

May 4, 2009

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

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
April 27, 2009, 9:00 a.m.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

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

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Community Development Coordinator; Finance Manager Linda Ivey; Personnel Manager Melina Wenner; Facilities Manager Roy Rogers; DPA Ryan Brown; Larry Moser, Steve Becken, Bryan Thorp, and Norm Childress, Public Works; Marianne Ophardt and Gwen-Alyn Hoheisel, WSU; Auditor Bobbie Gagner; District Court Administrator Jacki Lahtinen; Bryan Perry, Safety/Training Coordinator; Shon Small, Sheriff's Office; Planning Manager Mike Shuttleworth; and District Court Judge Bob Ingvalson.

Approval of Minutes

The Minutes of April 20, 2009 were approved.

Consent Agenda

MOTION: Commissioner Beaver moved to approve the consent agenda items "a" through "q". Commissioner Bowman seconded and upon vote, the Board approved the following:

Auditor

- a. Professional Services Work Order w/Tyler Technologies

Board of Equalization

- b. Reappointment of L Bateman

Commissioners

- c. Alternate Dates for Budget Hearings 2010; Rescinding Resolution 09-116
- d. Police Information Network Interlocal Cooperation Agreement w/Cities of Connell, Kennewick, Pasco & Richland
- e. Public Works Organizational Chart

Facilities

- f. Contract w/Sierra Electric Inc. for Lighting and Wiring at Jail
- g. Contract Amendment w/Cascade Fire Protection

Fairgrounds

- h. Notice of Completion for Installation of Pump Station

Human Services

- i. Contract Amendment, #0763-20235-03, w/DSHS
- j. Agreement, #BENFR-MHBG, w/Greater Columbia Behavioral Health

Juvenile

- k. Contract Amendment w/Ernie Chapin

Office of Public Defense

- l. Letter Terminating All Current District Court Indigent Contracts

Personnel

- m. County Claim CC 09-03

Planning

- n. Travel Expense Reimbursements

Road/Engineer

- o. Contract Award for Horse Heaven Vista Improvements
- p. Final Assessment Roll Amendment for County Roads Improvement District #15

Sheriff

- q. Contract w/U.S. Army Corps of Engineers for the Ice Harbor - McNary Project

The Board briefly recessed, reconvening at 9:05 a.m.

WSU Educator for Commercial Fruit

Marianne Ophardt and Gwen-Alyn Hoheisel gave an update on the automated tree fruit system implemented by award of the \$6 million grant.

The Board briefly recessed, reconvening at 9:15 a.m.

Public Hearing – Six-Year Road Program

Steve Becken presented the Six-Year Road Program 2010-2015 for adoption.

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

MOTION: Commissioner Bowman moved to approve the Six-Year Road Program 2010-2015 as presented. Commissioner Beaver seconded.

Discussion

Commissioner Beaver complimented the efforts of the Public Works Department in stepping up for the department. Commissioner Bowman said he agreed and complimented their efforts. Chairman Beniz said he agreed with the program and believed it was very doable.

Upon vote, the motion carried unanimously.

Other Business

KID/Red Mountain

Commissioner Bowman said he attended the Red Mountain KID meeting and they were moving forward with a program for redirection of water (taking it out of the Yakima River at Red Mountain). He provided copies of the program that included costs and anticipated water to be received.

Legislation

Commissioner Bowman briefly discussed the transportation budget legislation regarding commute trip reduction. He said that Benton County would have until at least after the completion of the interchange before it needed to comply.

The Board briefly recessed, reconvening at 9:35 a.m.

Interlocal Agreement – Tri-Cities Regional Special Weapons and Tactics Team

Sheriff Taylor (via videoconference) presented a new interlocal agreement that added the City of Pasco to the SWAT team and requested the Board approve the agreement.

MOTION: Commissioner Beaver moved to approve the Interlocal Agreement for the Benton County/Tri-Cities Regional Special Weapons and Tactics Team. Commissioner Bowman seconded and upon vote, the motion carried.

The Board briefly recessed, reconvening at 9:40 a.m.

Legislative Approval for District Court Judges

District Court Judge Bob Ingvalson and Jacki Lahtinen presented a proposal to create two new elected judicial positions for District Court and have those positions filled by appointment. Judge Ingvalson gave background information and said the State was trying to make it rewarding and the goal was to get half of the judge's salary into the trial court improvement fund.

Commissioner Beaver said he was ready to move forward. He said the problem in Benton County was the amount of warrants and believed they needed judges to get the warrants through. He said he didn't believe the commissioner program was going to continue to work and that having two more judges would accelerate the program and make it run more efficiently.

Commissioner Bowman said it would cost the County money to fund the increase from a commissioner to a judge, even though the money would be returned to the trial court improvement fund. He said the best use of the money in Current Expense was on the weight of the Board. Commissioner Bowman suggested the County ease into the program and recommended at this time to convert one commissioner position to a judge and see how it washed out in the budget for the additional one.

Chairman Benitz said he believed it was important that Benton County have elected officials on the bench and that it would create efficiencies that require the individuals who have broken the law to be held accountable.

MOTION: Commissioner Beaver moved to approve the two new elected positions in District Court and have those positions appointed by County Commissioners. Chairman Benitz seconded.

Discussion

Commissioner Bowman requested that the current commissioners be appointed to the position of District Court judge and then run for election in 2010.

Judge Ingvalson said the Court had recommendations on appointments, but the decision would be up to the Commissioners. He said the Courts would be able to put them to work as soon as they came into office and they would become a judge on July 26, 2009.

Upon vote, the motion carried with Commissioner Bowman opposing.

Ordinance Amendment – BCC 11.65.030(d)

Mike Shuttleworth presented the ordinance amendment to allow the exemption level for communication towers for emergency preparedness and public safety purposes to 200 feet. He said the Planning Commission conducted a public hearing for the proposed ordinance and recommended approval.

Commissioner Bowman asked if the limit of 200 feet allowed some wiggle room for the agency that needed the exemption and Mr. Shuttleworth stated it did.

MOTION: Commissioner Beaver moved to adopt the Planning Commission's findings of fact as their own and approve the resolution and ordinance amendment to BCC 11.65.030(d). Commissioner Bowman seconded and upon vote, the motion carried.

District Court Judges – Cont.

David Sparks said the current policy for appointing judicial positions required the committee provide three names for each open position and he wanted to know if the Board would require six names.

Ryan Brown said the districting plan needed to be updated before proceeding because all judicial positions have to be included in the plan. Mr. Brown said he would provide a memo to the Board on that issue.

Commissioner Bowman said he was not in agreement with providing six names since the committee just went through a process and there were already some names available.

Mr. Sparks stated the process for other open positions in the County would be to use the same list if a new position came open.

Chairman Benitz recommended the Board work through the districting plan and then work off the same list of candidates. The Board agreed.

Executive Session – Litigation Update

The Board went into executive session with DPA Ryan Brown at 10:04 a.m. for approximately 15 minutes to discuss pending litigation. Also present were David Sparks, Cami McKenzie, Melina Wenner, and Loretta Smith Kelty. The Board came out of executive session at 10:18 a.m. Mr. Brown announced that no action was taken but direction was given.

