.P. ("Caremark") and _____

Reference is hereby made to the Managed Pharmacy Benefit Services Agreement Consumer Card Program dated as of March 1, 2006
(the "Agreement") among National Association of Counties ("Customer"), Member County, and Caremark under which
Customer has engaged Caremark to provide services to prescription drug plans for Customer and its Member Counties.

MEMBER COUNTY does hereby agree to be bound by, and to assume and perform, each and all of the terms, covenants and
conditions of the Agreement as Member County (as defined in the Agreement) in the same manner and to the same extent as if it
were a party thereto. Member County acknowledges and agrees that Customer and Caremark may amend all or any portion of the
Agreement, except with respect to the Initial Term, and Member County hereby agrees to be bound by any such amendment.
Customer shall give Member County reasonable notice prior to the effective date of any such amendment. If such amendment is
adverse to Member County or its Participants, Member County may, within ninety (90) days of receiving such notice from Customer,
terminate its participation in the Agreement by giving prior written notice to Customer and Caremark.

Each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback
Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations
under this Agreement. Further, Caremark shall ensure that individuals meeting the definition of "Covered Persons" (as such term is
defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human
Services and AdvancePCS) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback
Statute and the Stark Law. In addition, Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and
Stark Law may be accessed at <http://www.caremark.com/wps/portal/s.155/3370?cms=CMS-2-007764>.

Customer and Caremark, by their signatures hereto, accept and agree to Member County's participation with the Agreement under
the terms and conditions of the Agreement. By signing this Managed Pharmacy Benefit Services Agreement for Member County,
Member County acknowledges and agrees that the terms of the Agreement have been completely read, fully understood and
voluntarily accepted and further agrees to be bound thereby.

NATIONAL ASSOCIATION OF COUNTIES

By: _____
Signature on File

Title: _____

Date: _____

CAREMARKPCS HEALTH, L.P.

By: CaremarkPCS Health Systems, LLC, its
General Partner

MEMBER COUNTY:

[County Name]

By: _____
Signature on File

Title: _____

Date: _____

By: _____
Signature on File

Title: _____

Date: _____

10:10

Executive Session

CID Water Rights
Issue

K. Fitzgerald

10:10

BENTON COUNTY PROSECUTOR 7122 W. Okanogan Place, Bldg. A Kennewick WA 99336 Telephone: 735-3591 Fax: 736-3066	
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ATTORNEY-CLIENT PRIVILEGED - DO NOT DISCLOSE

TO: Board of County Commissioners
 Mr. Max Benitz; Mr. Leo Bowman; and Mr. Claude Oliver

CC: Mr. Ross Dunfee; Mr. Steve Becken
 Benton County Public Works Dept.

FROM: Kathleen Fitzgerald, DPA

DATE: February 26, 2008

RE: CID Water Rights and Plan for Utilization

The following parcels were on CID's agenda for water right reassignment. The County objected to reassignment of water rights and is in progress on developing a plan for utilization of the water allocated to these parcels per Option 1 of Terry Miller's list of options (Adopt a plan acceptable to the District and use the water this year, 2008).

1. Tax Parcel No. 1-0598-103-0003-001 - Dike/Tax Title
2. Tax Parcel No. 1-0598-103-0010-001 - Dike ,
3. Tax Parcel No. 1-0980-300-0023-000 - Near CID Shop
4. Tax Parcel No. 1-1680-100-0009-000 - Pit near Chemical Dr.
5. Tax Parcel No. 1-2180-201-0162-005 - Right of Way
6. Tax Parcel No. 1-2680-400-0009-001 - Right of Way.

I advised the County Commissioners that I left the CID board meeting with the assurance that the CID board simply wants the County to use the water allocated to these properties and have a plan in place for utilization of the water. The County Commissioners are keen to preserve and utilize the allocated water on County owned property.

County Plan A

Steve Becken of the Public Works Department contacted Larry Fox on February 11, 2008 to discuss options for utilizing the water in accordance with Option (1) on Miller's list of proposals. Today Ross Dunfee, the County Engineer, and Steve Becken are examining the feasibility of bringing water into Two Rivers Park. Rather than having water on dikes and right of way, it makes sense to take the water allocated to these small parcels that really require no irrigation and move the allocated water to Two Rivers Park. This

would entail transferring water allocated to parcels No. 1,2,3, 5 and 6 above and transferring the entirety to Two Rivers Park. The Pit on Chemical Drive is in the process of being sold and is not factored into this analysis. (Note: Per the sale of the Pit on Chemical Drive, we are looking at a water allocation of 7.23 acres and not 13.82 acres). Larry Fox advised that this park is outside of the CID boundary but if the County could develop a plan and commit to that plan, the CID would be willing to go through the annexation process to bring Two Rivers Park into the District. Larry Fox advised Steve Becken that he is willing to work with the Public Works Department to flesh out this proposal and determine whether it is feasible and economically reasonable to transfer water to Two Rivers. The County will need time to study this matter. Mr. Fox advised that providing he remains in the loop, he has no problem working with the County and giving the County the time it needs to examine this possible resolution.

County Plan B

If the Two Rivers Park proposal does not work out, the Commissioners, as Plan B, suggested that the County eliminate the two parcels that are right of way, (#5 and #6). That will remove these parcels from the tax rolls and they should no longer be assessed. In so doing, the County would relinquish the water right associated with these properties.

No. 4 on the list above, the Pit on Chemical Drive, is in the process of being sold to the Shoemakers. That sale should be completed this month.

As for Nos. 1 and 2, the Commissioners advised that the County could give up the water rights on these two parcels as water is not needed on the dikes.

And finally, No. 3, the County would give this property to CID in exchange for a cancellation of the irrigation assessments that are due and owing on that property. This amounts to \$307.89 for 2007 and in April 2008, \$593.99. This property is landlocked with CID and DNR property on all sides. The County does not have an access easement into this property.

Both Plan A and Plan B provide that delinquent irrigation assessments will be paid on the above parcels, except the tax title property per RCW 36.35.100 (No. 1 on the list of parcels above).

