

BOARD OF HEALTH

Special Meeting Minutes

October 29, 2010

Call to Order

Chairman Bob Koch called the meeting to order at 1:30 p.m.

Roll Call

Dr. Jecha called the roll. The following were:

Present: Chairman Bob Koch, Board Members Max Benitz Jr., James Beaver, Leo Bowman, Rick Miller, Brad Peck, and Executive Secretary Larry Jecha, M.D.

Staff Present: Cody Lewis, IT Manager; Amy Serven and Becky Mellinger, Administrative Services; Lisa Wight, Human Resources; Sandy Owen, Preventive Health Director; Annie Goodwin and Shelley Little, Preventive Health Supervisors; Rick Dawson, Environmental Health Supervisor; Jim Coleman, Representing Local 17.

Visitors: Fred Bowen, Franklin County Administrator; Linda Ivey and Ed Thornburgh, Human Services; Ryan Brown, Benton County Deputy Chief Prosecuting Attorney; Keith Mercer, Benton County Finance Manager; Loretta Smith-Kelty, Deputy Benton County Administrator; Wes Burkhead, citizen; Michelle Dupler, Tri City Herald.

Approval of Agenda

Commissioner Beaver moved, seconded by Commissioner Miller to approve the agenda. Discussion was requested by Commissioner Peck for clarification on item number five; specifically why the Board of Health is touring the building when that seems to be more of a function for the Board of Commissioners. Chairman Koch stated that it doesn't state why they are touring; just that they are looking at unused space, without stipulating what the space might be used for. Commissioner Peck asked why they are touring the unused space. Chairman Koch replied it is an amendment to the Health District lease agreement that originally had 37,000 square feet and changing it to approximately 25,000 square feet. Commissioner Peck pointed out for the record that the objection was made in case there was a challenge to the legality of the meeting. Motion approved.

Unused/common space walkthrough

Board members took a walkthrough of the building to observe the common areas that would be shared by any other entity that leased the unused portion of the building. Commissioner Peck objected to the walkthrough. He felt anything possibly referencing Human Services occupying space in the building should be dealt with by the Board of County Commissioners, not the Board of Health. Meeting went into recess at 1:35 p.m. while the walkthrough was conducted. Meeting reconvened at 1:40 p.m.

Amended and Restated Lease Agreement

Commissioner Benitz moved, seconded by Commissioner Beaver, to amend the lease agreement made between Benton Franklin Health District and Benton County. Dr. Jecha stated that he had not seen the revised lease agreement and questioned why, if the Health District is giving up space in the building, our

rent is not decreasing. Commissioner Bowman stated that in the original agreement the price was not determined by square footage. In 2005 Benton County put two million dollars down payment on a bond plus an additional \$500,000 on the bond that was to be repaid to the County by the Health District. Since that time Benton County has continued to make \$200,000 a year payments on the Health District building. It was originally planned that approximately \$50,000 was going to be paid by the Benton County Clean Air Authority for use of the unused and common areas. In the interim, they decided to buy their own building, leaving the areas of the building unoccupied, and Benton County to pay the approximately \$50,000 per year. Every cent that the Health District gives to Benton County they use to repay the bond. He stated that the Health District will save some money because they will share overhead cost of operations with whoever moves into the building. Commissioner Peck asked for clarification on which costs will be shared. Commissioner Bowman stated that heating and air, sewer, water will all be shared costs. Commissioner Peck also shared that he was concerned with the lack of verbiage on termination of the agreement should the need ever arise. Ryan Brown, who helped amend the clause, stated that 95% of the lease is the same as before and there was never any verbiage discussing early termination. Commissioner Peck questioned a statement in the lease that states the Bi-County Human Services now is willing to lease unoccupied space. He stated that it has been discussed and they have looked at leases but in his opinion this new lease is predicated on something which is not yet fact. Commissioner Beaver stated that the County cannot agree to lease space that they have no right to, so the first step is to tour the building and look at the space as was done in this meeting, amend the agreement with the Health District to allow the County to lease the space to someone, and then offer it. Commissioner Peck feels the way the lease is worded and the way they are going about the process, the line between the Bi-County function and the Board of Health is being blurred. Commissioners Benitz, Beaver, Bowman, Koch and Miller voted in favor. Commissioner Peck opposed. Motion carried.

The date of the next regular meeting is November 17, 2010 at 1:30 p.m.

At 1:58 p.m. the meeting adjourned.

Prepared by:

Amy Serven, Administrative Assistant
Benton-Franklin Health District



Bob Koch
Chairman of the Board



Larry Jecha, M.D.
Executive Secretary

RESOLUTION 10 661

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE AMENDED AND RESTATED LEASE AGREEMENT BETWEEN BENTON COUNTY AND BENTON-FRANKLIN DISTRICT HEALTH DEPARTMENT BOARD OF HEALTH

WHEREAS, the Benton-Franklin Health District and Benton County previously entered into a lease of a portion of a New Building owned by Benton County as per Resolution 07-058 dated January 23, 2007; and

WHEREAS, the above referenced lease agreement has been amended three times via a First Amendment per Resolution 08-170 executed in February of 2008, a Second Amendment per Resolution 09-166 executed in March of 2009, and a Third Amendment Resolution 10-122 executed in February of 2010; and