Claim for Damages

CC 09-12: Received on April 24, 2009 from Jon Jason King

Vouchers

Check Date: 04/24/2009
Warrant #: 923587-923838
Total all funds: \$978,189.28

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

Resolutions

09-265 Professional Services Work Order w/Tyler Technologies
09-266 Reappointment of L Bateman
09-267 Alternate Dates for Budget Hearings 2010; Rescinding Resolution 09-116
09-268 Police Information Network Interlocal Cooperation Agreement w/Cities of
Connell, Kennewick, Pasco & Richland
09-269 Public Works Organizational Chart
09-270 Contract w/Sierra Electric Inc. for Lighting and Wiring at Jail
09-271 Contract Amendment w/Cascade Fire Protection
09-272 Notice of Completion for Installation of Pump Station
09-273 Contract Amendment, #0763-20235-03, w/DSHS
09-274 Agreement, #BENFR-MHBG, w/Greater Columbia Behavioral Health
09-275 Contract Amendment w/Ernie Chapin
09-276 Letter Terminating All Current District Court Indigent Contracts
09-276A Denial of County Claim CC 09-03
09-277 Contract Award for Horse Heaven Vista Improvements
09-278 Final Assessment Roll Amendment for County Roads Improvement District #15
09-279 Contract w/U.S. Army Corps of Engineers for the Ice Harbor - McNary Project
09-280 Six-Year Road Program 2010-2015

- 09-281 Interlocal Agreement for Benton County/Tri-Cities Regional Special Weapons and Tactics Team
- 09-282 Adoption of Ordinance 468 Relating to Communication Facility Criteria

There being no further business before the Board, the meeting adjourned at approximately 10:19 a.m.

Clerk of the Board

Chairman

BENTON COUNTY
SALARY REQUEST STATEMENT

a

REASON FOR REQUEST Reclassification per Resolution 09-269

POSITION Engineering Services Manager

Norman Childress

NAME OF AFFECTED EMPLOYEE/CANDIDATE

EFFECTIVE DATE 5-1-09

OFFICE/DEPARTMENT Public Works

SALARY FROM 18 I (6121) TO 19 I (6427)

[Signature]
ELECTED OFFICIAL/DEPARTMENT DIRECTOR
DATE

APPROVED _____
DENIED _____
CHAIRMAN _____
MEMBER _____
MEMBER _____
DATE _____

BACKGROUND INFORMATION (Attach documentation; organizational chart, application, contract language, budgetary approval, appraisal, Resolution, etc.)

BASIS:

FISCAL IMPACT AND REVIEW

FIRST YEAR IMPACT: 0

AGGREGATE IMPACT: 0

Attach the Employment Opportunity, if applicable, and Classification Description document(s). State how this individual meets or exceeds the criteria listed in these documents.

List names of other employees who hold the same classification. Include grade, step, and salary.

White--Personnel BCPERS 0014/95	Yellow--Payroll	Pink--Commissioners	Goldenrod--Department
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BENTON COUNTY
SALARY REQUEST STATEMENT

REASON FOR REQUEST Reclassification per
Resolution 09-269
Larry Moser

POSITION Roads Financial Administrator

NAME OF AFFECTED EMPLOYEE/CANDIDATE

EFFECTIVE DATE 5-1-09

OFFICE/DEPARTMENT Public Works

SALARY FROM 18I (6121) TO 19I (6427)


ELECTED OFFICIAL/DEPARTMENT DIRECTOR
DATE

APPROVED _____
DENIED _____
CHAIRMAN _____
MEMBER _____
MEMBER _____
DATE _____

BACKGROUND INFORMATION (Attach documentation; organizational chart, application, contract language, budgetary approval, appraisal, Resolution, etc.)

BASIS:

FISCAL IMPACT AND REVIEW

FIRST YEAR IMPACT: 0

AGGREGATE IMPACT: 0

Attach the Employment Opportunity, if applicable, and Classification Description document(s). State how this individual meets or exceeds the criteria listed in these documents.

List names of other employees who hold the same classification. Include grade, step, and salary.

White--Personnel BCPERS 0014/95	Yellow--Payroll	Pink--Commissioners	Goldenrod--Department
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BENTON COUNTY
SALARY REQUEST STATEMENT

REASON FOR REQUEST Reclassification per
Resolution 09-269
Bryan Thorp

POSITION Project Engineer

NAME OF AFFECTED EMPLOYEE/CANDIDATE

EFFECTIVE DATE 5-1-09

OFFICE/DEPARTMENT Public Works

SALARY FROM 18 I (6121) TO 19 I (6427)

[Signature]
ELECTED OFFICIAL/DEPARTMENT DIRECTOR
DATE

APPROVED _____
DENIED _____
CHAIRMAN _____
MEMBER _____
MEMBER _____
DATE _____

BACKGROUND INFORMATION (Attach documentation; organizational chart, application, contract language, budgetary approval, appraisal, Resolution, etc.)

BASIS:

FISCAL IMPACT AND REVIEW

FIRST YEAR IMPACT: 0

AGGREGATE IMPACT: 0

Attach the Employment Opportunity, if applicable, and Classification Description document(s). State how this individual meets or exceeds the criteria listed in these documents.

List names of other employees who hold the same classification. Include grade, step, and salary.

White--Personnel BCPERS 0014/95	Yellow--Payroll	Pink--Commissioners	Goldenrod--Department
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RESOLUTION 09 269

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE UPDATED BENTON COUNTY PUBLIC WORKS ORGANIZATIONAL CHART

WHEREAS, the Board of Benton County Commissioners has reorganized Public Works under the direction of the County Administrator; and,

WHEREAS, the County Administrator is bringing forth a recommendation for a reorganization of the Public Works Department that will result in cost savings to the County Road Fund; **NOW THEREFORE**,

BE IT RESOLVED, the position of Public Works Manager be placed at a salary grade of 27 and the County Engineer be placed at a grade 25; and,

BE IT FURTHER RESOLVED, that the positions of Financial Administrator, Project Engineer, and Engineering Services Manager all be reclassified to a grade 19 and the elimination of the vacant utility inspector position; and,

BE IT FURTHER RESOLVED, that the organizational chart become effective May 1, 2009.