MEMO FROM PUBLIC WORKS DATED FEBRUARY 14, 2008 - SEE ATTACHED

This memorandum provides further information and detail regarding Plan A and Plan B.

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

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

Benton County

Department of Public Works

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

To: Kathleen Fitzgerald, Deputy Prosecuting Attorney
Larry Fox, Manager, Columbia Irrigation District

From: Steven W. Becken, Asst. Pub. Wks. Dir./Asst. Co. Eng.

RE: CID water rights issues

Date: February 14, 2008

We have been asked to explore the possibility of having the irrigation water rights for six properties transferred to the Two Rivers Park in the Finley area.

Two Rivers Park is outside the Columbia Irrigation District boundaries. Benton County would need to request annexation into the CID before water could be transferred to the park. The CID, if they agreed to the annexation, would need to contact the Benton County Planning Department to determine whether or not this needs to go before the Boundary Review Board. This decision is dependent upon the size of the annexation. If the acreage to be annexed is 10 acres or less or less than \$2,000,000.00 in valuation, the process can be accomplished in a few days. If water rights from all six parcels are to be transferred, we exceed the 10-acre rule and the time frame for annexation can stretch out to six months, not counting CID time to begin the process.

West of Haney Road is an existing 8-inch irrigation line extending Northerly from the CID canal to the North Side of Finley Road. That line then splits into several other lines, one of which is a 3-inch line running Southerly along the North side of Finley Road approximately 400 feet. Because of friction and head loss, the 3-inch line would need to be replaced with a 4-inch line. To connect the park to this line would require continuing the 4-inch line another 1,100 feet more or less. Cost of installing this line is estimated at \$10,000.00.

Once irrigation pipe is extended to the park, a connection into the park's system would be required, if it can be done, or lay new park irrigation lines at additional expense.

Columbia Irrigation District will not begin the process of annexing the park unless the Benton County will commit to placing the park irrigation system in the ground and utilizing the water. If CID does not annex the park, the water rights cannot be transferred to the park.

If the Board determines to not go to the expense of providing irrigation water to Two Rivers Park, the following for each parcel of property is offered:

1: Parcel Number 1-0598-103-0003-001

This is a dike on the Yakima River located in Bridge Acres in West Richland. The parcel is 0.13 acres in size and was obtained by Treasurer's Deed, 12/22/1993. The parcel is landlocked. It is recommended to offer it at minimal price, subject to the dike remaining in place, to the adjoining landowners. If the adjoining landowners decline to purchase the property we would recommend transferring the irrigation water rights on this parcel to Columbia Irrigation District to be redistributed to other lands.

2: Parcel Number 1-0598-103-0010-001

This is a dike on the Yakima River located in Bridge Acres in West Richland. The parcel is 0.13 acres in size and was obtained by a condemnation taking for Diking District No. 1, Superior Court Case No. SC 15959. The parcel is landlocked. It is recommended to offer it at minimal price, subject to the dike remaining in place, to the adjoining landowners. If the adjoining landowners decline to purchase the property we would recommend transferring the irrigation water rights on this parcel to Columbia Irrigation District to be redistributed to other lands.

3: Parcel Number 1-0980-300-0023-000

This is a triangular shaped parcel of property located near the Columbia Irrigation District shop East of Kennewick. This is a landlocked parcel of property, bordered on the East by the railroad, the South by the State and the West by the Corp of Engineers and Columbia Irrigation District. Besides being landlocked, the ground consists of river rock that would take extensive landscaping if it were to be used for homes. With no access, it would be difficult to utilize the property for any kind of business.

The Assessor's Office states this is a 2.2-acre parcel, however, we are apparently being invoiced from CID for 3.34 acres of water. It is recommended this parcel be sold to Columbia Irrigation District at a minimal price. They have expressed a minor interest in the property to aid in securing their shop site. They could then control the water rights on this parcel.

4: Parcel Number 1-1680-100-0009-000

This is the Chemical (Road) Pit along SR-397. This has been offered for sale in the past and the sales have fallen through. Currently there is another offer that has been tendered for the property. It is recommended that the offer be considered and the water rights remain with the property. Regardless the outcome of the current offer to purchase this parcel, water rights need to remain with this land. It would appear that there could be a negative impact on the value of this land if the water rights are lost.

5: Parcel Number 1-2180-201-0162-005

This is actually road right of way. When the adjoining land was short platted, the survey did not include the road in the short plat. Because no deed had been filed formally transferring the right of way to the County, the Assessor assigned the land a parcel number. The landowner deeded the County the right of way, however, because the taxes on the land, amounting to \$7.78, had not been paid for the year 2007, the land did not get reclassified as road right of way and still shows on the Assessor's records as land. The taxes should be paid by March 1.

We also have taxes and an irrigation assessment due for 2008. I spoke with Barb Beller in the Benton County Treasurer's Office regarding the 2008 taxes and how to make them go away. After we have paid the 2007 assessment, the Treasurer's Office can zero out all but the irrigation assessment. To eliminate the irrigation assessment, the Treasurer's Office needs a letter from CID approving the deletion of the assessment. To this end, I spoke with Larry Fox, CID Manager. He stated that once we have title (we do have this) and after the County has filed for either transferring or relinquishing the water rights on this parcel, the irrigation district will remove the assessment. This puts us in a Catch 22 on this parcel. If the irrigation assessments are not removed, the parcel number cannot be eliminated and if this drags on into next year, there will be 2009 taxes and assessments to address.

Because this is road right of way, transferring the irrigation water rights on this parcel to Columbia Irrigation District to be redistributed to other lands should be considered.

6: Parcel umber 1-2680-400-0009-001

This is land that was purchased for the Intertie. The entire parcel of property was purchased to avoid leaving an uneconomic remnant. It is recommended that Public Works prepare a deed for Board signature dedicating only what is needed of the parcel for road and offering the remainder to the Port of Kennewick. The Port has not been consulted to determine whether or not there is an interest in the property. It is recommended that the Board consider transferring the irrigation water rights on the road right of way to Columbia Irrigation District to be redistributed to other lands.