WHEREAS, what typically would be considered common areas in the New Building were leased to the District because no other tenant was anticipated to move into the building; and

WHEREAS, a future tenant is willing to lease unoccupied space in the New Building and it is necessary for the District to now share certain areas of the New Building as common areas with the Department of Human Services; and

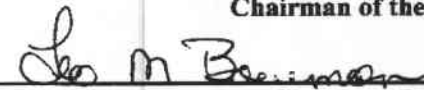
WHEREAS, the lease of space to a future tenant will save taxpayers considerable funds in contract to rent it pays to private landowners; and

WHEREAS, the parties hereto desire to amend their lease to accommodate the future tenant and to restate it for the sake of convenience and clarity; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington concurs with amended and restated lease agreement between Benton County and Benton-Franklin District Health Department Board of Health all in accordance with the terms and conditions outlined in the lease agreement attached hereto.


Dated this ... 1 ... day of ... Nov ..., 20 10.


Chairman of the Board


Chairman Pro-Tem


Member

Constituting the Board of County
Commissioners of Benton County,
Washington

Attest: ...  ...
Clerk of the Board

Return Name and Address:

Benton County Commissioners
P.O. Box 190
Prosser, WA 99350

COPY

PLEASE PRINT OR TYPE INFORMATION:

Document Title(s) (or transactions contained therein):

1. AMENDED AND RESTATED LEASE AGREEMENT

(Last name first, first name, middle initials):

1. Benton County
- 2.

Additional names on page _____ of document.

(Last name first, first name, middle initials):

1. Benton-Franklin Health District

Additional names on page _____ of document.

Legal description (abbreviated: i.e., lot, block, plat or section, township, range, qtr./qtr.)

N/A

Additional legal is on page _____ of document.

Reference Number(s) of documents assigned or released:

None

Additional numbers on page _____ of document.

Assessor's Property Tax Parcel/Account Number:

3299-200-0014-001

Additional parcel numbers on page _____ of document.

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information.

**AMENDED AND RESTATED
LEASE AGREEMENT**

THIS AGREEMENT is made and entered into this 1 day of Nov., 2010 by and between the COUNTY OF BENTON, hereinafter referred to as "County," and the BENTON-FRANKLIN HEALTH DISTRICT, hereinafter referred to as "District," regarding construction and rental of a new building in which the District can consolidate the location of its services within Benton County (the "New Building").

WHEREAS, the District provides public health service for the County in the Benton-Franklin County area; and

WHEREAS, the District needed a larger, consolidated facility for the purpose of conducting and continuing its function in providing health services; and

WHEREAS, the County owned available real property and had the ability to finance the construction of the New Building on such property that is located near the Benton County Justice Center, in Kennewick, Washington, primarily through the proceeds of limited tax general obligations bonds to be repaid with the rental payments required by the District as set forth herein; and

WHEREAS, the District was willing to lease a portion of the New Building to be used by the District in serving the health and welfare of the citizens served by the District;

WHEREAS, the County and the District executed a lease agreement dated January 23, 2007, to accomplish that objective; and

WHEREAS, the above referenced lease agreement has been amended three times via a First Amendment executed in February, 2008, a Second Amendment executed in March of 2009, and a Third Amendment executed in February of 2010; and

WHEREAS, what typically would be considered as common areas in such a building were leased to the District because no other tenant was anticipated to move into the New Building; and

WHEREAS, the bi-county Department of Human Services, a department within the Benton and Franklin County governments, now is willing to lease unoccupied space in the New Building, and it is necessary for the District to now share certain areas of the New Building as common areas; and

WHEREAS, the lease of space to Human Services will save taxpayers considerable funds in contrast to rent it pays to a private landowner; and

WHEREAS, the parties hereto desire to so amend their lease to accommodate Human Services and to restate it for the sake of convenience and clarity; NOW THEREFORE,

IN CONSIDERATION, of the mutual promises and undertakings set forth herein, the parties agree as follows:

1. Leasehold Interest. The County hereby leases to the District and the District hereby leases from the County for use and occupancy a portion of the New Building, to be located on the real property described on Exhibit A hereto (the New Building and the associated real property referred to as the "Property"). That portion of the New Building leased to the District under this Amended and Restated Lease is approximately Twenty-Five Thousand Eight Hundred Fifty-Five (25,855) square feet and is represented in the diagram attached hereto as Exhibit B attached hereto. The District agrees that their pro rata share of the Property Operating Expenses (as defined in Section 7) will be based on the amount of square feet rented by the District divided by the total square feet within the New Building rented to the District and any other party (excluding common space). The County in accordance with a generally recognized method of measuring rented or rentable areas for commercial leases will determine the calculation of the square feet rented to the District and to any other tenants.

2. Lease Term. Except as otherwise provided herein, the District's occupancy of the New Building will commence March 1, 2008, and end December 31, 2031 (the "Term").

3. Withdrawal. In the event the County should withdraw from the District at any time within the Term of this Amended and Restated Lease, this Amended and Restated Lease shall automatically terminate upon the effective date of the County's withdrawal from the District.