Dated this 27 day of April, 2009

Ma E. Bennett
Chairman of the Board

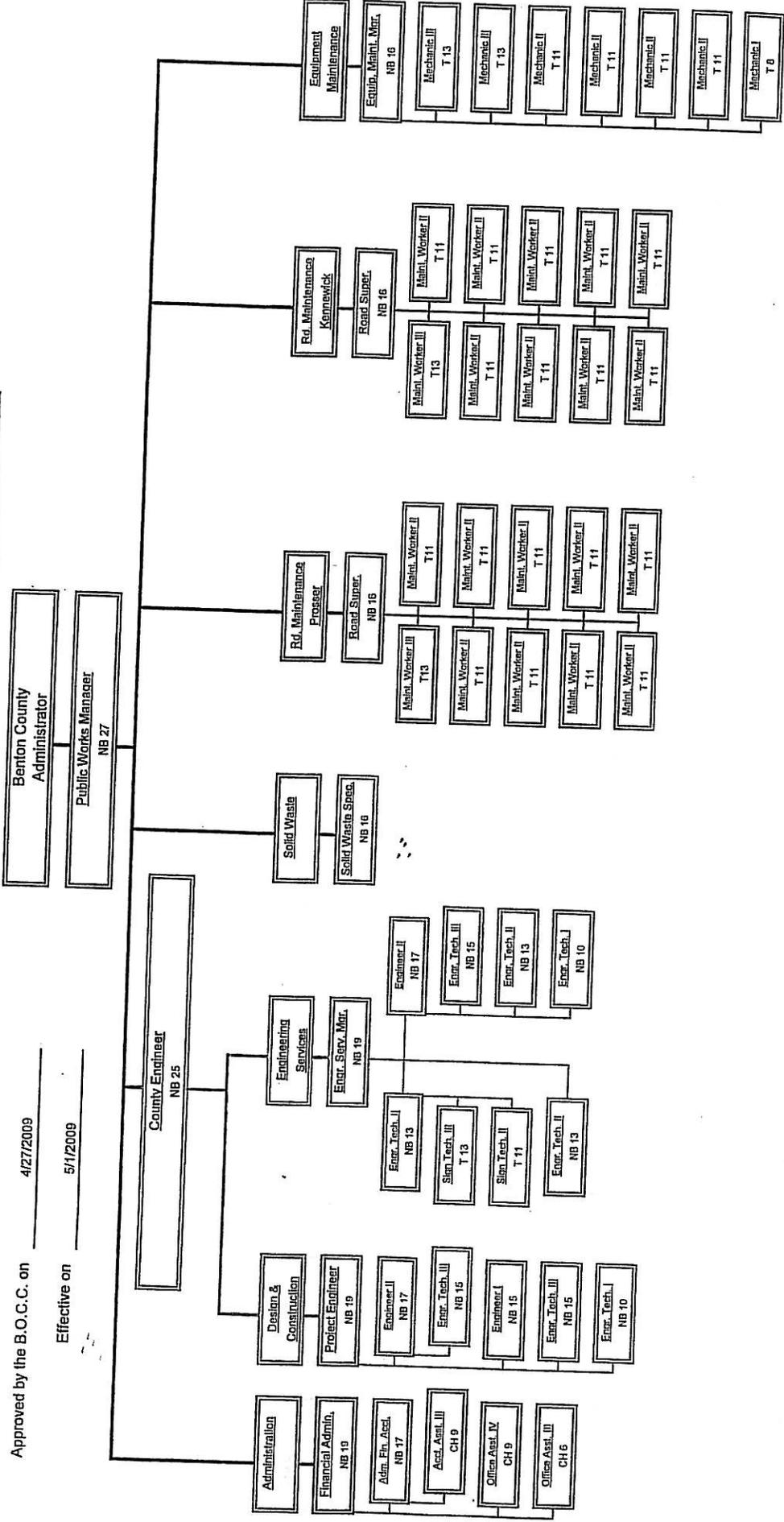
Don Beever
Chairman Pro Tem

James R. Beever
Member

Attest: *Ann M. [Signature]*
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Benton County Public Works Organizational Chart



Approved by the B.O.C.C. on 4/27/2009

Effective on 5/1/2009

Leo Bowman
District 1
Max Benitz, Jr.
District 2
James Beaver
District 3

Board of County Commissioners
BENTON COUNTY

David Sparks
County Administrator

Loretta Smith Kelly
Deputy County Administrator

May 4, 2009

United States Department of the Interior
Bureau of Reclamation
Columbia-Cascade Area Office
1917 Marsh Road
Yakima, WA 98901-2058

Attn. Ms. Wendy Christensen for Gerald Kelso

Re: Benton County's Participation in the YRBWEP

Dear Ms. Christensen:

Benton County is in receipt of the Department's invitation to participate in the Yakima River Basin Water Enhancement Project formation. Please be advised that it is our desire to stay informed and be involved in this process.

At this time, we would appoint Benton County Commissioner, Max Benitz, Jr. as our designee. Future information may be sent to his attention at the address listed below. Thank you for offering our county the opportunity to participate.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Max E. Benitz, Jr.
Chairman

Leo Bowman
Chair Pro Tem

James Beaver
Member

cc: Benton County Commissioners
Administration
Adam Fyall, Community Dev.
Yakima County Commissioners
Kittitas County Commissioners



United States Department of the Interior

BUREAU OF RECLAMATION
Columbia-Cascades Area Office
1917 Marsh Road
Yakima, Washington 98901-2058

FILE



TAKE PRIDE
IN AMERICA

RECEIVED

APR 28 2009

BENTON COUNTY
COMMISSIONERS

*received
4/28/09*

Max	<input checked="" type="checkbox"/>
Leo	<input checked="" type="checkbox"/>
Jim	<input checked="" type="checkbox"/>
David	<input checked="" type="checkbox"/>
Loretta	<input checked="" type="checkbox"/>
Other	<i>A. Fyall</i>

IN REPLY REFER TO:
CCA-1100
PRJ-3.00

APR 27 2009

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

Subject: Yakima River Basin Water Enhancement Project (YRBWEP) 2009 Work Group
Formation and Invitation to Participate

Dear Sirs:

Next month the Washington State Department of Ecology (Ecology) expects to complete its State Environmental Policy Act (SEPA) integrated water resources needs and options analysis for the water shortage problems of the Yakima basin. With conclusion of this analysis there will be over 30 years of study of the water resource needs of the basin and potential solutions to meeting those needs.

The Bureau of Reclamation and Ecology intend to convene a work group that will use the 30 years of information to develop a comprehensive water resources plan for the basin. Participants include, and may not be limited to, representatives of the Yakama Nation; State, Federal, county and city governments, environmental organizations, irrigation districts, and Congress. To be effective, the work group will need to be facilitated and manageable in size.

We expect a group size of approximately fifteen. Meetings are expected to occur weekly or biweekly and commence in June. The meetings will be open to the public.

Regarding your organization's potential participation, we ask you to select an individual who is:

- Recognized as a spokesperson for your organization/constituency
- Sufficiently well-versed in the process and issues to articulate your organization's perspectives, needs, and preferences
- Able to attend all meetings (this will be a working group and each meeting will build on the last; therefore, continuity of participation is important)
- Able to work collaboratively—willing and able to see/consider multiple points of view.

A meeting schedule and full plan of the purpose, content, and expected products of each meeting will be prepared and forwarded to you and your designated representative upon completion. Full agendas will be provided in advance of each meeting.

We look forward to working with your organization through this process. If, however, you do not wish to participate, believe that your interests will be adequately represented by another listed organization, or wish to nominate another organization to represent your interests, please let us know.

Please notify Ms. Wendy Christensen at 509-575-5848, extension 203, or by email at wchristensen@pn.usbr.gov, of your intent to be involved in this process or the name and contact information of your designee.

Sincerely,



fw
Gerald W. Kelso, Area Manager
Bureau of Reclamation
Columbia-Cascades Area Office



Derek I. Sandison, Director
Washington Department of Ecology
Office of Columbia River

Enclosure

Identical Letter Sent To:

Honorable Patty Murray
United States Senator
173 Russell Senate Office Building
Washington, D.C. 20510

Honorable Maria Cantwell
United States Senator
511 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Patty Murray
United States Senator
2988 Jackson Federal Building
Seattle, WA 98174

Honorable Maria Cantwell
United States Senator
915 Second Avenue, Suite 3206
Seattle, WA 98174

Honorable Patty Murray
United States Senator
402 E. Yakima Avenue, Suite 390
Yakima, WA 98901

Honorable Maria Cantwell
United States Senator
825 Jadwin Avenue, Suite 205
Richland, WA 99352

Honorable Richard Doc Hastings
Member, United States House of
Representatives
1203 Longworth House Office Building
Washington, D.C. 20515

Honorable Richard Doc Hastings
Member, United States House of
Representatives
2715 St. Andrews Loop, Suite D
Pasco, WA 99301

Honorable Richard Doc Hastings
Member, United States House of
Representatives
302 East Chestnut
Yakima, WA 98902

Mr. Bill Lover
City of Yakima
129 N. 2nd Street
Yakima, WA 98901

Continued on next page.

Identical Letter Sent To:

Continued from previous page.