10:30

Bid Opening – Traffic Sign Material

10:40

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ESTABLISHING A SALARY GRADE FOR THE PLANNING MANAGER

WHEREAS, the Board of Benton County Commissioners approved Resolution 07-320, Non-Bargaining Salary and Classification/Grade Administration Policy and Procedure; and,

WHEREAS, that Resolution includes a process for “new” position and/or substantially changed position (re)classification/grade requests to be processed for a determination by the Board of Benton County Commissioners; and,

WHEREAS, the Board of Benton County Commissioners has suspended the Non-Bargaining Position Evaluation Committee; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby establishes a grade of 21 to the Planning Manager; and,

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and,

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County’s “at will” employer status.

Dated this day of, 20

Chairman of the Board

Chairman Pro Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

TITLE: PLANNING MANAGER

DEPARTMENT: PLANNING DEPARTMENT

REPORTS TO: COUNTY ADMINISTRATOR

SUPERVISES: ALL PERSONNEL IN THE PLANNING DEPARTMENT

SUMMARY:

Plans, organizes and directs the planning department functions for the County; prepares and implements the County Comprehensive Plan and Development Regulations.

JOB DUTIES:

Directs department operations to achieve goals within budgeted funds and available personnel; plans and organizes workloads and staff assignments, reviews progress, directs changes in priorities and schedules as needed to assure work is completed in an efficient and timely manner.

Provides managerial leadership and directs the selection, supervision and evaluation of staff. Conducts or oversees performance evaluations, and initiates and implements disciplinary actions as warranted. Resolves grievances and other sensitive personnel matters. Provides training and motivation to make full use of individual capabilities and to meet changing system demands.

Provides planning leadership and direction, and develops current and long-range plans, development regulations, goals and objectives for the County, including the Comprehensive Plan; evaluates existing local, state and federal regulations and develops, recommends and implements modifications to existing ordinances and procedures. Directs Shorelines Management activities; acts as the County SEPA official, provides staff support to the Boundary Review Board.

Establishes policies, procedures, work rules, and performance standards to assure the efficient and effective operation of the Planning Department in compliance with County standards and federal, state and local laws.

Prepares and administers the department budget based on staffing and resource requirements, cost estimates and objectives and goals. Monitors and documents expenditures assuring compliance with approved budget and staff levels.

Analyzes and recommends improvements to existing services and operating systems of the department. Develops and maintains systems and records that provide for proper evaluation, control and documentation of assigned operations. Coordinates department programs with other governmental agencies.

Makes presentations regarding planning proposals and activities to the Commissioners, civic groups and the general public. Directs the resolution of inquiries, complaints, or problems, or emergencies affecting the availability or quality of services. Responds to the most sensitive or complex inquiries or service complaints.

KNOWLEDGE, SKILLS AND ABILITIES:

Knowledge of practices, principles and procedures of current and long range planning.

Knowledge of legal requirements, regulations and laws applicable to the operation of the department.

Knowledge of principles and practices of governmental fiscal management, including budget preparation, expenditure control, grant writing and record keeping.

Ability to perform research and write comprehensive reports on planning, zoning and related matters.

Ability to plan, organize and oversee assigned work programs, including monitoring work schedules and evaluating the work of subordinates.

Ability to develop departmental goals and objectives and to conduct and implement planning activities.

Ability to analyze and evaluate operations and develop and implement corrective action to resolve problems.

Ability to establish and maintain effective working relationships with employees, County Commissioners, other agencies and the general public.

Ability to communicate effectively both orally and written with individuals and groups regarding complex or sensitive issues or regulations.

Proficient in Microsoft Word and GIS systems.

EDUCATION/EXPERIENCE:

Bachelor's degree in Planning or related field; Master's degree preferred. Five years of professional level planning experience including managerial and supervisory responsibility. In place of a Master's Degree five additional years of experience is required.

LICENSES/CERTIFICATES/OTHER REQUIREMENTS:

Valid Washington State Driver's License

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ESTABLISHING A SALARY GRADE FOR THE BUILDING MANAGER

WHEREAS, the Board of Benton County Commissioners approved Resolution 07-320, Non-Bargaining Salary and Classification/Grade Administration Policy and Procedure; and,

WHEREAS, that Resolution includes a process for “new” position and/or substantially changed position (re)classification/grade requests to be processed for a determination by the Board of Benton County Commissioners; and,

WHEREAS, the Board of Benton County Commissioners has suspended the Non-Bargaining Position Evaluation Committee; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby establishes a grade of 19 to the Building Manager; and,

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and,

BE IT FURTHER RESOLVED, that this Resolution is not intended nor shall be interpreted as limiting or compromising the County’s “at will” employer status.

Dated this day of, 20

Chairman of the Board

Chairman Pro Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

TITLE: BUILDING MANAGER
DEPARTMENT: BUILDING DEPARTMENT
REPORTS TO: COUNTY ADMINISTRATOR
SUPERVISES: ALL PERSONNEL IN THE BUILDING DEPARTMENT

SUMMARY:

Plans, organizes, and directs the building department functions for the County. Enforces building, zoning, mechanical, fire and other codes and ordinances adopted by the County. Performs inspections of private and public construction projects, and coordinates other building inspection activities.

JOB DUTIES:

Directs department operations to achieve goals within budgeted funds and available personnel; plans and organizes workloads and staff assignments, reviews progress, directs changes in priorities and schedules as needed to assure work is completed in an efficient and timely manner.

Provides managerial leadership and directs the selection, supervision and evaluation of staff. Conducts or oversees performance evaluations, and initiates and implements disciplinary actions as warranted. Resolves grievances and other sensitive personnel matters. Provides training and motivation to make full use of individual capabilities and to meet changing system demands.

Establishes policies, procedures, work rules, and performance standards to assure the efficient and effective operation of the Building Department in compliance with County standards and federal, state and local laws.

Prepares and administers the department budget based on staffing and resource requirements, cost estimates and objectives and goals. Monitors and documents expenditures assuring compliance with approved budget and staff levels.