4. Use of Building. The New Building shall be used by the District for the purpose of providing public health services and for no other use without the express written consent of the County. The District may not use or occupy the New Building in violation of any law, ordinance, regulation or the certificate of occupancy issued for the New Building, and may not do, bring, or keep anything in or about the Property that will cause an increase premium for or the cancellation of any insurance covering the New Building. If the District does cause any such increase in insurance premiums, it shall pay or reimburse the County for entire amount thereof, without regard to whether the County elects to terminate this Amended and Restated Lease as a result of the District's unauthorized use of the New Building. The District, its employees, authorized representatives and business invitees have a non-exclusive right to reasonably use and enjoy the areas designated as common areas on Exhibit C, subject to the County's rights set forth in this Amended and Restated Lease.

5. Assignment/Leasing. The District shall not assign either this Amended and Restated Lease Agreement or lease or sublease any portion of the New Building, except with the written consent of the County; which consent shall not be unreasonably withheld. This Amended and Restated Lease is not assignable by operation of law. The District acknowledges that the County may lease a portion of the New Building to one or more other tenants.

6. Monthly Rent. Commencing February 1, 2007, the District agrees to pay the County Four Thousand Five Hundred Dollars (\$4,500.00) per month until the commencement of the Term of occupancy under this Amended and Restated Lease. During the Term of occupancy, the District agrees to pay the County Twenty Two Thousand One Hundred Eighty Three Dollars and

Thirty-Three Cents (\$22,183.33) per month. All such payments shall be made to the following address: Attention: Chairman of the Board of Benton County Commissioners, PO Box 190, Prosser, WA 99350. The District shall make such payments, without deduction or offset, in advance on or before the first day of each month, except that the monthly rent for the first month or any portion thereof of occupancy shall be paid on or before the date the Term commences. The monthly rent payable under this Section shall remain as stated above during this Amended and Restated Lease.

7. Additional Rent.

a. Lump Sum. As additional rent, the District shall pay the County the additional sum of Five Hundred Thousand Dollars (\$500,000). The District shall pay this amount in five (5) annual payments, with the first installment due on or before March 1, 2010. Interest shall be paid by the District on the unpaid principal amount commencing March 1, 2010, at the annual rate of one percent (1%). For payments due March 1, 2011, and thereafter, the County will calculate the annual payments due and submit an invoice to the District a minimum of thirty (30) days prior to the payment date. Pursuant to the terms of its March 7, 1990, Lease Option Agreement with the County, on or before March 1, 2007, the District shall exercise its option to purchase the property leased thereunder. At the District's discretion, the payments required hereunder may come from the District's sale of the property that is the subject of March 5, 1990, Lease Option Agreement or from other District revenue sources. The payments required hereunder are in no way contingent upon the sale of said property by the District.

b. Operating Expenses.

i. The District shall pay the County an amount equal to the District's pro rata share of Operating Expenses. "Operating Expenses" shall consist of all expenses, costs and amounts which the County pays during any calendar year which occurs during the Term of this Amended and Restated Lease, because of or in connection with the repair, maintenance, restoration or operation of the Property, including without limitation: (a) utilities such as electricity, power, gas, steam, oil or other fuel, water, sewer, lighting, heating, air conditioning and ventilation; (b) insurance applicable to the New Building, not limited to the amount of coverage the County is required to provide under this Amended and Restated Lease; (c) any equipment rented or purchased for use in the operation, repair or maintenance of the Property; (d) the cost of any management fee actually paid and the fair rental value of any office space provided in connection with a management agreement, up to customary and reasonable amounts; (e) wages, salaries and other compensation and benefits for all persons engaged in the operation, maintenance or security of the Property; (f) the cost of any L.I.D., special assessment, irrigation assessment, or any other obligation imposed on the owner of the New Building and (g) operation, repair and maintenance of all systems and equipment and components thereof, including replacement of components, janitorial service, alarm and security service, window cleaning, trash removal, elevator maintenance, cleaning of walks, parking facilities and walls, removal of ice and snow, replacement of wall and floor coverings,

ceiling tiles and fixtures in lobbies, corridors, restrooms and other common areas, maintenance and replacement of shrubs, trees, grass, sod and other landscaped items, irrigation systems, fences, curbs, and walkways, re-paving and re-striping of parking facilities and roof repairs.

ii. Operating Expenses shall not include costs paid directly by the District with the permission of the County or the costs of items for which the County receives reimbursement from insurance proceeds.

iii. The District's pro rata share of Operating Expenses is equal to the square footage rented by the District divided by the total square footage rented within the New Building (excluding common areas), averaged over the calendar year for which the Operating Expenses are being determined.

iv. The County may reasonably estimate in advance the amounts payable by the District for Operating Expenses for any full or partial calendar year of the Term. In such event, the District shall pay such estimated amounts, on a monthly basis, on or before the first day of each calendar month, together with the District's monthly rent. The County may reasonably adjust estimates for Operating Expenses from time to time.

c. Statement and Settlement of Operating Expenses.

