

PS 7.5200d



DEBT PARTICIPATION AGREEMENT
JAIL AND DISTRICT COURT EXPANSION

This Debt Participation Agreement, effective upon the date all parties have executed it and filing with the Benton County Auditor, is entered into by and between Benton County, a political subdivision of the State of Washington ("County"), and the cities of Richland, Kennewick, Prosser, and West Richland, all municipal corporations in the State of Washington (collectively, the "Cities").

RECITALS

WHEREAS, the Cities all currently lease adult jail space from the County at the Benton County Justice Center on a space available basis at a per bed per day rate;

WHEREAS, in the foreseeable future there will no longer be adult jail space available to lease to the Cities unless the jail facilities at the Justice Center are expanded;

WHEREAS, under the April 3, 1995 Benton County District Court Districting Plan, the Cities also utilize district court facilities at the Benton County Justice Center in return for payment of their respective shares of the cost of operating district court, based on each city's case filings;

WHEREAS, the Cities acknowledge that their usage of the district court facilities is a contributing factor to the need to expand such facilities;

WHEREAS, the County and the Cities therefore have agreed that additional space for both adult incarceration and district court operations must be constructed and that the Cities should assist the County with the costs thereof as necessary;

WHEREAS, as part of the jail and district court expansion project, the County expects to authorize significant renovations to the Benton County Sheriff's Office and other building system upgrades at the Justice Center for solely County purposes and services, and the Cities agree it is most efficient for such associated design and construction to be completed as part of the jail and district court expansion given that the Cities' financial obligations under this Agreement are unlikely to increase as a result of such additional construction;

WHEREAS, the Cities have requested that the County not factor the cost of the jail expansion into the bed/day rate and that

RESOLUTION

0 233

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN TO SIGN THE DEBT PARTICIPATION AGREEMENT WITH THE CITIES TO FINANCE EXPANSION OF LAW ENFORCEMENT FACILITIES

WHEREAS, the attached Debt Participation Agreement has been drafted to identify how the contemplated expansion of facilities for various law enforcement facilities will be financed; and

WHEREAS, on May 8, 2000, Commissioner Leo Bowman submitted a Debt Participation Agreement in substantially the form attached to each of the involved cities for their review and approval; and

WHEREAS, the County has received resolution 30-00 dated May 16, 2000, by the City of Richland and a letter dated May 17, 2000, from Mr. Bob Kelly, Kennewick City Manager, that represent that the mayors of each such city are authorized to execute the Debt Participation Agreement; and

WHEREAS, the County expects to receive from Prosser and West Richland copies of resolutions passed by each respective city council approving such agreement and authorizing the execution thereof; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Commissioners hereby authorizes its Chairman to execute and deliver a Debt Participation Agreement in substantially the form attached hereto (with any needed revisions to page 3 to reflect the authorizations and approvals by Prosser and West Richland) upon receipt of written representations from each of the cities reflecting such cities' approval of such agreement and authorizing the execution thereof by their respective representatives.

Dated this 5th day of June, 2000

Ma E Bentley
Chairman of the Board.

Leo M Bowman
Member.

Claude L. Cross
Member.

Attest: *Joni Lynn Cabbage*
Clerk of the Board

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

PERFECT PRINTING, PROSSER

cc: R. Brown; D. Sparks
file (JC expansion agreements)

BROWN

instead the County and Cities seek sources of funding other than those used for operations to assist with the cost of the expansion, with the Cities agreeing to assist the County with the annual debt service payments on a non-voted, general obligation bond issuance if sufficient alternative funding sources are not secured to fully fund the actual costs of the jail and district court expansion;

WHEREAS, pursuant to a Memorandum of Understanding executed by the County and the Cities in August of 1999 for funding certain costs associated with the expansion ("MOU"), the County and the Cities have already funded and paid \$83,000 for the pre-design/project scoping development services identified in paragraph 1 of that MOU, which are embodied in volume 1 of the *Pre-Design Report - Benton County Justice Center Expansion Project*, by Ohashi-Augier Architectural Services dated January 26, 2000 ("Pre-Design Report");