Analyzes and recommends improvements to existing services and operating systems of the department. Develops and maintains systems and records that provide for proper evaluation, control and documentation or assigned operations. Coordinates department programs with other governmental agencies.

Makes presentations regarding building proposals and activities to the Commissioners, interested groups and the general public. Directs the resolution of inquiries, complaints, or problems, or emergencies affecting the availability or quality of services. Responds to the most sensitive or complex inquiries or service complaints.

Directs the enforcement of building, fire and zoning codes in the county; assures that the County conforms to state and federal building, fire and other codes.

Provides leadership and direction in evaluating existing local, state and federal regulations and develops, recommends and implements modifications to existing ordinances and procedures.

Coordinates work with other departments and the general public to ensure timely completion of work projects.

Supervises the permit issuance, inspections, approvals, and disapprovals of each stage of residential, commercial, and mobile home construction, alteration, or repair. Assures compliance with applicable building, plumbing, mechanical, and fire codes.

Provides information to contractors and the general public regarding building codes, regulations, and policies and zoning laws. Interprets codes as necessary.

WORKING CONDITIONS:

Work is performed in an office setting or in the field. Driving and field inspections may require exposure to varying weather conditions.

KNOWLEDGE, SKILLS AND ABILITIES:

Ability to develop departmental goals and objectives and to conduct and implement building activities.

Ability to analyze and evaluate operations and develop and implement corrective action to resolve problems.

Ability to plan, organize and oversee work programs, including monitoring work schedules and evaluating the work of subordinates.

Thorough knowledge of principles, methods, and techniques relating to the inspection of residential/commercial buildings and mobile home placement/alterations.

Knowledge of building construction, plumbing, and mechanical installations.

Knowledge of legal requirements and laws applicable to the operation of the building department.

Ability to interpret plans, specifications, and engineering drawings to monitor construction progress.

Ability to establish and maintain effective working relationships with employees, County Commissioners, other agencies and the general public.

Ability to accurately document inspections and to explain decisions to contractors and the general public.

Ability to communicate effectively both orally and written with individuals and groups regarding complex or sensitive issues or regulations.

EDUCATION AND EXPERIENCE:

High school diploma or GED and ICBO certifications in building, plumbing, and mechanical required. Minimum five years of professional level building experience with a governmental agency including managerial and supervisory responsibility. Experience in building construction preferred. College or Jr. College course in construction or related field may be substituted for construction experience.

LICENSE, CERTIFICATES AND OTHER REQUIREMENTS:

ICBO Certifications in building, plumbing and mechanical required. Chief Building Official Certification preferred. All certifications must be maintained in current status while employed. Valid Washington State Driver's license obtainable; must have a good driving record.

10:50 am

Executive Session

Discuss Performance of Public Employees

D Sparks

No Submittal To Be Provided

11:05

Executive Session
Potential Litigation

R. Brown

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

Benton County

Department of Public Works

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

11:15

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

To: Board of County Commissioners

From: Steven W. Becken, Asst. Co. Eng./Asst. Pub. Wks. Dir. *SWB*

Date: March 4, 2008

RE: Bert James Road, CE 1774 CRP

On March 18, 2003 Public Works staff was given direction to prepare an alignment for Bert James Road and to begin obtaining right of way for the project.

In November of 2005, we notified all landowners of the project and the fact that additional right of way would be needed for the project. Because this was not a high priority project, we worked on obtaining the right of way as time permitted. By October of 2007, we had obtained all of the needed right of way with the exception of a parcel owned by the Department of Natural Resources (DNR) and lands owned by Earl and Ines Walker.

We have been working with the DNR and now need to submit the final drawings before a permit can be issued.

When we first contacted Mr. Walker by letter we offered \$2,225.00 for 6.19 acres of land needed for the road. We based our offer on the Benton County Assessor's appraised value of the land. In 2007, the Assessor revalued the land and we increased our offer to \$3,170.00 based on the new assessed valuation.

In September 2007, we met with Earl Walker to begin negotiations for the property. At the that meeting Mr. Walker would not discuss selling the land unless we were willing to undertake work on Hickman Road and impose location restrictions on Level 3.

Level 3 is a fiber optic company that installed fiber optics in Bert James Road. Apparently the company and Mr. Walker were negotiating for the right to install the fiber optics through the Walker property. Not coming to an agreement, Level 3 decided to install the fiber optics in the right of way in accordance with their franchise. According to Mr. Walker, Level 3 also did not clean up the area properly after completion of their work. It was explained to Mr. Walker that because Level 3 has a franchise with the County, we could not prohibit Level 3 from being in the right of way nor could we impose any restrictions on them that we would not impose on other companies. We also explained that Hickman Road was not under consideration for reconstruction at this time and its reconstruction would not be part of our discussions on Bert James Road.

Because we wouldn't do anything with Hickman Road nor would we impose any restrictions on Level 3, Mr. Walker determined that the meeting was over and left.

To bring the project back to the forefront, we contacted Mr. Walker in February asking the he contact us to restart the negotiations for the right of way. On March 3, Mr. Walker came to our office to discuss the project.

Mr. Walker began the conversation by saying that he would sell us the land only if we would include a clause in the deed not allowing Level 3 to be located in the right of way he was selling without his approval and without compensation to him by Level 3. He stated that he knew we had received payment of \$1.00 per foot of fiber optic from Level 3 to allow them to place their cable within the right of way. We explained that once we received the right of way, that in accordance with the franchise, Level 3 would be allowed in the new right of way. We would not treat them any different than any other franchise holder and we would not honor his request to include a clause denying access rights to or requiring payment from Level 3. We also informed him that we did not receive any payment from Level 3, other than the franchise fee, to allow them in the right of way. With that, Mr. Walker informed us that he would not sell the right of way, would be consulting an attorney and left.