i. Within 120 days after the end of each calendar year, or as soon thereafter as practicable, the County shall provide a statement (the "Statement") to the District showing: (a) The amount of Operating Expenses for the previous calendar year, with a listing of amounts for major categories of Operating Expenses; (b) Any amount paid by the District towards Operating Expenses during the previous calendar year on an estimated basis; and (c) Any revised estimate of the District's obligations for Operating Expenses for the current calendar year. If the Statement shows that the District's estimated payments were less than the District's actual obligations for Operating Expenses for the previous year, the District shall pay the difference. If the Statement shows an increase in the District's estimated payments for the current calendar year, the District shall pay the difference between the new and former estimates for the period from January 1 of the current calendar year through the month in which the Statement is sent. The District shall make such payments within 30 days after the County sends the Statement. If the Statement shows that the District's estimated payments exceeded the District's actual obligations for Operating Expenses, the District will receive a credit for the difference against payments of rent next due. If the Term has expired and no further rent is due, the District will receive a refund of the difference within 30 days after the County sends the Statement.

ii. The County reserves the right to reasonably change, from time to time, the manner or timing of the foregoing Statements and payments. No delay by the County in providing the Statement will be deemed a default by the County or a

waiver of the County's right to require payment of the District's obligations for actual or estimated Operating Expenses.

iii. If the Term commences other than January 1, or ends other than December 31, the District's obligations to pay estimated and actual amounts toward Operating Expenses for the first or final calendar years will be prorated to reflect the portion of those years included in the Term. For Operating Expenses that are paid by the County on an annual or semi-annual basis, prorations will be made by multiplying the total estimated or actual (as the case may be) Operating Expenses, for the calendar years in question, by a fraction, the numerator of which will be the number of days of the Term during such calendar year, and the denominator of which will be 365. For Operating Expenses that are paid by the County on monthly basis, prorations will be made based on the actual number of days during the month in question.

iv. The sale proceeds, Operating Expenses, and any other amounts which the District is or becomes obligated to pay the County under this Lease, in addition to monthly rent set forth above, are sometimes herein referred to collectively as "Additional Rent," and all remedies applicable to the non-payment of monthly rent are applicable thereto.

8. Late Charges. The District acknowledges that late payment by the District to the County of sums due hereunder will cause the County to incur costs not contemplated by this Amended and Restated Lease, the exact amount of which would be extremely difficult and impractical to ascertain. Those costs, include, but are not limited to, interest and penalty payments under the terms of the bonds sold to finance the construction of the New Building, processing expenses, accounting expenses, and late charges which may be imposed on the County by third parties. Therefore, in the event the District fails to pay any amount due hereunder within five (5) days after that amount is due, the District shall pay the County, as Additional Rent, a \$200 late charge. Waiver of the late charge with respect to any installment or sum will not be deemed to constitute a waiver with respect to any subsequent late charge, which may accrue. In the event any amount so due is delinquent for a period in excess of five (5) days, the District shall pay the County an additional late charge, computed at the rate of the lesser of 1.5% per month or the maximum rate permissible by law, upon the total amount so overdue and for each day following its due date that the payment is delinquent. The District shall pay the County a standard charge for each returned check based upon the amount banks are then charging.

9. Ownership of Improvements. Title to all improvements made during the course of the leasehold, including the materials used in the improvements, shall vest in the County.

9A. County's Personal Property. The New Building will be partially furnished with the personal property owned by the County listed on Exhibit D attached hereto. The District shall maintain and repair such property as required by Section 14 below. All of the County's personal property listed on Exhibit D and any other personal property of the County's subsequently placed into the New Building will remain the County's property and may not be removed from the New Building by the District at any time during the Term or at the expiration of the Term.

10. District's Property. All of the District's personal property and trade fixtures will remain the District's property and may be removed from the New Building at any time during the Term; provided the District is not in default. Upon the expiration or sooner termination of this Amended and Restated Lease, the District shall remove its property, and property of any party other than the County located within the area rented to the District, from the New Building. District shall repair damage to the New Building resulting from the installation or removal of its property, and the District shall promptly surrender the New Building in the condition required by Section 28. In the event of any failure by the District to remove, repair or clean the New Building as provided in this section, the District shall, upon demand, reimburse the County for the cost of any such removal, repair or cleaning. Any property left in the New Building or on the Property after expiration or termination of the Term or after the District's vacation or abandonment of the New Building ("Abandoned Property") will be deemed to have been abandoned and to have become the property of the County to dispose of at the County's discretion. The District shall reimburse the County for any of the County's court costs, attorney's fees, and storage charges related to Abandoned Property. The County may, at its option, sell Abandoned Property at private sale without notice or legal process, for such price as the County may obtain, and apply the proceeds of such sale to any amounts due under this Amended and Restated Lease from the District to the County, including expenses incident to the removal and sale of Abandoned Property, or the County may otherwise dispose of Abandoned Property.