WHEREAS, pursuant to paragraph 2 of that MOU, the County has paid an additional \$47,000 to Ohashi-Augier for the facility program analysis design consulting services reflected in volume 2 of the Pre-Design Report from the County's Capital Acquisition Fund, which payment will be considered part of the funds the County has agreed to commit from that fund;

WHEREAS, because time is of the essence, the County has directed Ohashi-Augier Architectural Services to commence with the integrated security plan referenced in paragraph 3 of the MOU and with actual schematic design services for the expansion project;

WHEREAS, pursuant to the MOU and this Debt Participation Agreement, the Cities will share in such costs incurred as of the effective date of this Agreement and any of those costs incurred after such date, along with the additional costs of design and construction incurred to construct certain facilities as described herein pursuant to the terms of this Agreement;

WHEREAS, by Resolution No. 0-233, adopted on June 5, 2000, by the County, its Board of Commissioners has authorized execution and delivery of this Agreement on behalf of the County;

WHEREAS, by motion passed on May 16, 2000, as represented in the May 17, 2000 letter from Mr. Bob Kelly, Kennewick City Manager, the City Council of Kennewick has authorized execution and delivery of this Agreement on behalf of the City of Kennewick;

WHEREAS, by Resolution No. 30-00 of the City of Richland dated May 16, 2000, the City Council of Richland has authorized execution and delivery of this Agreement on behalf of the City of Richland;

WHEREAS, by motion passed on May 23, 2000, as represented in the June 2, 2000, letter from Ms. Karen L. Richardson, Asst. Finance Director, the City Council of Prosser has authorized execution and delivery of this Agreement on behalf of the City of Prosser; and

WHEREAS, by motion passed June 5, 2000, as represented in the June 6, 2000, letter from Mr. Jerry Peltier, Mayor, the City Council of West Richland has authorized execution and delivery of this Agreement on behalf of the City of West Richland.

AGREEMENT

NOW THEREFORE, based on the mutual agreements set forth herein, the parties agree as follows with respect to the financing and debt service to pay for the actual costs incurred by the County in connection with the expansion of the facilities described paragraph 1 (or as modified in accordance with paragraph 2 below) and paragraph 9 below:

1. Agreed Upon Jointly Financed Facilities. So long as the estimated cost of the following facilities, upon completion of design by Ohasi-Augier Architectural Services, is no greater than \$38,000,000 (excluding any stated margin of error), the Cities and the County agree that the following facilities will be constructed and paid for pursuant to this Agreement:

a) Jail Expansion. Renovation of existing second floor jail space at the Benton County Justice Center and jail area code and security upgrade; site development costs and construction of a new, fully operational two story jail facility with skybridge to existing jail; a pre-book/sallyport wing; a mechanical penthouse on roof of new jail building; and a third floor shell with a mezzanine structure within the new jail building, all as referenced on page VI.9 Sub-Section C of volume 1 of the Pre-Design Report (excluding Jail Expansion Option B.3 - 3rd Floor Jail Finished) and as more fully described elsewhere in such Pre-Design Report, which is incorporated herein by reference.

b) Courts Expansion/Renovations. Construction of a new two-story building with connecting corridors to existing Justice Center (approx. 15,000 square feet per floor, entire first floor finished with sufficient square feet of second floor finished for space for the Prosecutor's Office and probation department); a mechanical equipment penthouse on roof of new building;

renovation of existing first and second floors of that portion of Justice Center housing court related facilities, prosecuting attorney's office and court clerks' offices; renovation of existing second floor of courts area of Justice Center for archival/storage room/jury assembly use; and site development for the above work, all as referenced on Page VI.10 Sub-Section D (excluding Courts Expansion Option B.1 - Add Additional 2-Story Shell-In Area) of volume 1 of the Pre-Design Report and as more fully described elsewhere in such Pre-Design Report.