A short time later he returned to discuss the road again. At this time he stated that he would sell the land, however, the price would be at least \$6,000.00. In addition to this he wanted us to tell Level 3 they could not be in the right of way and he would negotiate with them to grant them an easement. Once again he was informed that we would not prohibit Level 3 from the right of way. He wanted to know who would be responsible for relocating the cable and pots that were in the way. We informed him that under the terms of the franchise, Level 3 would be responsible for the relocation of anything of theirs located within the right of way that interfered with our project. We agreed to inform Level 3 that obtaining an easement from Mr. Walker was an option if they did not want to relocate within the right of way.

If we would not prohibit Level 3 from the right of way, Mr. Walker stated that he wanted to be paid \$1.00 per foot for the fiber optic in front of his property in addition to the \$6,000.00. He apparently believes that this is what he would have received from Level 3 had easement negotiations worked out and that by allowing the company to locate within the road right of way he was cheated out of that money. The total current request from Mr. Walker is approximately \$12,000.00 for the 6.19 acres. At this time this is a verbal request only as he has submitted nothing in writing.

We are at a point where continued negotiations will probably be fruitless. While we could make a case to increase the offer for the right of way closer to the \$6,000.00 figure, we cannot agree to pay for cable installed within County road right of way. Mr. Walker's bias with Level 3 will continue to enter into the negotiations and our continued refusal to impose restrictions on Level 3 or to pay him for cable within the right of way will negate any movement toward purchase of the additional needed road right of way.

We are seeking direction for the Board on how to proceed with the project. Do we continue to attempt to negotiate with Mr. Walker and if so, when do we final say enough? Do we hire a professional appraiser and negotiate based upon his value of the land? This will probably not get us any further than we are now, however, it would aid us in preparations for condemnation proceedings. Do we prepare to go to condemnation or do we drop the project?

11:30

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: March 10, 2008	Execute Contract _____	Consent Agenda _____
Subject: Kennewick Annex Update	Pass Resolution _____	Public Hearing _____
	Pass Ordinance _____	1st Discussion _____
Prepared by: <u>M. Wenner and Roy Rogers</u>	Pass Motion _____	2nd Discussion _____
	Other X_____	Other X_____

BACKGROUND INFORMATION

On January 4, 2008, the Benton County Facilities Manager and Risk Manager presented to the board a plan of action to address the recommendations made by the Empirical Company in their final report for the Indoor Air Quality Study for the Benton County Annex. The Facilities Manager and Risk Manager would like to update the board on the progress of that plan.

11:40

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 10 Mar 2008 Subject: HHH public outreach Memo Date: 04 Mar 2008 Prepared By: AJF Reviewed By:	Execute Contract Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda Public Hearing 1st Discussion 2nd Discussion Other

INTRODUCTION

This discussion has three separate but overlapping and connected components. I will be trying to meet with Commissioners individually to discuss, and I am trying to minimize the length and complexity of this memo.

Staff believes there are three decision points for Monday:

1. Does Benton County want to join the inter-local agreement with Klickitat County for cost-sharing the remainder of the WRIA 31 Watershed Plan preparation (up to \$10,000)?
2. How does Benton County want to pursue a feasibility study for Horse Heaven Hills irrigation?
3. How does Benton County want to pursue public outreach and survey for Horse Heaven Hills irrigation?

Each of these are discussed in brief below.

SUMMARY & BACKGROUND – WRIA 31 INTER-LOCAL AGREEMENT

The 1998 legislature passed ESHB 2514, codified into RCW 90.82, to set a framework for developing local solutions to watershed issues on a watershed basis. Under this process, Benton and Klickitat Counties have been jointly developing a watershed plan for "Water Resource Inventory Area #31" (WRIA 31) for about the last four years. Klickitat County has been the lead agency, and as such has handled all or the administration and contracting for this project. They have a full-time staff member dedicated to planning the three WRIAs in the County.

There are four phases of the plan development, and the State of Washington provides primary funding for each phase through the Department of Ecology:

- Phase 1 - **Organization** - \$50,000 per WRIA (WRIA 31 completed)
- Phase 2 – **Technical Assessment** - Up to \$200,000 per WRIA (WRIA 31 completed)
- Phase 3 - **Planning** - Up to \$250,000 per WRIA (WRIA 31 almost completed)
- Phase 4 – **Implementation** – Up to \$250,000 per WRIA (WRIA 31 begins in July)

We are close to completing "Phase 3". The Planning Unit has approved the Plan, but now it must go through State Environmental Policy Act review and then come to the county commissioners for final adoption.

In WRIA 31 we have spent the whole of our State grant, but we added some extra items to the scope, such as preparing the "pre-application" described below, and we needed to have two extra meetings with our consultant (Aspect Consulting), and some other items related to printing and SEPA review. As such, we are over budget. Klickitat County has started to absorb these costs because things have to get done, but they are hoping that Benton County will be a partner. They have prepared a joint resolution and inter-local agreement (attached) for cost-sharing to finish "Phase 3".

FISCAL IMPACT

Up to but not to exceed \$10,000. I have worked with Loretta and we have identified Sustainable Development money to cover this cost.

ACTION SOUGHT

Passage of the joint resolution and the associated interlocal agreement.

SUMMARY & BACKGROUND – HORSE HEAVEN HILLS FEASIBILITY STUDY

Following the previous reports that Nakaty Enterprises prepared for Benton and Klickitat Counties in 2004, 2005, and 2006; the feasibility study would look more deeply at subjects such as agricultural practices and crops, allowable withdrawals from the Columbia River at various intervals, storage capacity at the possible reservoir sites, suitability of the dam sites, suitability of the conveyance alignment, and other issues associated with using some of the Day/McNary irrigation reserve in a lift, conveyance, and storage system in the Horse Heaven Hills.

The WRIA 31 Planning Unit prepared a required "pre-application" for Ecology for grant funding of this study (this was part of the expanded scope discussed above). Upon review, Ecology has said that an invitation for formal application will not be extended on this project (erroneously, the Planning Unit previous was sent a letter with the opposite message on March 3rd).

