

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF LEWIS COUNTY, WASHINGTON

IN RE: APPROVING PROFESSIONAL)
SERVICES AGREEMENT BETWEEN) RESOLUTION NO. 02-407
LEWIS COUNTY AND SANDRA BENBROOK)

WHEREAS, the BOARD OF COUNTY COMMISSIONERS has reviewed a Professional Services Agreement between Lewis County and Sandra Benbrook to providing consulting services regarding the UGA feasibility study for Packwood, Washington; and,

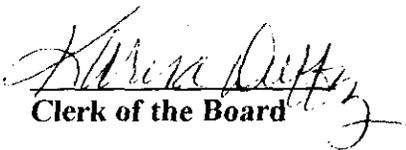
WHEREAS, it appears to be in the best public interest to authorize this Professional Services Agreement with Sandra Benbrook;

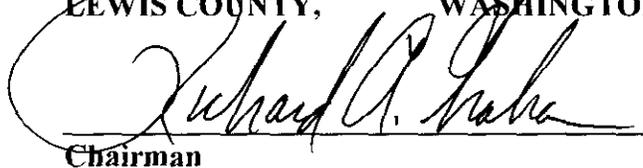
NOW THEREFORE BE IT RESOLVED, that this Professional Services Agreement between Lewis County and Sandra Benbrook is hereby approved and the Chairman of the BOARD OF COUNTY COMMISSIONERS is authorized to sign the Agreement on behalf of Lewis County.

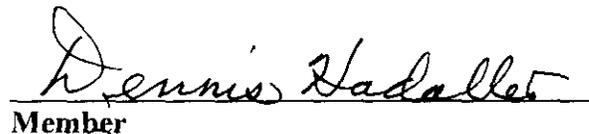
DONE IN OPEN SESSION this 7th day of October 2002.

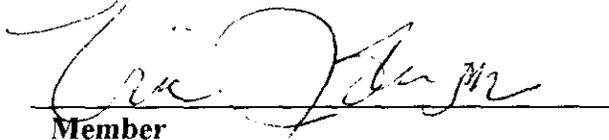
ATTEST:

**BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON**


Clerk of the Board


Chairman


Member


Member

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON
OCT 18 2002

PERSONAL SERVICES AGREEMENT

CONTRACT NO. _____

SANDRA BENBROOK, 363 Brim Road, Onalaska, WA 98570, hereinafter called CONTRACTOR, and LEWIS COUNTY, hereinafter called COUNTY agree as set forth in this Agreement, including: General Conditions, Exhibit A Special Conditions, Exhibit B Payment, and Exhibit C Scope of Work, copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein.

The term of this Agreement shall commence as soon as legal arrangements are finalized but no later than the 7th day of October, 2002.

CONTRACTOR acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 5, 13, 19 and 22, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this 7th day of October, 2002.

CONTRACTOR:


Title of Signatory: *President Benbrook and Associates*
Mailing Address: *and Associates*

363 Brim Road
Onalaska, WA 98570

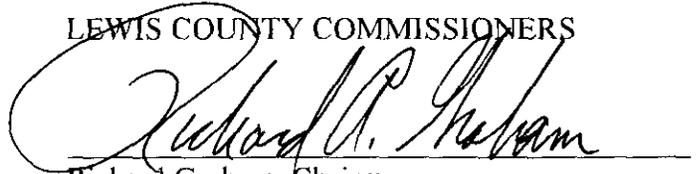
Social Security No.:

559-78-7044

State Uniform Business ID No.:

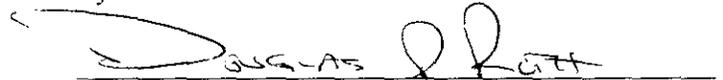
602 156 103 001

LEWIS COUNTY COMMISSIONERS


Richard Graham, Chairman

Approved as to Form Only:
JEREMY RANDOLPH, Prosecuting Attorney

By:


DUGLAS R. RUTT

Civil Deputy Prosecutor

GENERAL CONDITIONS

1. **Scope of Contractors Services:**

The Contractor agrees to provide to the County services and any material set forth in Scope of Bid identified as Exhibit "A" during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

2. **Accounting and Payment for Contractor Services:**

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B". Where Exhibit "B" requires payments by Lewis County, payment shall be based upon billings, supported unless otherwise provided in Exhibit "B", by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for Lewis County, (hereinafter referred to as the "Contracting Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.

Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor through the County voucher system for the Contractor's service pursuant to the terms set forth in Exhibit "A" and the rate as set forth in Exhibit "B".

3. **Assignment and Subcontracting:**

No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the Contractor, or as set forth in Exhibit "A".

4. **Independent Contractor:**

The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent Contractor. The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" 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, or any other rights or privileges afforded to Lewis County employees.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

5. **No Guarantee of Employment:**

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

6. **Taxes:**

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

7. **Regulations and Requirement:**

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth in Special Conditions.

8. **Right to Review:**

This contract is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Contracting Officer. Such review may occur with or without notice, and may include, but is not limited to, on site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after contract termination, and shall make them available for such review, within Lewis County, State of Washington, upon request.

9. **Modifications:**

Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

10. **Termination for Default:**

If the contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or make an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until work called for, as may be applicable under Exhibit "B", has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra

expenses incurred by the County in completing the work, as may be applicable under Exhibit "B", including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

11. **Termination for Public Convenience:**

The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

12. **Defense & Indemnity Agreement:**

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officer and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and an account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the negligence of the County, its appointed or elected officials or employees. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

13. **Industrial Insurance Waiver:**

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the Contractor waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

14. **Venue and Choice of Law:**

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Lewis. The Agreement shall be governed by the laws of the State of Washington.

15. **Withholding Payment:**

In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Agreement and said failure has not been cured within the times set forth in this Agreement, then the County may, upon written notice, withhold all monies due and payable to Contractor, without penalty, until such failure to perform is cured or otherwise adjudicated.

16. **Future Non-Allocation of Funds:**

If sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.

17. **Contractor Commitments, Warranties and Representations:**

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

18. **Patent/Copyright Infringement:**

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payment are conditioned upon the following:

- a. That Contractor shall be notified promptly in writing by County of any notice of such claim.
- b. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information in the event such claim of infringement is made, provided no reduction in performance or loss results to the County.

19. **Disputes:**

a. **General**

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, 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. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Contracting Officer, shall be final and conclusive.

b. **Notice of Potential Claims**

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Contracting Officer or the County,

or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. **Detailed Claim**

The Contractor is not entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

20. **Ownership of Items Produced:**

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the performance of this Agreement shall be the sole and absolute property of the County.

21. **Confidentiality:**

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Lewis County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

22. **Notice:**

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the Lewis County Treasurer for whom services are rendered, to wit: Rose A. Bowman, Treasurer, 360 NW North St., MS TRSO1, Chehalis, WA 98532-1900. Notice to the Contractor for all purposes under this Agreement shall be given to the address reflected above. Notice may be given by delivery or by depositing in the U.S. mail, first class, postage prepaid.

23. **Contract Officer**

The COUNTY is the recipient of CONTRACTOR'S services, and at all times acts through its Board of County Commissioners. The Contact Officer of the COUNTY will be Richard Graham, Chairman, Board of County Commissioners or his designee.

24. **Non-Discrimination (Lewis County Funds)**

The CONTRACTOR should be aware that public funds are being used to assist in this project. During the performance of this contract, the CONTRACTOR agrees as follows:

- a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting for the provisions of this non-discrimination clause.
- b. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
- c. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- d. The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books and records for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- e. In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contract may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

25. **Eight Hour Law and Payment for Labor**

The CONTRACTOR agrees to comply with RCW 49.28.010.065 providing that no laborer, workman or mechanic in the employ of the CONTRACTOR, sub-contractor, or other person doing or contracting to do the whole or any part of the work contemplated by this contract, shall be permitted or required to work more than eight (8) hours in any one calendar day, provided that, in cases of extraordinary emergency, such danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight (8) hours of each calendar day shall not be less than one and one-half times the rate allowed for this same amount of time during eight (8) hours' service. Any work necessary to be performed after regular working hours, or Sunday or legal holidays shall be performed without additional expense to the COUNTY.