c) Sheriff Remodel. Renovation of existing first floor jail/sheriff area and vehicle sallyport areas for the Benton County Sheriff's Office and pro rata site development costs for such renovation, as referenced on Page VI.11 Sub-Section D of volume 1 of the Pre-Design Report and as more fully described elsewhere in such Pre-Design Report.

d) Justice Center Building System Upgrades. Refurbish and/or replace the central HVAC system chiller/boiler equipment and add isolation valves; replace/upgrade fire alarm/protection system in courts area; and add video/recording security system in six courtrooms, as referenced on Page VI.12 Sub-Section D of volume 1 of the Pre-Design Report (excluding "A.2 Assisted-Listening System") and as more fully described elsewhere in such Pre-Design Report.

2. County Discretion Regarding Facilities. a) Design Phase. If at any time during the design phase, Ohasi-Augier estimates that the total estimated cost of the facilities set forth in paragraph 1 above will exceed \$38,000,000 (excluding any stated margin of error), the County agrees that it will instruct the design team to modify the design so that estimated costs do not exceed \$38,000,000 (excluding any stated margin of error). In such case, the Cities agree that it shall be within the sole discretion of the County to determine how the design plans shall be modified so that the estimated cost at the end of the design phase does not exceed \$38,000,000 (excluding any stated margin of error).

b) Bid Phase. If upon receipt of construction bids, Ohasi-Augier estimates that the total estimated cost of the facilities set forth in paragraph 1 above will exceed \$38,000,000 (including a 5% construction contingency) the County agrees it will either (i) not award a construction contract for one or more deduct alternatives that have been bid as separate items; (ii) solicit

another set of construction bids; and/or (iii) re-design the facilities set forth in paragraph 1 above, so that Chasi-Augier's estimate of the total cost of such facilities will not exceed \$38,000,000 (including a 5% construction contingency) at the time of issuance of the construction contract.

c) Related Issues. A majority of the parties to this Agreement may agree in writing to waive the County's obligations under paragraphs (a) and/or (b) above. The Cities and the County all acknowledge that the actual construction cost of the facilities, as designed, that are being financed in accordance with paragraphs 1 or 2 of this Agreement may exceed \$38,000,000 and acknowledge they may incur additional obligations as a result pursuant to subsection 3(f) below.

3. Funding Commitments. With respect to funding the actual total costs of the January 26, 2000 Facilities Program Analysis Report (volume 2 of the Pre-Design Report), the actual cost of the training/commission services described in paragraph 2 of the MOU, and the actual total cost of design, construction and expansion of the facilities described in paragraph 1 above, or as modified under the terms of paragraph 2 above, and paragraph 9 below, the County and the Cities agree to fund such costs in the following manner:

a) Contribution from Fund No. 0133-101. The County agrees to contribute \$4,000,000 from the 1/10% - Criminal Justice Fund, fund No. 0133-101, into which all revenue from the voted 1/10 of 1% sales and use tax imposed by Benton County Code, chapter 8.12B is deposited, to partially pay for the costs of the design, construction, and/or expansion of such facilities.

b) Contribution from Current Expense. The County agrees to contribute \$2,500,000 from Current Expense, fund no. 0000-101, to partially pay for the costs of the design, construction, and/or expansion of such facilities.

c) Contribution of Reserves from Capital Acquisition Fund. The County has already contributed \$47,000 from its Capital Acquisition Fund, fund no. 0305-101, to pay for volume 2 of the Pre-Design Report. The County further agrees to contribute an additional \$11,453,000 from its Land and Building Fund, fund no. 0199-101, towards further partial payment for the costs of design, construction and/or expansion of such facilities.

d) Third Party Financing. The County and the Cities

agree to investigate and use their best efforts to obtain additional funding sources to pay for some or all of the remaining actual costs of the design, construction and expansion of the facilities described in paragraph 1 above, or as modified under the terms of paragraph 2 above, and paragraph 9 below; provided, all parties hereto must acknowledge their approval of such funding alternative, in writing, in order to relieve or partially relieve any party of any obligations under this Agreement. If approved, such additional funding sources may include but are not necessarily limited to increased revenue to the County as a result of legislation and/or revenues derived from a county-wide voter approved bond issuance.