11. Improvements and Alterations by the District. The District shall not make any improvements or alterations to the Property without the prior written consent of the County. After obtaining the County's consent, the District may make, at its expense, those improvements or alterations to the New Building or Property as the District desires, provided that any repairs, improvements or alterations by the District may only be done at times and in conformity with plans and specifications approved in advance in writing by the County. The District shall make all such improvements and alterations in accordance with all laws, rules, regulations, ordinances and requirements of governmental agencies, offices and boards having jurisdiction. The District shall complete, at its sole expense, any alterations to the New Building or Property required because of the District's improvements and alterations, including any alterations required under the Americans with Disabilities Act. The District shall reimburse the County for any cost incurred by the County in the event the County is required to assist in obtaining any approvals. If requested by the County, the District shall post a bond or other security reasonably satisfactory to the County to protect the County against liens arising from work performed by or for the District. All work must be done in a workmanlike manner and with material of quality and appearance customary in the trade for first-class construction of the type of building in the area in which the New Building is located, and will be the property of the County upon the expiration or earlier termination of the Amended and Restated Lease.

12. Personal Property Taxes, Rent Taxes and Other Taxes. The District shall pay all taxes, charges and other governmental impositions assessed against or levied upon the District's fixtures, furnishings, equipment and personal property located on the Property prior to delinquency. The District shall pay any rent tax, sales tax, value added tax, or other tax currently applicable or which becomes applicable in the future, to the rent or Services (as defined in Section 13).

13. Maintenance, Management and Services.

a. The County covenants and agrees with the District to cause public utilities to furnish electricity and water utilized in operating all normal facilities serving the New Building, and to furnish the following utilities ("Services") to the New Building during District's occupancy of the New Building:

i. Hot and cold water at those points of supply provided for general use of other tenants in the New Building;

ii. Central heating and air conditioning on weekdays (except holidays) from 8:00 a.m. to 5:00 p.m. ("Normal Business Hours"), at such temperatures and in such amounts as are considered by the County to be standard; provided that before or after Normal Business Hours, such services will be provided only upon request of the District and if reasonably available, in which case the District will bear the entire cost thereof;

iii. Routine maintenance, elevator service, painting and electric lighting service for all common areas of the New Building in the manner and to the extent deemed by the County to be standard;

iv. Janitorial service on a 5-day week basis;

v. Electricity for standard office lighting fixtures, equipment, and accessories, up to 264 hours per month, where;

- a. the connected electrical load of all of the same does not exceed an average of four watts per square foot of the New Building (or such lesser amount as may be available, based on the safe and lawful capacity of the existing electrical circuit(s) and facilities serving the New Building);
- b. the electricity will be at nominal 120 volts, single phase (or 110 volts, depending on available service in the New Building); and
- c. the safe and lawful capacity of the existing electrical circuit(s) serving the New Building is not exceeded.

If the District's electrical equipment requires additional air conditioning capacity above that provided by the New Building's standard system, then the District shall pay for the cost of installing and operating the additional air conditioning.

vi. Initial lamps, bulbs, starters and ballasts used in the New Building. The District agrees to reimburse the County for the cost and expense of maintaining and replacing such lamps, bulbs, starters and ballasts in that portion of the New Building leased to the District; and

vii. Security for the New Building; provided the County will not be liable to the District for loss, damage, or injury due to theft, burglary or other criminal act, or for damage or injury caused by any person.

b. In the event the District desires any of the aforementioned services in amounts in excess of those deemed by the County to be standard for the New Building, and in the event the County elects to provide such additional quantities, the District shall pay the County as Additional Rent hereunder the cost of providing such additional quantities.

c. The County will not be liable for any loss, injury or damage to person or property resulting from any variation, interruption, or failure of Services due to any cause whatsoever absent the County's gross negligence. Variation, interruption or failure of Services will not be construed as an eviction of the District, nor give rise to an abatement of rent, or relieve the District from fulfillment of any covenant or agreement hereof. If any of the equipment or machinery utilized in supplying Services breaks down, or for any cause ceases to function properly, the County shall use reasonable diligence to repair such equipment or machinery promptly.

14. District Maintenance. By taking possession of the New Building, the District accepts the New Building as being in good and sanitary order, condition and repair. The District shall, at its expense, clean, maintain and keep that portion of the New Building that is leased hereunder and all appurtenances, including, without limitation, carpet, wall-coverings, signs, windows, doors, skylights, plumbing and other fixtures, equipment and improvements in the condition it was at the commencement of the Term, reasonable wear and tear excepted, and make all repairs throughout the Term.

15. Liens. The District shall keep the Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by the District. The County has the right at all reasonable times to post any notices on the New Building which it deems necessary for the County's protection from such liens. If any such liens are filed, the County may, without waiving its rights and remedies for breach, and without releasing the District from any of its obligations hereunder, require District to post security in form and amount reasonable satisfactory to the County or cause such liens to be released by any means the County deems proper, including payment in satisfaction of the claim giving rise to the lien. The District shall pay to the County upon demand any sum paid by the County to remove the liens, together with interest from the date of payment by the County, at the lesser of 1.5% per month or the maximum rate permissible by law.