Mr. Jeff Tayer
Regional Director
Washington Department of Fish & Wildlife
1701 South 24th Avenue
Yakima, WA 98902-5720

Mr. Max Benitz
Benton County Commissioner
P.O. Box 190
Prosser, WA 99350

Mr. Mike Leita
Yakima County Commissioner
128 N. 2nd Street
Yakima, WA 98902

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

Mr. Ralph Sampson
Chair
Yakama Nation
P.O. Box 151
Toppenish, WA 98948

Kittitas County Board of Commissioners
205 W. 5th Avenue, Suite 108
Ellensburg, WA 98926

Mr. Ken Hasbrouck, Manager
Kittitas Reclamation District
P.O. Box 276
Ellensburg, WA 98926

Mr. Scott Revell
Acting Manager
Kennewick Irrigation District
P.O. Box 6900
Kennewick, WA 99336-0401

Mr. Rick Dieker
Sec/Treas/Mgr
Yakima-Tieton Irrigation District
470 Camp 4 Road
Yakima, WA 98908

Mr. Tom Monroe
Sec/Treas/Operations Manager
Roza Irrigation District
P.O. Box 810
Sunnyside, WA 98944

Mr. Jim Trull
Secretary/Treasurer
Sunnyside Valley Irrigation District
P.O. Box 239
Sunnyside, WA 98944

Mr. Alex Conley
Yakima Basin Fish & Wildlife Recovery Board
P.O. Box 2662
Yakima, WA 98907

Mr. Michael Garrity
Washington Conservation Director
American Rivers
4005 20th Avenue W., Suite 221
Seattle, WA 98199

cc: see next page.

Subject: Yakima River Basin Water Enhancement Project (YRBWEP) 2009 Work Group
Formation and Invitation to Participate

<p>cc: Mr. Jay Manning Ecology Director Washington State Department of Ecology P.O. Box 47600 Olympia, WA 98504-7600</p>	<p>Mr. John Easterbrooks Washington State Department of Fish and Wildlife 1701 South 24th Avenue Yakima, WA 98902</p>
<p>Ms. Mary McBride Office of Senator Patty Murray 950 Pacific Avenue, Suite 650 Tacoma, WA 98402</p>	<p>Ms. Chris Endresen State Director Office of Senator Maria Cantwell 915 Second Avenue, Suite 3206 Seattle, WA 98174</p>
<p>Ms. Rebecca Thornton Office of Senator Patty Murray 402 E. Yakima Avenue, Suite 390 Yakima, WA 98901</p>	<p>Mr. David Reeploeg Office of Senator Maria Cantwell 825 Jadwin Avenue, Suite 205 Richland, WA 99352</p>
<p>Mr. Ryan Rodruck Field Representative Office of Representative Richard Doc Hastings 302 East Chestnut Yakima, WA 98902</p>	<p>Ms. Barb Lisk Office of Representative Richard Doc Hastings 2715 St. Andrews Loop, Suite D Pasco, WA 99301</p>
<p>Mr. Donald Gatchalian Yakima County 128 N. 2nd Street Yakima, WA 98901</p>	<p>Mr. Dave Brown City of Yakima 2301 Fruitvale Blvd. Yakima, WA 98902</p>
<p>Mr. Phil Rigdon Deputy Director Natural Resources Department Yakama Nation P.O. Box 151 Toppenish, WA 98948</p>	<p>Mr. Tom Ring Hydrologist Natural Water Resources Yakama Nation P.O. 151 Toppenish, WA 98948</p>
<p>Mr. Jim Milton Yakima Basin Water Resource Agency 2301 Fruitvale Blvd. Yakima, WA 98902</p>	<p>Mr. Sid Morrison Yakima Basin Storage Alliance 503 Ballard Road Zillah, WA 98953</p>

C

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CAPITAL PROJECTS FUND NUMBER 0305-101

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

Dated this _____ day of _____, 2009

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

cc: Commissioners; Auditor; File

IVEY

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Capital Projects Dept Nbr: 000
 Fund Name: Capital Projects Fund Nbr: 0305-101
 TRANSFER FROM: Dept 000 TRANSFER TO: Dept 000

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
594.110	6412	Capital Outlay Buildings	\$10,000	539.500	4103	Professional Services	\$10,000
TOTAL			\$10,000	TOTAL			\$10,000

Explanation:

Transfer to appropriate funds from Capital Outlay Buildings to Professional Services for the construction of the Sidewalk Replacement and new slab for the trash compactor located at the Benton County Justice Center, Resolution 09-106.

Prepared by: Linda Ivey Date: 27-Apr-2009

Approved Denied Date: _____

Chairman

Member

Member

AGENDA ITEM	TYPE OF ACTION NEEDED	
MEETING DATE: 5/4/09	Execute Contract	CONSENT AGENDA XXX
SUBJECT:	Pass Resolution XXX	PUBLIC HEARING
Horticultural Pest and	Pass Ordinance	1ST DISCUSSION
Disease Board appointment	Pass Motion	2ND DISCUSSION
Prepared By: Frank Wolf	Other	OTHER
Reviewed By:		

BACKGROUND INFORMATION

The terms of four members, Archie den Hoed, Richard Hendrickson, Don Lewis Jr. and Jeff Lunden, on the Benton County Horticultural Pest and Disease Board, expired March 31, 2009.

SUMMARY

Archie den Hoed, Richard Hendrickson, Don Lewis Jr. and Jeff Lunden has expressed a desire to continue in their positions.

RECOMMENDATION

1st Reappoint Archie den Hoed, Richard Hendrickson, Don Lewis Jr. and Jeff Lunden.

FISCAL IMPACT

Increased productivity due to reduced horticultural pests and diseases. Increased ability to export to areas, which require County Horticultural Pest and Disease Boards. Additional tax revenue for Benton County.

MOTION

Reappoint Archie den Hoed, Richard Hendrickson, Don Lewis Jr. and Jeff Lunden to two-year terms on the Horticultural Pest and Disease Board ending March 31, 2011.

e

AGENDA ITEM MEETING DATE: May 4, 2009 SUBJECT WSDFW Order Form MEMO DATE: April 28, 2009 Prepared By: Carel Hiatt Reviewed By Michael E. Shuttleworth	<u>TYPE OF ACTION NEEDED</u> Execute Contract Pass Resolution X Pass Ordinance Pass Motion Other	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other
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BACKGROUND INFORMATION

The Board in 2000 signed a memorandum of understanding with the Washington State Department of Fish/Wildlife in order to obtain information for Benton County. The Benton County Planning Department has been acquiring current information from the State Department of Fish/Wildlife every six months per the State's suggestion that we not utilize information older than six months.

On March 14, 2005, the Board of County Commissioners made and approved a motion to have the Planning Department order one set of the Washington State Department of Fish/Wildlife maps/CD. The maps/CD will be retained in the Benton County Planning Department. Effective this order in 2009, the Benton County Planning Department will no longer be ordering both maps and CD's. The Benton County Planning Department will only be ordering a CD. The GIS Department will then transfer the data from the CD as an overlay for the Planning Department.

Seeing as Commissioner Max E. Benitz, Jr. is the current Chairman of the Board of County Commissioner he will need to sign the attached Washington State Department of Fish/Wildlife Order Form in order to secure the CD that will be retained in the Benton County Planning Department.

SUMMARY

The Board in 2000 signed a memorandum of understanding with the Washington State Department of Fish/Wildlife to obtain current information every six months. The Chairman of the Board of County Commissioners will need to sign the attached order form. Upon return of this form the Planning Department will then be able to order the necessary documentation.

RECOMMENDATION

The Planning Department recommends that the Chairman of the Board of County Commissioners sign the attached Washington State Department of Fish/Wildlife Order Form and then return said form to the Planning Department for ordering of the CD.

FISCAL IMPACT

This amount has been included in the 2009 budget for the Benton County Planning Department

MOTION

Approve the Consent Agenda adopting the Resolution authorizing Commissioner Benitz to sign the attached the Washington State Department of Fish/Wildlife Order Form.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE ORDER FORM ON BEHALF OF BENTON COUNTY TO OBTAIN THE HABITATS AND SPECIES INFORMATION

BE IT RESOLVED that Max E. Benitz, Jr., Chairman of the Board of County Commissioners is hereby authorized to sign the Washington State Department of Fish and Wildlife order form to obtain the Habitats and Species information.