Notwithstanding the above provisions, a CONTRACTOR may enter into an agreement approved by the employees in which the employees may work up to ten (10) hours in a calendar day for not more than four (4) calendar days in a week.

CONTRACTOR further agrees that said contract is terminable in case the CONTRACTOR shall violate the provisions of such act.

26. **Solicitation or Recruitment of Contract**

The CONTRACTOR, and sub-contractors shall further verify that:

1. She had not employed or retained any company or person (other than a full time bona fide employee working solely for the offerer) to solicit or receive this contract; and
2. She has not paid or agreed to pay any company or person (other than a full time bona fide employee working solely for the offerer) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and
3. She has not been asked or otherwise coerced, whether express or implied, into contributing funds, for any purpose as a condition to doing business with the COUNTY.

27. **Severability:**

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not effect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

28. **Waiver:**

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

29. **Survival:**

The provisions of paragraphs 4, 5, 6, 8, 12, 13, 14, 15, 18, 20, and 21 shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

30. **Entire Agreement:**

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"

Payment

All payments due to CONTRACTOR will be billed to COUNTY at the completion of all items noted in the Scope of Work. CONTRACTOR will not expect or demand payment prior to the completion of assigned tasks. CONTRACTOR will be paid based on the agreed price not to exceed \$4,170.00.

See attached Exhibit "B" for details.

EXHIBIT "B"

SCOPE OF WORK

PACKWOOD UGA STUDY PREPARATION

Proposed Scope of Work

Objective: Assist Packwood and Lewis County prepare to conduct a desirability and feasibility assessment of the Packwood Urban Growth Area (UGA) by participating in community discussions, preparing applications for the appropriate grant funds, and by assisting the Lewis County Planning Commission.

Time Frame

Begin work on October 7, 2002 and continue through December 31, 2002

Steps, Estimated Level of Effort and Deliverables

Task 1

Research grant options with appropriate state and federal agency staff. Include examination of best fit with current sanitary sewer system study being conducted by the Department of Ecology. Explore requirements and funding cycles for grants. Prepare and deliver briefing for Packwood community members and the Lewis County Planning Commissioners working on the Packwood project. Receive feedback and make final selections for targeted grant applications.

Completion Date: October 15, 2002
Estimated Level Of Effort: 8 hours
Deliverable: Briefing Document

Task 2

Attend community meetings, gathering information and data from prior efforts. Conduct interviews. Develop a sound understanding of community objectives and concerns regarding establishment of the proposed UGA boundary. Understand the connection between the ongoing Ecology study and other activities that will have fiscal impacts and/or benefits to the community and the county. Develop and present briefings with preliminary recommendations on the scopes of work for two grant applications. Obtain feedback and agreement on the scopes of work for two grant application packages.

Completion Dates: First Scope by October 22, 2002
Second Scope by November 15, 2002
Estimated Level Of Effort: 22 hours
Deliverable: Two Briefing Documents

Task 3

Develop draft grant applications for discussion with the Packwood community members, Planning Commission, and Lewis County officials. Conduct presentations of the draft grant proposals, gather feedback and suggestions, and make revisions to the draft grants. Deliver to final draft grant application packages to the Planning Commission for action by appropriate organizations and officials.

Completion Dates: First Draft Grant by November 19, 2002
 Second Draft Grant by December 17, 2002
 Final Draft Grant Packages by December 31, 2002

Level Of Effort: 32 hours

Deliverable: Two Final Draft Grant Packages

Estimated Project Budget

Task/Activity	Estimated Hours				Total
	Sept. '02	Oct. '02	Nov. '02	Dec. '02	
1. Research grant options, hold discussions with program staff, and conduct briefing		8			8
2. Attend community meetings, gather data, prepare and present recommended grant scopes, and finalize scopes.		14	8		22
3. Write draft grants, present to community, gather feedback, refine and finalize draft grants.			12	20	32
Total Level of Effort in Hours		22	20	20	62

Hourly Fee = \$75.00
 Travel Time = \$35.00
 Total Budget = \$4,170.00

Note: This fee includes incidental out of pocket expenses for automobile mileage, supplies, postage and related project costs. Please see Excel Spreadsheet for Budget Detail.