Ecology has concerns about the scope of this project. As of this memo, Mr. Fyall and Mr. McClure tentatively have plans to meet with Ecology on Friday, March 7th for more detail on this. In any event, there are essentially two options – the County(s) can apply pressure on Ecology to rethink this decision and allow us to submit an application; or we can use some time this year to better define the project and go back to Ecology or another possible funding source at a later time. The application deadline is April 1st, and it is a rigorous application preparation process.

FISCAL IMPACT

One estimate of a cost for the feasibility study is in the \$100,000-120,000 range (Nakaty, 2007). If the County(s) succeed in getting a state grant for the feasibility study, either in 2008 or later, the impact may only be in staff and incidental expenses. The other options are to pursue other funding sources, and to bankroll the project ourselves. We have not placed any markers in the 2008 budget for projects of this magnitude.

ACTION SOUGHT

The key decision today, is for how much Benton County wants to pursue getting the State to accept an application for the feasibility study this year (April 1st). If the Board wants to pursue this option, then staff will work with Klickitat County and Ecology to make this happen.

SUMMARY & BACKGROUND – HORSE HEAVEN HILLS SURVEY

In January, Commissioners asked staff (Fyall and Dunfee) to develop a strategy for informing and gauging the opinion of the affected public in south Benton County (and eastern Klickitat County) about the concept for bringing large-scale irrigation to the Horse Heaven Hills through a lift and canal system, utilizing the Day/McNary irrigation reserve. The goal being to get a better feel for the level of community interest and support in this project before the County(s) begin another round of investment of money and staff time in studies and planning.

Staff discussed the subject further, agreeing that the best approach would be to contract an outside consultant for the work. The attachment describes the general workscope, which essentially includes an effort to distribute basic information about the concept to the public, and contacting water users within the study area to gather their opinion. A budget "in the area of \$10,000-15,000" was assumed.

Mr. Fyall prepared a request for qualifications (RFQ), which was reviewed and critiqued by Mr. Dunfee and also by Dave McClure of Klickitat County. The revised RFQ is attached for Board consideration.

FISCAL IMPACT

Staff has set a budget not to exceed \$12,000. The money would come from the Sustainable Development budget. The RFQ is [at this point] written with the assumption of Klickitat County as a partner. Staff has also included Klickitat County in this review and Klickitat County staff has discussed the subject with their Board of Commissioners to see if Klickitat County wants to be a cost-sharing partner. Klickitat Commissioners are supportive of the survey, but feel its timing is linked to the feasibility study discussed above. If the Counties decided to move forward with pursuit of the feasibility study now, then Klickitat is willing to move forward with the survey and cost-share the project. If, however, a decision is made not to immediately pursue the feasibility study, Klickitat County feels it would be a better idea to wait until summer for the survey and use "Phase 4" monies from Ecology to fund it and save our money. Dave McClure has discussed this with Ecology, and Ecology has told him that this is an acceptable use of the Phase 4 grant, since a major component of Phase 4 is public outreach.

ACTION SOUGHT

Decision points:

1. Does Benton County want to pursue the survey now, or wait until later in the year?
2. In either case, does the draft RFQ reflect what the Board intended for this project in January?

#

**THE FOLLOWING SECTION
IS THE BENTON-KLICKITAT
INTER-LOCAL AGREEMENT
AND JOINT RESOLUTION**

BEFORE THE BOARDS OF COUNTY COMMISSIONERS
of Benton and Klickitat Counties, Washington

IN THE MATTER OF	}	Benton County
SUPPORTING COMPLETION OF THE WATERSHED	}	Resolution _____
PLANNING PROCESS FOR WATER RESOURCE	}	Klickitat County
INVENTORY AREA 31	}	Resolution <u>04008</u>

WHEREAS, the Boards of County Commissioners, meeting in their respective regular sessions, having before them the need to consider providing funding to support completion of the watershed planning process for Water Resources Inventory Area (WRIA) 31; and

WHEREAS, watershed planning under chapter 90.82 of the Revised Code of Washington ("RCW") provides a thorough and cooperative method for determining what the current water resource situation is in a WRIA, provides local citizens and the governments closest to them with the maximum possible input concerning their goals and objectives for the development and management of water resources within the WRIA, and provides a process that will result in providing state agencies with more specific guidance to manage water resources in the WRIA consistent with current law and direction provided by local entities and citizens; and

WHEREAS, Benton County and Klickitat County are initiating governments under chapter 90.82 RCW for watershed planning in WRIA 31; and

WHEREAS, Klickitat County is the lead agency for watershed planning in WRIA 31 and as such is responsible for grant administration and coordination of the planning effort; and

WHEREAS, the WRIA 31 Planning Unit has made good progress on developing a proposed watershed management plan, which will be presented for considered for approval by joint session of the boards of county commissioners for the counties with territory in the WRIA; and

WHEREAS, Klickitat County estimates that the cost completing the watershed planning process for WRIA 31 will exceed by twenty thousand dollars (\$20,000) the amount of funding available under Klickitat County's grant from the Washington Department of Ecology; and

WHEREAS, completing the watershed planning processes for WRIA 31 is in the interest of the citizens of Benton County and Klickitat County;

NOW THEREFORE BE IT RESOLVED, that Benton and Klickitat Counties will contribute up to ten thousand dollars (\$10,000) each to pay the eligible costs of completing the WRIA 31 watershed planning process, pursuant to the terms set out in an Interlocal Agreement between the counties; and

IGN
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BE IT FURTHER RESOLVED, that eligible costs under this resolution are those expenditures made by Klickitat County on or after October 1, 2007 in fulfillment of its responsibilities as the lead agency for watershed planning in WRIA 31 and for which Klickitat County can not be reimbursed under its watershed planning grant from Washington Department of Ecology because the amount of the grant funding is exhausted; and

BE IT FURTHER RESOLVED, that neither this resolution nor any resulting interlocal agreement shall in any way affect the deliberations or decisions of the counties pertaining to approval or rejection of any proposed watershed management plan for WRIA 31.

DATED this 26 day of February, 2008.

DATED this ___ day of _____, 2008.