Dated this _____ day of _____ 2009

Chairman of the Board

Member

Member

Constituting the Board of County
Commissioners of Benton County
Washington.

Attest.....
Clerk of the Board

MES/ch

CC: Planning Department



FISH AND WILDLIFE ORDER FORM

HABITATS AND SPECIES INFORMATION

INSTRUCTIONS

Please complete this order form to request maps and/or digital data on locations of species and habitats. For descriptions of standard products and prices see the *Ordering Habitats and Species Information* sheet which accompanies this form or visit our web site at wdfw.wa.gov/hab/release.htm. Mail completed form to: Washington Department of Fish and Wildlife, Priority Habitats and Species, 600 Capitol Way N., Olympia WA 98501-1091 or fax to (360) 902-2946. You will receive an invoice itemizing the costs for your request and instructions for submitting payment. *Sorry, we do not accept payments by credit card.* For questions call (360) 902-2543. For information on state listed plants contact the Washington Department of Natural Resources at: dnr.wa.gov/ResearchScience/Topics/NaturalHeritage/Pages/amp_nh.aspx.

Name: Benton County
Agency/Organization: Max E. Benitz, Jr. - Chairman - Board of County Commissioners
David Sparks - County Administrator
Address: Benton County Planning Department
City: P O Box 910 State: Prosser - Washington Zip Code: 99350
Phone Number: 509-786-5612 Date of Request: _____

Does your agency/organization have a Release Agreement, which includes you as a contact, on file with the Washington Department of Fish and Wildlife regarding the confidentiality of sensitive information? Yes No Don't Know

Identify yourself as one of the following:

- Owner of land covered by this request Tribe Utility Conservation organization Government Agency
 Consultant representing (please circle one:) Landowner Tribe Utility Conservation organization Government Agency
If Government Agency or representative please specify agency name and type (Federal, State etc.)
 Researcher with a university Other (please specify) _____

REQUESTER READ AND SIGN

By receiving fish and wildlife information from the Washington Department of Fish and Wildlife (WDFW), you incur an obligation to use it in a way that does not cause undue harm to our public fish and wildlife resources.

All fish and wildlife species are vulnerable to harm from human activities. Harm can occur directly (e.g., an animal is harassed or injured) or indirectly (e.g., a nest tree is felled or a wetland is drained). Harm can occur unintentionally, even, by those who value the fish and wildlife resources (e.g., repeated visits to a heron rookery which flushes birds from the nest and exposes eggs to cold weather and predators). The most serious threats to fish and wildlife, rather than being direct and malicious acts, are indirect human actions where harm to fish and wildlife was unintentional.

The Washington State constitution confers fish and wildlife ownership to all citizens of the state. WDFW is mandated to safeguard this ownership by preserving, protecting and perpetuating fish and wildlife resources. The public has a crucial role in fulfilling this mandate, for two reasons. First, the statewide distribution of fish and wildlife species and habitat is beyond the monitoring capability of any single agency. Second, the state's constitution gives to the people ownership of fish and wildlife but not of the habitat on which fish and wildlife's survival ultimately depends. Property owners are also habitat owners and their collective actions have a profound effect on the state's fish and wildlife.

WDFW provides information on the location of many of Washington's most sensitive and vulnerable fish and wildlife resources. Use of this information must be commensurate with the vulnerability of fish and wildlife resources and with the conditions outlined in WDFW Releasing Sensitive Fish and Wildlife Information Policy 5210.

Fish and wildlife species are protected through specific legislation. Regulations most applicable to users of WDFW information include RCW 77.16.120 (taking of protected fish and wildlife), WAC 232-12-292 (Bald Eagle protection rules), WAC 232-12-064 (live fish and wildlife) and RCW 42.17.310 (exempting of sensitive fish and wildlife information from public inspection and copying).

I have read and understand the information above and certify that this form is filled out accurately and completely to the best of my knowledge. I understand that I will receive an invoice itemizing the costs for this request and instructions for submitting payment.

REQUESTER'S SIGNATURE X _____

Project Name/Number: _____

Project Description/Use of Requested Information: _____



FISH AND WILDLIFE ORDER FORM

HABITATS AND SPECIES INFORMATION

Project Location of Request - [For your project please specify the area by section, township, and range and include a project vicinity map]: List here or attach listing. Alternatively you may e-mail a copy of this order form, project vicinity map and if available a GIS layer of your project site to us at phsproducts@dfw.wa.gov.

Special Requests: _____

STANDARD PRODUCTS

Indicate desired products by checking appropriate blank box:

(For descriptions of standard products and prices see the *Ordering Habitats and Species Information* sheet which accompanies this form or visit our web site at wdfw.wa.gov/hab/release.htm.)

MAP PRODUCTS

1.	Detailed 1:24,000 Scale Habitats and Species Map (Detailed information on known locations of important fish, wildlife and habitats; a report accompanies this map.)	
2.	Bald Eagle Buffer Map (Shows nest and roost sites with buffer zones for determining a habitat protection agreement between WDFW and a landowner.)	
3.	Marine Resource Map (Generalized information of forage fish surveys, marine fish and shellfish.)	

DIGITAL DATA PRODUCTS

4.	Priority Habitats and Species Polygon, Wildlife Survey Data Management Point/Polygon (includes Marbled Murrelet points), Spotted Owl Point, and Bald Eagle Buffer Management Zone Databases (Information in these databases are updated regularly.)	X
5.	Washington Lakes and Rivers Information System (WLRIS) Fish Distribution Database (Selected fish species information are updated on a regular basis.)	X
6.	Forage Fish Survey, Marine and Shellfish Resources, Seabird Colonies and Seal/Sea Lion Haulout Databases (Forage Fish Survey information is updated 1-2 times a year, information from the other databases are rarely updated.)	X

Standard Map Options (check relevant options)

Provide map(s) on paper Include documentation for map(s) Yes No

Standard Digital Data Options

Digital data is for use with Geographic Information Software (GIS); it is not an image of a map.

Available Formats: (please check one)

All digital data formats provided in State Plane South NAD 1983 (1991 adjustment) on Compact Disk (CD).

ArcGIS 9.2 Personal Geodatabase Geographic Markup Language (GML) ESRI Shape File

RESOLUTION

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BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: EMERGENCY DISASTER ASSISTANCE FUNDS FOR THE DECEMBER 2008 SEVERE WINTER STORMS EVENT; DESIGNATION OF APPLICANT'S AGENT AND ALTERNATE; RESCINDING RESOLUTION 09-196

WHEREAS, in order to obtain Federal and/or State Emergency/Disaster Assistance funds for the December 2008 Severe Winter Storms Event, the County must designate an Agent and Alternate Agent; and

WHEREAS, by Resolution 09-196 the Board of Benton County Commissioners designated Ross B. Dunfee, Public Works Director/County Engineer as the representative and designated Larry J. Moser, Public Works Financial Administrator as the alternate for and in behalf of Benton County; and

WHEREAS, the position of Public Works Director/County Engineer has been eliminated and Mr. Dunfee is no longer employed with Benton County, therefore, the County must designate an Agent and Alternate Agent; **NOW, THEREFORE**

BE IT RESOLVED that Steven W. Becken, Public Works Manager is hereby designated the authorized representative and Larry J. Moser, Public Works Financial Administrator, is hereby designated the alternate for and in behalf of Benton County, a public agency established under the laws of the State of Washington; and

BE IT FURTHER RESOLVED, these representatives are authorized on behalf of Benton County to execute all contracts, certify completion of projects, request payments, and prepare all required documentation for funding requirements; and

BE IT FURTHER RESOLVED that the Board shall sign the Signature Authorization Form requested by the Washington State Military Department, a copy of which will be filed in the Public Works Department; and

BE IT FURTHER RESOLVED that Resolution No. 09-196 is hereby rescinded.