e) Non-Voted, General Obligation Bond Issuance. To fund any portion of the actual design, construction and expansion costs of the facilities set forth in paragraph 1 above, or as modified under the terms of paragraph 2 above, and paragraph 9 below, that are not expected to be satisfied by funding sources described in subsections 3(a) through (d) above, the County agrees to contribute the net proceeds of a non-voted, general obligation bond issuance by the County. The Cities and Counties agree that it is within the County's discretion as to whether such bond issuance is necessary, the amount of such issuance necessary to fully fund the actual costs of the facilities described in paragraph 1, or as modified under paragraph 2 above, and paragraph 9, and when any such issuance or issuances would occur. The County is not obligated to fully satisfy its funding commitments set forth in subsections 3(a) through 3(c) prior to issuing such bonds. The Cities and the County agree that the interest and principal payments on any such bond issuance ("debt service") shall be satisfied from the following sources in the following order:

(i) Paragraph 3(d) Funding. To the extent agreed to in writing as part of the written approval under subsection 3(d) above, such funds may be used for debt service payments on such bonds.

(ii) Income from Bond Revenues. The County shall contribute an amount equal to the amount of income on the unexpended portion of the net bond proceeds earned and received between the date of issuance of the bonds and the date all such net proceeds are expended.

(iii) 1/10 of 1% Revenue. To the extent needed, the County agrees to contribute during each twelve (12) month period following issuance of such bonds, until such bonds are retired, the lesser of: 1) \$500,000; or 2) the amount of revenues received during such prior twelve (12) month period from the imposition of the sales and use tax under Benton County Code, chapter 8.12B, that are deposited into the 1/10% - Criminal Justice Fund, fund no. 0133-101 to be applied towards debt service on such bonds. With respect to any twelve (12) month period wherein such revenues are less than \$500,000, the Cities and the County agree to contribute funds, in the percentages set forth in paragraph 3(e)(v) or paragraph 9 below, whichever are applicable, sufficient to provide the County with the \$500,000 for annual debt service anticipated from the revenues deposited in fund no. 0133-101. Any contributions from the Cities under this subsection shall be due within thirty (30) days of written notice from the County that contributions are required from the Cities under this subsection.

(iv) Rural County Capital Funds. To the extent needed, the County and the Cities agree that commencing August 1, 2001, and until such bonds are retired, all revenues received by the County as a result of the Rural County Sales and Use Tax diversion implemented by Benton County Code, chapter 8.10, as authorized by RCW 82.14.370, will be contributed towards payment of debt service on such bonds so long as it is legal for such funds to be used for such purpose.

(v) Cities' Contributions. To the extent the funds described in subsections 3(e)(i) through 3(e)(iv) are not sufficient in any twelve (12) month period following issuance of such bonds to meet the debt service payments due on such bonds, the Cities agree to assist the County pay such shortfall, i.e. the difference between the debt service paid during such prior twelve month period and the funds available to the County to pay such debt service under subsections 3(e)(i) through 3(e)(iv). The Cities and the County agree that each respective jurisdiction will be responsible for the following percentages of any such annual shortfall: Benton

County 69.5%; Kennewick 19.6%; Richland 8.0%; Prosser 1.2%; and West Richland 1.7%; provided, under the circumstances set forth in paragraph 9 below, the percentages will be as set forth in that paragraph. The Cities' obligations under subsections 3(e)(iii) and this subsection 3(e)(v) are contingent upon the occurrence of the described shortfalls.

f) Additional Funds. If, due to cost overruns or for any other reason, the actual cost of construction exceeds the revenues contributed by the County and the Cities pursuant to subsections 3(a) through 3(d) above and the net proceeds of the bond issuance described in subsection 3(e), the Cities and the Counties agree to share in the excess of such costs over such revenues in the percentages set forth in subsection 3(e)(v) or paragraph 9, whichever are applicable. Such contributions are required only after the expenditure of all funds contributed pursuant to subsections 3(a) through 3(d) and the net proceeds of the bond issuance referred to in subsection 3(e) above.