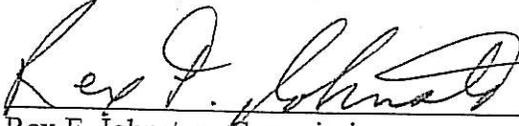
BOARD OF COUNTY COMMISSIONERS
Klickitat County, Washington

BOARD OF COUNTY COMMISSIONERS
Benton County, Washington



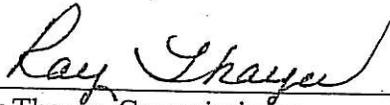
David Sauter, Chairman

Claude Oliver, Chairman



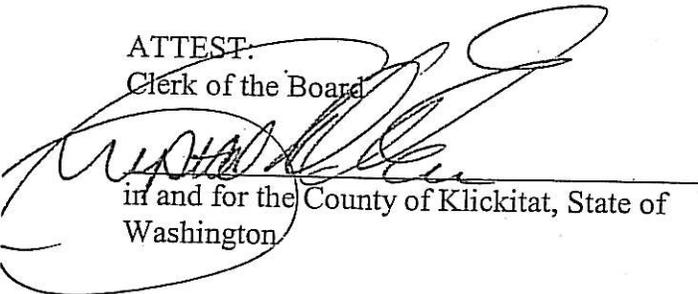
Rex F. Johnston, Commissioner

Leo Bowman, Commissioner



Ray Thayer, Commissioner

Max Benitz, Jr., Commissioner

ATTEST:
Clerk of the Board


in and for the County of Klickitat, State of Washington

ATTEST:
Clerk of the Board

in and for the County of Benton, State of Washington



204008

**INTERLOCAL AGREEMENT
FOR TWO-COUNTY COOPERATION ON
WATERSHED PLANNING FOR WATER RESOURCE INVENTORY AREA 31**

This Interlocal Agreement ("Agreement") is entered into by and between Benton County, a municipal corporation of the State of Washington, and Klickitat County, a municipal corporation of the State of Washington, collectively referred to in this Agreement hereafter as the "Parties".

RECITALS:

WHEREAS, watershed planning under Chapter 90.82 of the Revised Code of Washington ("RCW") provides a thorough and cooperative method for determining what the current water resource situation is in a water resource inventory area ("WRIA"), provides local citizens with the maximum possible input concerning their goals and objectives for the development and management of water resources within the WRIA, and provides a process that will result in providing state agencies with more specific guidance to manage water resources in the WRIA consistent with current law and direction provided by local entities and citizens; and

WHEREAS, Benton County and Klickitat County are initiating governments under Chapter 90.82 RCW for watershed planning in WRIA 31; and

WHEREAS, Klickitat County is the lead agency for watershed planning in WRIA 31 responsible for grant administration and coordination of the planning effort; and

WHEREAS, Klickitat County estimates that the cost completing the process of developing a watershed management plan will be exceed by up to twenty thousand dollars (\$20,000) the amount of funding available under Klickitat County's grant from the Washington Department of Ecology; and

WHEREAS, completing the process of developing a watershed management plan for WRIA 31 is in the interest of the citizens of Benton County and Klickitat County; and

WHEREAS, the Parties to this Agreement have developed a joint resolution, as provided in Exhibit A, to ensure completion of the process of developing a watershed management plan for WRIA 31; and

WHEREAS, implementation of said joint resolution involves costs which should be shared equally by the Parties;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Parties shall cooperate to implement and fund their joint resolution for completing the watershed planning process in WRIA 31.
2. Responsibility for management of the project shall be with Klickitat County acting as the lead agency for watershed planning in WRIA 31 in cooperation with Benton County through the WRIA 31 Planning Unit.
3. The Parties agree that each party will contribute up to ten thousand dollars (\$10,000) each for payment of Eligible Watershed Planning Costs, and that Klickitat County will be the lead agency for the administration of funds as provided for by RCW 43.09.285.

**IGN
RE**

4. Eligible Watershed Planning Costs under this Agreement are those expenditures made by Klickitat County on or after October 1, 2007 in fulfillment of its responsibilities as the lead agency for watershed planning in WRIA 31 and for which Klickitat County cannot be reimbursed under its watershed planning grant from Washington Department of Ecology because the amount of the grant funding is exhausted. Klickitat County shall be responsible for ensuring that all state regulations are followed in procuring the services, equipment, or supplies that are the subject of the expenses.
5. Upon incurring Eligible Watershed Planning Costs, Klickitat County may submit an invoice to Benton County for fifty-percent (50%) of such costs. Said invoice shall provide a detailed description of such expenses, and upon request Klickitat County shall provide Benton County with copies of all documentation evidencing such expenses.
6. This Agreement is effective upon execution by both parties and will remain in effect until April 30, 2008.
7. Either party may terminate this Agreement upon ten (10) days written notification by certified mail to the other party. The terminating party will be responsible for fifty percent (50%) of all eligible costs incurred in the implementation of this Agreement up to the date of such notice and within the limit set forth in paragraph 3.
8. This Agreement will be governed and construed in accordance with the laws of the State of Washington. Any dispute arising out of or relating to this Agreement shall be jointly submitted by the Parties to a mutually acceptable mediator for resolution. The Parties agree to participate in mediation until all disputes are resolved and equally share in the mediator's fee. The venue for any legal proceedings will be the county that the Parties agree upon or, if an agreement on venue is not reached, the venue determined by the mediator.

Benton County

 Claude Oliver Date
 Board of County Commissioners,
 Chairman

Attest:

 Clerk of the Board Date
 Benton County

Approved as to Form:

 Deputy Prosecuting Attorney Date
 Benton County

Klickitat County

David Sauter 2-28-08
 David Sauter Date
 Board of County Commissioners,
 Chairman

Attest:

[Signature]
 Clerk of the Board Date
 Klickitat County

Approved as to Form:

Tim O'Neill 2/21/08
 Tim O'Neill Date
 Prosecuting Attorney
 Klickitat County

**SIGN
HERE**

**THE FOLLOWING SECTION
IS THE DRAFT RFQ**

BENTON COUNTY, WASHINGTON OFFICE OF SUSTAINABLE DEVELOPMENT

REQUEST FOR QUALIFICATIONS FOR CONSULTING SERVICES

PUBLIC OUTREACH “HORSE HEAVEN HILLS – WITHDRAWALS, CONVEYANCE, AND STORAGE FOR EXPANDED IRRIGATION”

MARCH 2008

Introduction

Benton and Klickitat Counties are seeking professional assistance to inform the public about a major, regional water storage and conveyance project and to assess issues, questions, and support for continuing with planning of the project. The purpose of this request for qualifications (RFQ) is to select a qualified consultant to assist the Counties in this public information and opinion-gathering effort.