Dated this 4th day of May 2009.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

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

SWB:LJM:dlh

SIGNATURE AUTHORIZATION FORM

WASHINGTON STATE MILITARY DEPARTMENT
Camp Murray, Washington 98430-4122

Please read instructions on reverse side before completing this form.

NAME OF ORGANIZATION <i>BENTON COUNTY, WASHINGTON</i>	DATE SUBMITTED
PROJECT DESCRIPTION <i>DECEMBER 2008 SEVERE WINTER STORMS</i>	CONTRACT NUMBER

1. AUTHORIZING AUTHORITY

SIGNATURE	PRINT OR TYPE NAME	TITLE/TERM OF OFFICE
	Max E. Benitz, Jr.	Chairman, Board of County Commissioners
	Leo M. Bowman	Chairman Pro-Tem, Board of County Commissioners
	James R. Beaver	Member, Board of County Commissioners

2. AUTHORIZED TO SIGN CONTRACTS/CONTRACT AMENDMENTS

SIGNATURE	PRINT OR TYPE NAME	TITLE
	Max E. Benitz, Jr.	Chairman, Board of County Commissioners

3. DESIGNATED APPLICANT AGENT AND ALTERNATE

SIGNATURE	PRINT OR TYPE NAME	TITLE
	Steven W. Becken	Public Works Manager
	Larry J. Moser	Financial Administrator

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: PUBLIC ASSISTANCE GRANT AGREEMENT-EMERGENCY DISASTER ASSISTANCE FUNDS FOR THE SEVERE WINTER STORMS EVENT; RESCINDING RESOLUTION 09-216

WHEREAS, Presidential Disaster Declaration #FEMA-1825-DR-WA provides funds for the repair or restoration of damaged public facilities and a Public Assistance Grant Agreement will be required for said funding; and

WHEREAS, the Board of Benton County Commissioners adopted the Public Assistance Grant Agreement-Emergency Disaster Assistance Funds for the Severe Winter Storms Event by Resolution 09-216; and

WHEREAS, the Public Assistance Grant Agreement named the Public Works Director as the Applicant Agent and that position has been eliminated and the individual is no longer employed with Benton County; and

WHEREAS, a new Grant Agreement must be signed; **NOW, THEREFORE**

BE IT RESOLVED that an updated Public Assistance Grant Agreement is hereby approved, and the Chairman is authorized to sign the Face Sheet on behalf of Benton County; and

BE IT FURTHER RESOLVED that Resolution No. 09-216 is hereby rescinded.

Dated this 4th day of May, 2009.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

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

SWB:LJM:dlh

**Washington State Military Department
PUBLIC ASSISTANCE GRANT AGREEMENT FACE SHEET**

1. Applicant Name and Address: Benton County	2. Total Project Amount: To be determined, based upon approved project worksheets	3. Grant Number: D09-469
4. Applicant Agent, phone number: Steven W. Becken (509) 786-5611	5. Grant Start Date: March 2, 2009	6. Grant End Date: March 1, 2013
7. MD Program Manager/phone number: Gerard Urbas, (253) 512-7402	8. Data Universal Numbering System (DUNS): 083738997	9. UBI # (state revenue): 03500097±1
10. Funding Authority: Washington State Military Department (the "Department"), and Federal Emergency Management Agency (FEMA)		

11. Funding Source Agreement #: FEMA-1825-DR-WA	12. Program Index # 794YC/794YD 792YE	13. Catalog of Federal Domestic Asst. (CFDA) # & Title: 97.036, Public Assistance	14. TIN or SSN: 91-6001296
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15. Service Districts: (BY LEGISLATIVE DISTRICT): 8th & 16th (BY CONGRESSIONAL DISTRICT): 4th	16. Service Area by County(ies): Benton County	17. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____
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18. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Collaborative Research <input type="checkbox"/> A/E <input type="checkbox"/> Other _____	19. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency
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20. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO _____	21. Contractor Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input type="checkbox"/> SUBRECIPIENT <input checked="" type="checkbox"/> OTHER
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22. BRIEF DESCRIPTION:
Presidential Disaster Declaration # FEMA-1825-DR-WA—Severe Winter Storm and Record and Near Record Snow: To provide funds to the Applicant for the repair or restoration of damaged public facilities as approved by the Federal Emergency Management Agency in project worksheets describing eligible scopes of work and associated funding, which are incorporated herein by this reference.

IN WITNESS WHEREOF, the Department and Applicant acknowledge and accept the terms of this Grant Agreement, exhibits, references and attachments hereto and have executed this Grant Agreement as of the date and year written below. This Grant Agreement Face Sheet, Special Terms and Conditions, General Terms and Conditions, Federal and State Requirements and Assurances, and any other attachments or references govern the rights and obligations of both parties to this Grant Agreement.

- In the event of an inconsistency in this Grant Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:
1. **Applicable Federal and State Statutes and Regulations**
 2. **Statement of Work and/or Project Description as outlined in FEMA approved Project Worksheet(s)**
 3. **Special Terms and Conditions**
 4. **General Terms and Conditions, and,**
 5. **Other provisions of the contract incorporated by reference.**

This Grant Agreement, including all attachments, contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant Agreement shall be deemed to exist or to bind any of the parties hereto.

WHEREAS, the parties hereto have executed this Grant Agreement on the day and year last specified below.

<p>FOR THE DEPARTMENT:</p> <p>_____ Signature James M. Mullen, Director Emergency Management Division Washington State Military Department</p> <p>_____ Date</p>	<p>FOR THE APPLICANT:</p> <p>_____ Signature print or type name: MAX E. BENITZ, JR Chairman, Board of Benton County Commissioners</p> <p>_____ Date 05/04/09</p>
<p>APPROVED AS TO FORM: by J. Finlay (signature on file) 2/6/2009 Assistant Attorney General</p>	<p>APPROVED AS TO FORM: _____ Applicant's Legal Review _____ Date</p>

SPECIAL TERMS AND CONDITIONS

ARTICLE I – COMPENSATION SCHEDULE

1. FUNDING

The DEPARTMENT will administer the Public Assistance Grant Program and reimburse approved eligible Public Assistance costs to the APPLICANT that are identified under the auspices of Presidential Emergency Declaration Number FEMA-1825-DR-WA and authorized by and consistent with the Stafford Act (P.L. 93-288, as amended) and applicable regulations. It is understood that no final dollar figure is committed to at the time that this Grant Agreement is executed, but that financial commitments will be made by amendments to the project application as Project Worksheets are completed in the field and projects are authorized by state and federal officials. See Attachment #1-Project Worksheet sample.

Pursuant to the FEMA-STATE AGREEMENT, the Federal Emergency Management Agency (FEMA) will contribute 75 percent of the eligible costs for any eligible project and 100 percent of the administrative costs, as provided for in subsection 3.D. of Article I. The APPLICANT will commit to the remaining 25 percent non-federal match to any eligible project that has been identified under the Presidential Disaster Declaration number FEMA-1825-DR-WA, subject to the following exception:

Donated Resources: FEMA will credit an APPLICANT for the value of certain volunteer labor, donated equipment, and donated materials used in the performance of eligible emergency work – categories A and B, referred to as Donated Resources. The Donated Resources are recognized by FEMA in a Project Worksheet. Donated Resources offset the non-federal share of the eligible emergency work approved in Project Worksheets. For non-state agency applicants, the donated resource value will first be applied to the APPLICANT's non-federal share, and any remaining donated resource value will be applied to the DEPARTMENT's share. The value of the Donated Resources are calculated as described in FEMA Policy 9525.2, and are capped at the non-Federal share of approved eligible emergency work costs. The Federal share of the Donated Resources will not exceed the non-federal share of eligible emergency work costs approved in Project Worksheets. Any excess credit can be credited only to other eligible emergency work costs, for the same APPLICANT in the same disaster. The value of excess donated resources cannot be credited toward or transferred to another eligible APPLICANT, or toward other State obligations.