4. Timing of Required Contributions from Cities.

- a) The Cities and County agree that non-voted, general obligation bonds are likely to be issued prior to complete expenditure of the County's contributions set forth in subsections 3(a) through 3(c). Debt service payments may therefore commence prior to such complete expenditures as well. If there is a funding shortfall with respect to such debt service as described in subsection 3(e)(v), the Cities and County agree that if such shortfall is identified for any twelve (12) month period following issuance of such bonds then the Cities' obligation under subsection 3(e)(v) to assist with such debt service shortfall commences at that time; regardless of whether the County has fully expended all funds it is required to contribute pursuant to subsections 3(a) through 3(c).

- b) The Cities shall not be obligated to pay any amount due under subsection 3(f) until such time as all funds committed to the project pursuant to subsection 3(a) through 3(d) and the net proceeds of the bond issuance under subsection 3(e) have been expended.

- c) If an obligation to pay by the Cities commences under subsection 4(a) or (b), the County will promptly submit an invoice to each city for the entire amount due from each city that can be calculated at that time. Thereafter, to the extent an obligation to pay continues to accrue or exist, the County will submit monthly invoices to the Cities on or before the 15th day of each following month until the County has satisfied all bills related to the design and construction of the facilities agreed to in paragraph 1, or as modified by paragraph 2 above, and paragraph 9.

- d) The Cities shall pay the County the amounts set forth on such invoices within thirty (30) days from receipt. For any account balances outstanding for more than thirty (30) days, the Cities shall be obligated to pay a service charge of 1% per month (12% per annum). Should it become necessary, all collection costs, including attorney fees, will be paid by the Cities.

5. Accounting. Within thirty (30) days of full execution of this Agreement, the County shall submit to the Cities a statement reflecting the cost of volume 2 of the Pre-Design Report and any additional costs with respect to the design of the facilities described in paragraph 1 above billed to the County as of the date of execution the Agreement. By the end of every succeeding calendar month until the vendors of the design and construction work on the facilities are paid in full, the County shall use its best efforts to submit a statement reflecting the design and/or construction costs billed to the County that were not previously reflected on a prior statement submitted to the Cities. The County also agrees to provide notice to the Cities prior to agreeing to any construction change order in an amount exceeding \$75,000.

6. No Ownership Interest. The County and the Cities agree that the Cities shall not obtain any legal or beneficial ownership interest of any of the facilities described herein, regardless of whether the Cities contribute funds for the actual design and construction costs pursuant to this Agreement. The Cities have only agreed to contribute funds under this Agreement due to their desire not to have the County pass through design and construction costs to the Cities at a later date pursuant to agreements for jail and district court usage that the Cities otherwise likely would pay from ordinary operating revenues.

7. Terms Required by Interlocal Cooperation Act. The

following additional terms, which satisfy the requirements of the Interlocal Cooperation Act, are agreed to by the County and the Cities:

- a) The duration of this Agreement shall be until the facilities described herein are fully constructed and paid for, until all debt issued to pay for such construction is retired and until each party hereto has fully satisfied each and every one of its obligations under this Agreement.
- b) The Benton County Board of Commissioners shall be responsible for the administration of this Agreement.
- c) The purpose of this Agreement is to enable the County to expand its jail and district court facilities to accommodate both the County's and the Cities' present and future needs for such facilities and to commit the Cities to their fair share of the costs of such expansion in lieu of contributing in the form of rental payments for jail and district court usage.
- d) Financing of the facilities described herein shall be as set forth above in this Agreement.
- e) Termination of this Agreement shall occur only if agreed to in writing by all parties hereto. In such case, the County shall retain sole ownership of the facilities constructed pursuant to this Agreement.
- f) Upon full execution, this Agreement shall be filed with the Benton County Auditor. The Agreement shall not be effective until such filing is completed.