16. Insurance.

a. The District's Covenants. The District may not do or permit to be done any act or thing on the Property that will invalidate or be in conflict with the County's fire insurance policies covering the Property or that would increase the rate of fire insurance applicable to the Property to an amount higher than it otherwise would be. The District may neither do nor permit to be done any act or thing on the Property that could subject the County to

any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being conducted or within the Property.

b. Rate Increases. If, as a result of any act or omission by the District or violation of this Amended and Restated Lease, the rate of fire insurance applicable to the Property is increased to an amount higher than it otherwise would be, the District shall reimburse the County for that increase. Rate increase reimbursements are Additional Rent payable within five (5) days after demand therefore by the County. In any action or proceeding wherein the County and the District are parties, a schedule or "make-up" of rates for the Property issued by the County's insurance company is presumptive evidence of the facts stated therein, including the items and charges taken into consideration in fixing the fire insurance rate then applicable to the Property.

c. Waiver of Subrogation. Each party shall, at its sole cost and expense, include in its property insurance policies appropriate clauses pursuant to which the insurance companies:

- i. in the case of the District's insurance policies, waive all right of subrogation against the County and any tenant of space in the Property with respect to losses payable under such policies; and
- ii. in the case of the County's insurance policies, waive all right of subrogation against the District with respect to losses payable under such policies; and
- iii. in each case, agree that such policies will not be invalidated if, prior to a loss, the insured waives, in writing, any or all right of recovery against any party for losses covered by such policies.

Each party shall furnish to the other party upon demand evidence satisfactory to the demanding party establishing the inclusion of the above clauses in that party's insurance policies.

d. Waiver of Claims. Provided that the County's right of full recovery under its fire insurance policy is not adversely affected or prejudiced thereby, the County hereby waives any and all right of recovery which it might otherwise have against the District, its servants, agents and employees, for loss or damage occurring to the Property and the fixtures, appurtenances and equipment therein, to the extent the same is covered by the County's insurance, notwithstanding that such loss or damage may result from the negligence or fault of the District, its servants, agents or employees. Provided that the District's right of full recovery under its fire insurance policies is not adversely affected or prejudiced thereby, the District hereby waives any and all right of recovery which it might otherwise have against the County, its servants, and employees, and against every other tenant at the Property who has executed a waiver similar to the waiver set forth in this section for loss or damage to the District's furniture, furnishings, fixtures and other property removable by the District to the extent the same is covered by the District's insurance, notwithstanding that such loss or damage may result from the negligence or

fault of the County, its servants, agents or employees, or such other tenant and the servants, agents or employees thereof.

e. The County's Insurance Obligations. The County agrees to maintain insurance covering the New Building in an amount not less than 80% (or such greater percentage as may be necessary to comply with the provisions of any co-insurance clauses of the policy) of the "replacement cost" thereof as such term is defined in the Replacement Cost Endorsement to be attached thereto, insuring against the perils of Fire, Lightning, Extended Coverage, Vandalism and Malicious Mischief, extended by Special Extended Coverage Endorsement to insure against all other Risks of Direct Physical Loss, such coverages and endorsements to be as defined, provided and limited in the standard bureau forms prescribed by the insurance regulatory authority for Washington State for use by insurance companies admitted in Washington for the writing of such insurance on risks located within Washington. Such insurance shall be for the sole benefit of the County and under its sole control.

f. The District's Insurance Obligations.

i. The District covenants and agrees to provide, at its expense, on or before the commencement of the Term, and to keep in force during the Term, the following insurance coverages naming the County and the District as insured parties:

a. A comprehensive general liability insurance policy ("Liability Policy"), including, without limitation, blanket contractual liability coverage, broad form property damage, independent contractor's coverage and personal injury coverage of not less than \$2,000,000 each occurrence and \$3,000,000 annual aggregate for bodily or personal injury (including death) and property damage, protecting the County, its agents, and the District against any liability whatsoever occasioned by any occurrence on or about the Property or any appurtenances thereto; and

b. A fire and other casualty policy ("Fire Policy") insuring the full replacement value of the furniture, trade fixtures, and other personal property of the District located on the Property, equal to the value of tenants improvements in the Property, and all of the furniture, trade fixtures and other personal property of the District located on the Property with a deductible of no more than \$5,000 against loss or damage by fire, theft and such other risks or hazards as are insurable under present and future forms of "All Risk" insurance policies.

ii. All policies are to be written by good and solvent insurance companies licensed to do business in the State of Washington and that are satisfactory to the County, and must contain endorsements requiring written notice to the County 30 days prior to any cancellation or reduction in amount of coverage. The District will, within 10 days after a request from the County therefore, furnish the County with such additional information as the County may reasonably request from time

to time as to the value of tenant improvements on the Property and all of the furniture, trade fixtures, and other personal property of the District located on the Property.

iii. The insurance coverage required to be carried by the District under this Amended and Restated Lease may be carried under a primary liability policy of not less than \$1,000,000 and the balance under an umbrella policy or excess liability policy.

iv. Prior to the time such insurance is first required to be carried by the District, and thereafter at least 15 days prior to the effective date of any such policy, the District shall deliver to the County Risk Manager a certificate evidencing the insurance coverages required. All certificates must contain an endorsement that the insurance evidenced thereby may not be cancelled except upon 30 days prior notice to the County.

v. The District's failure to provide and keep in force the aforementioned insurance will be regarded as a default hereunder, entitling the County to exercise any or all of the remedies provided in this Amended and Restated Lease for default.