See Attachment #1 – Project Worksheet sample.

2. GRANT AGREEMENT PERIOD

Activities payable under this Grant Agreement and to be performed by the APPLICANT under this Grant Agreement shall be those activities which occurred during or subsequent to the incident period defined in the FEMA-State Agreement, and shall terminate upon completion of the project(s) approved by federal and state officials, including completion of close-out and audit. This period shall be referred to as the "Grant Agreement Period."

3. PAYMENTS

The DEPARTMENT, using funds granted for the purposes of the Presidential Disaster Declaration from FEMA, shall issue payments to the APPLICANT in compliance with the Washington State Public Assistance Applicant Manual procedures as follows:

- A. Small Project Payments: Payments are made for all small projects to the APPLICANT upon submission and approval of an A19-1A State of Washington Invoice Voucher to the DEPARTMENT, after FEMA has approved funding through approval of Project Worksheets.
- B. Progress Payments: Progress payment of funds for costs already incurred on large projects minus 10 percent retainage may be made to the APPLICANT upon submission by the APPLICANT of an A19-1A State of Washington Invoice Voucher, a letter of request, and a spreadsheet identifying the claimed costs supporting the payment request and approval by the DEPARTMENT.

- C. Improved Projects: Payments on improved projects will be pro-rated based upon the percentage of the project that is funded under this disaster grant to the overall project cost. This percentage will be identified when the first payment on the improved project is made. Progress payments will be made as outlined above in Section B.
- D. Final Payment: Final Payment on a large project will be made following submission by the APPLICANT of a certification of completion on the STATEMENT OF DOCUMENTATION/FINAL INSPECTION REPORT form upon completion of project(s), completion of all final inspections by the DEPARTMENT, and final approval by FEMA. Final payment on a large project will include any retainage withheld during progress payments. Final payments may also be conditional upon financial review, if determined necessary by the DEPARTMENT or FEMA. Adjustments to the final payment may be made following any audits conducted by the Washington State Auditor's Office, the United States Inspector General or other federal or state agency.
- E. The APPLICANT is eligible to receive \$100 for federal indirect costs, upon completion and closure of the disaster grant. Documentation of costs involved with attending applicant briefing, kick off meeting, and the exit meeting should be retained in the APPLICANT's files to support federal indirect cost reimbursement.
- F. All payment requests shall be made on an A19-1A form, State of Washington, Invoice Voucher. Payments will be made by electronic fund transfer to the APPLICANT's account.
- G. Federal funding shall not exceed the total federal contribution eligible for Public Assistance costs under Presidential Disaster Declaration number FEMA 1825-DR-WA.
- H. For state agencies, the DEPARTMENT will, through interagency reimbursement procedures, transfer payment to the APPLICANT. Payment will be transferred by journal voucher to Agency No. _____, Accounting Fund No. _____.

ARTICLE II – DOCUMENTATION

The APPLICANT is required to retain all documentation which adequately identifies the source and application of Public Assistance funds, including the federal indirect cost reimbursement, for six years following the closure of this disaster grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

ARTICLE III - QUARTERLY REPORTS

The APPLICANT is required to submit to the DEPARTMENT a quarterly report indicating the status of all their large projects. The status shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project and whether cost under runs or over runs are expected. In addition, the APPLICANT should note in the comment field any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the APPLICANT until a complete quarterly report is received by the DEPARTMENT.

ARTICLE IV – TIME EXTENSIONS

A time extension request is required to be forwarded to the DEPARTMENT by the APPLICANT for a project prior to the expiration of the approved completion date. If the project is approved and funded after the statutory approval time period for completion, then a time extension request must be submitted to the DEPARTMENT within fifteen days of receipt of the funding package.

A time extension request must be in writing and identify the project worksheet number, the reason the project has not been completed within the prior approved completion period, a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to submit a time extension request in a timely manner will result in denial of the time extension and loss of funding for the related project.

ARTICLE V - CLOSE-OUT

To initiate close-out, the APPLICANT is required to certify in writing, by Project Worksheet Number, date completed and total amount expended on the project, completion of the small projects. To initiate close-out of

the large projects, the APPLICANT shall submit certification of completion on a STATEMENT OF DOCUMENTATION/FINAL INSPECTION REPORT form to the DEPARTMENT.

The DEPARTMENT will then complete a site inspection and a financial review of documentation to support the claimed costs. Certifications on small and large projects are due within sixty days following the completion of the project or receipt of the approved Project Worksheet, whichever date is later.

After all of the projects have been certified as complete and approved for closure by FEMA, the DEPARTMENT will forward a final A19-1A State of Washington Invoice Voucher to the APPLICANT for release of the remaining funds due to the applicant for eligible costs, including any retainage previously withheld.

ARTICLE VI – KEY PERSONNEL

The individuals listed below shall be considered key personnel and point of contact. Any substitution by either party must be submitted in writing.

APPLICANT:

Name: STEVEN W. BECKEN
Title: Public Works Manager
E-mail address: steve.becken@co.benton.wa.us
Phone Number: 509-786-5611

DEPARTMENT:

Staff name: **Gerard Urbas**
Title: Deputy State Coordinating Officer
Public Assistance
E-Mail: g.urbas@emd.wa.gov
Phone Number: **(253) 512-7402**

ARTICLE VII - ADMINISTRATIVE REQUIREMENTS

- A. The APPLICANT shall comply with the following OMB Circulars as applicable to their organization:
- Cost Principles
 - OMB Circular A-87, as revised, Cost Principles for State, Local and Indian Tribal Governments. OMB Circular A-87 and program regulations will be used to determine costs for nonprofit hospitals funded under FEMA grants.
 - OMB Circular A-21, as revised, Cost Principles for Educational Institutions
 - OMB Circular A-122, as revised, Cost Principles for Non-Profit Organizations
 - Administrative Requirements
 - OMB A-102, as revised, Grants and Cooperative Agreements with State and Local Governments
 - OMB A-110, as revised, Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
 - Audit Requirements
 - OMB A-133, as revised, Audits of States, Local Governments, and Non-Profit Organizations
- B. The APPLICANT will comply with the federal regulations in 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, and 206, and the state requirements in the Washington State Public Assistance Applicant Manual, dated March 2009.
- C. Federal funding is provided by the Federal Emergency Management Agency (FEMA) and is administered by the DEPARTMENT. Under the authority of Presidential Disaster Declaration number FEMA 1825-DR-WA, the DEPARTMENT is reimbursing the APPLICANT for those approved eligible costs and activities necessary under the Public Assistance Grant Program during the incident period December 12, 2008 to January 5, 2009. Eligible costs and activities will be identified in Project Worksheets approved by FEMA.