The qualified consultant should have experience in both information distribution and public opinion survey techniques.

The project involves trying to reach as many people with meaningful information about the concept as possible, in what is a geographically large but relatively sparsely populated area.

The following subjects are discussed in this RFQ to assist in preparation of a response:

- Background
- Workslope
- Deliverables
- Schedule
- Budget
- Response
- Selection
- Inquiries

Background

Most of southern Benton County and eastern Klickitat County lie on a gradual, monoclinical slope that extends from the crest of the Horse Heaven Hills to the Columbia River. The area is arid, receiving less than 10 inches of precipitation annually. What is not taken-up through evapotranspiration or groundwater recharge, drains to the Columbia River through a series of intermittent and ephemeral streams.

The area is relatively sparsely populated, and is dominated economically by agriculture. Traditionally, agriculture throughout the area has been limited to pasturing and dry-land crops such as wheat due to the lack of natural or conveyed water source. More recently, irrigated agriculture has made inroads in the areas closer to the Columbia River due to localized pumping systems.

Over the years concepts have been offered about how to bring outside water to a larger area of the Horse Heaven Hills Slope. Most of these ideas have focused on using reserved irrigation water from the Columbia River system that would be drawn out of the river at points behind McNary Dam (Lake Wallula) and John Day Dam (Lake Umatilla).

In recent years, a specific concept has emerged and some smaller, preliminary studies of this approach have been done by Benton and Klickitat Counties. This concept involves withdrawing Columbia River water from the Wallula Gap and Alderdale areas, and conveying it in a lift and canal system across the Horse Heaven Hills Slope. This system would involve multiple surface storage reservoirs and small outfall power generating stations. These previous studies have set the table for larger, more detailed studies of the project's viability.

The feasibility study now contemplated would begin to look more closely at subjects such as agricultural practices and crops, allowable withdrawals from the Columbia River at various intervals, storage capacity at the possible reservoir sites, suitability of the dam sites, suitability of the conveyance alignment, potential hydro and wind power generation capacities, and other issues. As the Counties undertake these technical studies, they want to initiate public outreach and gain a better understanding of the affected public's interests, concerns, and support of the Horse Heaven irrigation concept. The purpose of this project is therefore to get information to the property owners and water uses as effectively as possible, then to gauge the community's reaction and initial thoughts on the concept. That information will be used in making future decisions about studying conveyance and storage in the Horse Heaven Hills.

Workscope

The following elements and tasks are integral to the project. A more detailed workscope will be negotiated with the selected consultant during the contract development phase.

- Contact as many property owners within the study area as possible by standard mailing or other practical method. Such contact piece will include a brief fact sheet with background on the concept and a map. Information will also be included on how comment can be provided, and notice of the two public meetings will be provided.
- Two public meetings will be held, one in each county, to provide background on the concept and a forum for public comments
- In-person interviews will be conducted with large operators and all general and special purpose districts and governments, and other key organizations, to fully inform them on the project and to gauge their support.

Deliverables

- A written and an oral report to each of the two boards of commissioners, detailing the outreach and survey techniques, and explaining findings and conclusions.

Schedule

Important dates:

- RFQ advertised in THC and SDJC: 17 Mar 2008
- Submittals due: 04 Apr 2008
- Selection announced: 11 Apr 2008

Before awarding a contract for services, Benton County must receive copies of the successful proponent's current business license and certificates of insurance. Thereafter, work will begin immediately upon execution of an agreement between the parties, with a completion goal of 31 July 2008.

Budget

The maximum budget for the project is \$12,000.00.

Response

Benton County will be the contracting and administration entity for the project. In submitting qualifications, each respondent acknowledges that Benton County shall not be liable to any person for the costs incurred therewith or in connection with costs incurred by any respondent in anticipation of County action approving or not approving any proposed agreement. The County may accept or reject any proposal or proposed agreement without limitation. Nothing in this RFQ or in subsequent negotiations creates any vested rights in any person.

Submittals should include four essential pieces:

1. Letter of Transmittal
2. Narrative
Brief resumes of the "principal-in-charge" and the key technical personnel to be assigned to this project. Discuss the experience of these persons and relate that experience to this project. (maximum 3 pages)

A proposed work program designed to satisfy the requirements listed in the Workslope section. Include the schedule you intend to follow in order to complete the project and a work plan. (maximum 5 pages)
3. Portfolio of Prior Work
A brief copy of work from a previous similar project completed by your team.
4. References
Provide contact information for at least three references who can attest to your team's ability to complete this project on time and within budget.

Respondents should submit three copies of their qualifications package.

Submittals must be in the form of hard copy and may be hand-delivered, posted via US Mail, or delivered via courier. No facsimile or electronic copy will be accepted. Submittals shall be delivered in a sealed manner and clearly marked on the outside of the package. Submittals should be made to:

**Adam J. Fyall
Benton County Office of Sustainable Development
7122 West Okanogan Place, Building A
Kennewick, Washington 99336**

Submittals must be received by 4:00pm, Friday, 4 April, 2008. No exceptions.

Selection

A selection team representing both Benton and Klickitat Counties will be empanelled by the respective boards of commissioners to review qualifications. The selection will be announced Friday, 11 April 2008.

Inquiries

All questions and comments regarding the RFQ should be directed to Adam J. Fyall, Benton County Community Development Coordinator, on 509-736-3053, or at the addresses listed above. Thank you for your interest in the project.

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