17. Indemnification and Exculpation of the County.

a. The District shall indemnify, defend and hold the County harmless from all claims arising from the District's use of the Property or the conduct of its business, or from any activity, work or thing done, permitted or suffered by the District in or about the Property. The District shall further indemnify, defend, and hold the County harmless from all claims, liabilities, costs, attorneys' fees and expenses arising from any breach or default in the performance of any obligation to be performed by the District under the terms of this Amended and Restated Lease, or arising from any act or omission of the District or of its agents or employees. The District's obligation to indemnify the County under this section includes an obligation to indemnify for losses resulting from death or injury to the District's employees, and the District accordingly hereby waives any and all immunities it now has or hereafter may have under any Industrial Insurance Act, or other worker's compensation, disability benefit or other similar act which would otherwise be applicable in the case of such a claim. In case any action or proceeding is brought against the County by reason of any such claim, the District, upon notice from the County, shall defend the same at the District's expense, by counsel approved in writing by the County. The District, as a material part of the consideration to the County, hereby assumes all risk of and waives any claims the District might have in respect to damages to property or injury to persons in, upon or about the Property from any cause whatsoever, except that which is caused by the County's gross negligence.

b. Neither the County nor any partner, director, officer, agent or employee of the County will be liable to the District, or its partners, directors, officers, contractors, agents, employees, invitees, sublessees or licensees, for any loss, injury, or damage or loss, irrespective of the cause of such injury, damage or loss, unless solely caused by or solely

resulting from the gross negligence or willful misconduct of the County or its employees in the operation or maintenance of the Property without contributory negligence on the part of the District or any of its sublessees or licensees, or its or their occupants of the Property. Furthermore, neither the County, nor any partner, director, officer, agent or employee of the County will be liable (i) for any such damage caused by other tenants or persons in or about the Property, or caused by public work; or (ii) for consequential damages arising out of any loss of the use of the Property or any equipment or facilities therein, by the District or any person claiming through or under the District.

18. Limitations of County Liability. The District agrees that no trustee, officer, employee, agent, advisor of the County will be personally liable for any obligation of the County hereunder, and that the District must look solely to the County for the enforcement of any claims against the County arising hereunder.

19. Destruction. In the event the New Building is destroyed or injured by fire or earthquake or other casualty, to the extent that it is untenable in whole or in part, then the County may, at the County's option, proceed with reasonable diligence to build and restore said New Building or such part thereof, provided that within 60 days after such destruction or injury, the County shall notify the District in writing of the County's intention to do so. During the period from destruction or damage to restoration, the monthly rent will be abated in the same ratio as that portion of the New Building which the County determines is unfit for occupancy bears to the whole New Building.

20. Rules and Regulations. The District shall use the Property in accordance with such reasonable rules and regulations ("Rules") as may be adopted by the County from time to time for the general safety, care, and cleanliness of the Property and use of the common areas designated on Exhibit C. The District shall cause its employees, agents, invitees and visitors to abide by the County's Rules.

21. Defaults – Remedies.

a. Default by the District. The occurrence of any one or more of the following events constitutes a default under this Amended and Restated Lease by the District:

- i. Vacation or abandonment of the New Building by the District;
- ii. Failure by the District to make any payment of rent when due, or failure to make any other payment required hereunder when due when that failure continues for a period of five (5) days after written notice from the County;
- iii. Failure by the District to observe or perform any of the covenants, conditions or provisions of this Amended and Restated Lease, other than the making of any payment, where that failure continues for a period of 30 days after written notice from the County; provided, that if the nature of the District's obligation is such that more than 30 days are reasonably required for cure, the District will not be in default if the District commences to cure within 30 days of the County's notice and

thereafter diligently pursues completion and completes performance within a reasonable time;

iv. Either:

a. the making by the District of any general assignment or general arrangement for the benefit of creditors;

b. the filing by or against the District of a petition in bankruptcy, including reorganization or arrangement, except in the case of a petition filed against the District when the same is dismissed within 30 days after filing; or

c. the appointment of a trustee or receiver to take possession of substantially all of the District's assets located at the Property or of the District's interest in this Amended and Restated Lease;

v. Cancellation of a guaranty of the District's obligations by a guarantor, if any;

vi. The District's failure to comply with the same term in this Amended and Restated Lease or covenant on three occasions during the Term, even if such breach is cured within the applicable cure period; or

vii. The District's failure to comply with the Rules, unless such failure is cured within five (5) days after notice.

b. Remedies. In the event of any default, the County may at any time, without waiving or limiting any other right or remedy, re-enter and take possession of the New Building, terminate this Amended and Restated Lease, accelerate all rent payments due hereunder which payments will then become immediately due and payable, or pursue any other remedy allowed by law. The District shall pay the County the costs of recovering possession of the New Building, the expenses of reletting, and any other costs or damages arising out of the District's default. Notwithstanding any re-entry or termination, the District will remain liable for all sums the District is obligated to pay hereunder for the balance of the Term, and the District shall compensate the County for any deficiency arising from reletting the New Building, provided, however, that the County shall use reasonable efforts to mitigate its damages. Unless the County elects to accelerate the rent owed hereunder, the District shall pay such deficiency each month as the amount thereof is ascertained by the County.

c. Default by the County. The County will not be in default unless the County fails to perform an obligation within 30 days after written notice by the District, which notice must specify the alleged breach of a specific section of this Amended and Restated Lease; provided, that if the nature of the County's obligation is such that more than 30 days are reasonably required for cure, the County will not be in default if the County commences to cure within 30 days of the District's notice and thereafter diligently pursues completion and completes performance within a reasonable time.