8. Waiver of Rights. No waiver of any right under this Agreement shall be effective unless made in writing by the authorized representative of the party to be bound thereby. Failure to insist upon full performance on any occasion shall not constitute consent to or waiver of any continuation of nonperformance or any later nonperformance, nor does payment of a billing or continued performance after notice of deficiency in performance constitute an acquiescence thereto.

9. Additional Expansion/Renovation. As part of the expansion

project described above, the County expects to have designed and constructed an additional 2-story shelled-in area attached to the new court building, as referenced on Page VI.10 Sub-Section D., 3. 1 - Add Additional 2-Story Shell-In Area, and to finish a portion of the second floor of the shelled-in area for office space for the County's Facilities and Parks Department, Central Services, Personnel, Civil Service and the Coroner's Office, as well as a telecommunications/data equipment room, a Board of Commissioners hearing room and possibly office space for investigations of child victim crimes. The County agrees to pay the costs of design, construction and the above described finishing of this additional facility. The County does expect, however, to finance such costs by increasing the amount of the bond issuance described in paragraph 3(e) above. As a result, the percentages for the Cities' contributions described in subsection 3(e)(v) are lower than they would otherwise be if the bond issuance amount were not increased to finance this additional expansion. In the event that the County decides not to proceed with the additional expansion described in this paragraph or to not finance the costs thereof through the bond issuance described in paragraph 3(e), then the Cities agree that their percentages of required contribution in case of debt service shortfall will be as follows instead of the percentages set forth in subsection 3(e)(v) above: Benton County 67.5%; Kennewick 20.9%; Richland 8.5%; Prosser 1.3%; and West Richland 1.8%.

10. Representations and Warranties of the County and the Cities. The County represents that it is a political subdivision of the State of Washington duly existing under the Constitution and laws of the State of Washington. The County has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action, the County has been duly authorized to execute, deliver and duly perform this Agreement. The Cities represent that they are municipal corporations duly organized and existing under the Constitution and laws of the State of Washington. Under the provisions of authorizing resolutions the Cities have the power to enter into the transactions contemplated by this Agreement and to carry out their obligations hereunder. By proper action, the Cities have been duly authorized to execute, deliver and duly perform this Agreement.

11. Notices. All notices or communications herein required or permitted to be given shall be in writing and mailed by first class mail, postage prepaid, or delivered as follows:

If to the Cities: City of Kennewick
Attn: Mayor and City Attorney
210 W. 6th Avenue
P.O. Box 6108
Kennewick, WA 99336

City of Richland
Attn: Mayor and City Attorney
505 Swift Boulevard
Richland, WA 99352

City of Prosser
Attn: Mayor and City Attorney
601 7th
Prosser, WA 99352

City of West Richland
Attn: Mayor and City Attorney
3805 W. Van Giesen
West Richland, WA 99352

If to the County: Benton County
Attn: Chair, Board of County
Commissioners and Prosecuting
Attorney
620 Market Street
Prosser, WA 99350

The County and the Cities may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

12. Amendments. This Agreement may not be effectively amended, changed, modified, altered or terminated except by the written agreement of the County and Cities.

13. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

14. Other Provisions. This Agreement is binding on the parties and all successors of such parties. The Agreement contains the entire terms of the agreement between the parties. The Agreement shall be construed pursuant to the laws of the State of Washington.

BENTON COUNTY

May E. Benoit
Chairman, Board of
Commissioners
Date: 6-15-00

Approved as to Form:

Date: _____

CITY OF KENNEWICK

James P. Beane
Mayor, City of Kennewick
Date: 6-15-00

Approved as to Form:

Date: _____

CITY OF RICHLAND

R. DeLoach
Mayor, City of Richland
Date: 6-15-2000

Approved as to Form:

Date: _____

CITY OF WEST RICHLAND

Nancy DeLuie
Mayor, City of West Richland
Date: 6-15-00

Approved as to Form:

Date: _____

CITY OF PROSSER

Herbert Schmidt
Mayor, City of Prosser
Date: 6/15/00

Approved as to Form:

Date: _____