22. Waiver. Failure of the County to promptly enforce its rights hereunder will not waive such rights. The County's acceptance of rent subsequent to the District's breach will not waive such breach.

23. Access. The County may enter the New Building at all times to: inspect; provide Services required hereunder; show the New Building to prospective purchasers or tenants; post notices of nonresponsibility; or, alter, improve or repair the New Building, all without being deemed a constructive eviction. The County shall give the District written advance notice of at least five (5) business days prior to commencing improvements or repairs that would likely materially disrupt the District's operations, except such notice shall be waived in the case of repairs needed to prevent further damage to the New Building or likelihood of injury to persons. The District shall ensure that the County at all times has a key with which to unlock all doors and gates to the New Building, excluding the District's vaults and safes. No re-keying of doors or gates may be done without the County's prior written approval. The County has the right to use any and all means that the County deems proper to open doors and gates in an emergency in order to obtain entry to the New Building.

24. Notices. Any notice required or permitted hereunder must be in writing and will be effective upon the earlier of personal delivery, or three (3) days after being mailed by certified mail, return receipt requested, addressed to the District or to the County at the address for that party designated below. Either party may specify a different address for notice purposes by written notice to the other, provided that upon commencement of the Term the County may in any event use the New Building as the District's address for notice purposes

- a. The County: Chairman, Board of Benton County Commissioners, PO Box 190, Prosser, WA 99350
- b. The District: Chairman, Board of the Benton-Franklin District Health Department, 800 West Canal Drive, Kennewick, WA 99336

25. Prior Agreements. This Amended and Restated Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in the Amended and Restated Lease, and neither the January 23, 2007, lease, any amendments thereto or any other prior agreement, letter of intent or understanding pertaining to any such matter will be effective for any purpose upon full execution of this Amended and Restated Lease. No provisions of this Amended and Restated Lease may be amended or added to, except by an agreement in writing signed by the parties or their respective successors in interest.

26. Vacation of Premises – Holding Over. Upon written notice from the County given at any time prior to the expiration of the Term, the District shall promptly vacate the New Building on or before the last day of the Term, leaving the New Building in the condition described in Section 28. If the District holds over after the expiration or earlier termination of the Term without the express written consent of the County, the District will be a tenant at sufferance only and otherwise subject to the terms, covenants and conditions only and otherwise subject to the terms, covenants and conditions herein specified, insofar as applicable. The District shall also pay its share of then current Additional Rent, prorated on a daily basis. Acceptance by the County of rent after the expiration of the Term or earlier termination thereof will not result in

a renewal of this Amended and Restated Lease. The foregoing provisions of this section are in addition to and do not affect the County's right of re-entry or any other rights of the County hereunder or as otherwise provided by law. The District hereby indemnifies and agrees to hold harmless the County from all loss, injury or liability arising from the District's failure to surrender the Property upon the expiration or termination of this Amended and Restated Lease.

27. Successors and Assigns. Except as otherwise provided in this Amended and Restated Lease, all of the covenants, conditions and provisions of this Lease are binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns. If the County sells or otherwise conveys its title to the Property, then after the effective date of such sale or conveyance the County will have no further liability under this Amended and Restated Lease to the District except as to matters of liability which have accrued and are unsatisfied as of the date of sale or conveyance, and the District must seek performance solely from the County's purchaser or successor in title. The County's successor will have all rights of the County hereunder.

28. Surrender of Premises. The voluntary or other surrender of this Amended and Restated Lease by the District, or a mutual cancellation thereof, will not work a merger, and will, at the option of the County, operate as an assignment to it of any or all subleases or subtenancies. Upon the expiration or earlier termination of this Amended and Restated Lease, the District shall peaceably surrender the New Building and all of the alterations and additions thereto, leave the New Building broom clean, in as good order, repair and condition as was provided to the District on the commencement of the Term, reasonable wear and tear excepted, and the District shall comply with the provisions of Sections 10 and 11. The delivery of keys to any employee of the County or to the County's agent or any employee thereof shall not be sufficient to constitute a termination of this Amended and Restated Lease or a surrender of the New Building.

29. Performance by the District. Except as otherwise expressly provided hereunder, all covenants and agreements to be performed by the District under this Amended and Restated Lease will be performed by the District at the District's sole cost and expense and without any abatement of rent. If the District fails to pay any sum of money owed to any party other than the County for which the District is liable hereunder, or if the District fails to perform any other act on its part to be performed hereunder, and such failure continues for 10 days after notice thereof by the County, the County may, without waiving or releasing the District from its obligations, make any such payment or perform any such other act to be made or performed by the District. The District shall pay the County, on demand, all sums so paid by the County and all necessary incidental costs, together with interest thereon at the lesser of 1.5% per month or the maximum rate permissible by law, from the date of such payment by the County.

30. Americans With Disabilities Act. Within ten days after receipt, the District shall advise the County in writing, and provide the County with copies of (as applicable) (a) any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property; (b) any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property; or (c) any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property.