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Assistance Grants**

1 DEFINITIONS

- As used throughout this Grant Agreement, the following terms shall have the meaning set forth below:
- a. **"Department"** shall mean the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department.
 - b. **"Applicant"** shall mean a state agency, local government, tribal government, special purpose district, or an eligible private nonprofit organization submitting an application to the Governor's Authorized Representative for disaster recovery assistance.
 - c. **"Applicant Agent"** shall mean the official representative and alternate designated or appointed by the Applicant and authorized to make decisions on behalf of the Applicant.
 - d. **"Grantee"** shall mean the government to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is an entire legal entity even if only a particular component of the entity is designated in the grant award document. For the purpose of this Grant Agreement, the state is the Grantee. The Grantee and the DEPARTMENT are one and the same.
 - e. **"Monitoring Activities"** shall mean all administrative, construction, financial, or other review activities that are conducted to ensure compliance with all state and federal rules, authorities or policies.
 - d. **"Subgrantee"** shall mean the government or other eligible legal entity to which a subgrant is awarded and which is accountable to the Grantee for the use of the funds provided. The Subgrantee and Applicant are one and the same.
 - e. **"Project"** shall mean those actions funded through the Public Assistance Program and described in approved Project Worksheets. Projects may include one or more of the following: reimbursement of costs for emergency response, debris removal and/or repair or restoration of damaged public facilities. A project may be a small, large, improved, or alternate project.
 - f. **"PL"** – is defined and used herein to mean the Public Law.
 - g. **"CFR"** – is defined and used herein to mean the Code of Federal Regulations.
 - h. **"OMB"** – is defined and used herein to mean the Office of Management and Budget.
 - i. **"WAC"** – is defined and used herein to mean the Washington Administrative Code.
 - j. **"RCW"** – is defined and used herein to mean the Revised Code of Washington.

A.2 RECORDS AND REPORTS

- a. The APPLICANT agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the APPLICANT's contracts, contract administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Grant Agreement.
- b. The APPLICANT's records related to this Grant Agreement and the projects funded hereunder may be inspected by the DEPARTMENT or the Director, or their designees, by designees of the Office of the State Auditor, the Federal Emergency Management Agency or their designees, or the Comptroller General of the United States or their designees or by other federal officials authorized by law, for the purposes of determining compliance by the APPLICANT with the terms of this Grant Agreement and to determine the appropriate level of funding to be paid under the subject Grant Agreement.
- c. The records shall be made available by the APPLICANT together with suitable space for such inspection at any and all times during the APPLICANT's normal working day.
- d. The APPLICANT shall retain all records and allow access related to this Grant Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Grant Agreement.

3 WAIVERS

No conditions or provisions of this Grant Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the Grant Agreement or to exercise any right based upon a breach thereof, or the

acceptance of any performance during such breach, shall not constitute a waiver of any right under this Grant Agreement.

A.4 AMENDMENTS AND MODIFICATIONS

The APPLICANT or the DEPARTMENT may request, in writing, an amendment or modification of this Grant Agreement. However, such amendment or modification shall not take effect until approved, in writing, by the DEPARTMENT and the APPLICANT.

A.5 TERMINATION AND OTHER REMEDIES

- a. If, through any cause, the APPLICANT shall fail to fulfill in a timely and proper manner its obligations under this Grant Agreement or if the APPLICANT shall violate any of its covenants, agreements, or stipulations of this Grant Agreement, the DEPARTMENT shall thereupon have the right to terminate this Grant Agreement and withhold the remaining allocation if such default or violation is not corrected within thirty (30) days after submitting written notice to the APPLICANT describing such default or violation.
- b. Notwithstanding any provisions of this Grant Agreement, either party may terminate this Grant Agreement by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.
- c. Reimbursement for APPLICANT services performed, and not otherwise paid for by the DEPARTMENT prior to the effective date of such termination shall be as the DEPARTMENT reasonably determines.
- d. The DEPARTMENT may unilaterally terminate all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement.

A.6 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The APPLICANT and all its contractors shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended) the Americans with Disabilities Act (ADA), the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

A.7 LEGAL RELATIONS

It is understood and agreed that this Grant Agreement is solely for the benefit of the parties to the Grant Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Grant Agreement.

To the extent allowed by law, the APPLICANT, its successors or assigns, will protect, save and hold harmless the DEPARTMENT, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the APPLICANT, its subcontractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Grant Agreement.

To the extent allowed by law, the APPLICANT further agrees to defend the DEPARTMENT and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Grant Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the DEPARTMENT; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the DEPARTMENT, and (2) the APPLICANT, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the APPLICANT, or APPLICANT's agents or employees.

insofar as the funding source, the Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of the Stafford Act.

A.8 ACKNOWLEDGMENTS

The APPLICANT shall include language which acknowledges the funding contribution of the DEPARTMENT and FEMA to this project in any release or other publication developed or modified for, or referring to, the project.

A.9 APPLICANT NOT EMPLOYEE

The APPLICANT, and/or employees or agents performing under this Grant Agreement are not employees or agents of the DEPARTMENT in any manner whatsoever. The APPLICANT will not be presented as nor claim to be an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Grant Agreement, nor will the APPLICANT make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Grant Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the APPLICANT is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the state of Washington in their own right and not by reason of this Grant Agreement.

A.10 NONDISCRIMINATION

The APPLICANT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Grant Agreement.

A.11 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The APPLICANT is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Grant Agreement. The APPLICANT may set utilization standards, based upon local conditions or may utilize the state of Washington MWBE goals, as identified in WAC 326-30-041.

A.12 CONFLICT OF INTEREST

No officer or employee of the DEPARTMENT; no member, officer, or employee of the APPLICANT or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such locality or localities who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Grant Agreement. The APPLICANT shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.13 VENUE

This Grant Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by the laws of the state of Washington. Venue of any suit between the parties arising out of this Grant Agreement shall be the Superior Court of Thurston County, Washington. The APPLICANT, by execution of this Grant Agreement acknowledges the jurisdiction of the courts of the State of Washington.

A.14 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Grant Agreement, and by this grant of funds does not and will not acquire any

ownership interest or title to such property of the APPLICANT. The APPLICANT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the state of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.15 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Grant Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Grant Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Grant Agreement are declared severable.

A.16 RECAPTURE PROVISION

In the event the APPLICANT fails to expend funds in accordance with federal, state, or local law and/or the provisions of the Grant Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Grant Agreement termination. Repayment by the APPLICANT of funds under this recapture provision shall occur within 30 days of demand. In the event the DEPARTMENT is required to institute legal proceeding to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs thereof, including attorney fees.

A.17 RECOVERY OF FUNDS

Any person who intentionally causes a condition for which Public Assistance is provided under this Grant Agreement shall be liable for the costs incurred by the state and federal governments in responding to such disaster. The APPLICANT will cooperate in a reasonable manner with the DEPARTMENT and the United States in efforts to recover expenditures under this Grant Agreement..

A.18 DUPLICATION OF BENEFITS

The APPLICANT agrees that the Public Assistance funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same loss from any other source. The APPLICANT will pursue full payment of eligible insurance benefits for properties covered in a project under this Grant Agreement. The APPLICANT will repay any Public Assistance that is duplicated by other benefits, funds, or insurance proceeds.

A.19 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.20 NOTICES

The APPLICANT shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

A.21 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Grant Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Grant Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.22 RESPONSIBILITY FOR PROJECT

While the DEPARTMENT undertakes to assist the APPLICANT with the project by providing grant funds pursuant to this Grant Agreement, the project itself remains the sole responsibility of the APPLICANT. The DEPARTMENT undertakes no responsibility to the APPLICANT, or to any third party, other than as is expressly set out in this Grant Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phases are applicable to this project, is solely that of the APPLICANT, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the APPLICANT shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The APPLICANT shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the APPLICANT in connection with the project. The APPLICANT shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

Pursuant to Sections 403 and 407 of the Stafford Act, 42 U.S.C. §§ 5170b & 5173, and to the extent allowed by law, if debris removal is authorized, the APPLICANT agrees to indemnify and hold harmless the state of Washington and the United States of America for any claims arising from the removal of debris or wreckage for this disaster. The APPLICANT agrees that debris removal from public and private property will not occur until the landowner grants the APPLICANT the right to enter and signs an unconditional authorization for the removal of the debris.

A.23 HAZARDOUS SUBSTANCES

The APPLICANT shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The APPLICANT shall fully disclose to the DEPARTMENT the results of its inspection and investigation and all other knowledge the APPLICANT has as to the presence of any hazardous substances at the proposed development/construction project site. The APPLICANT will be responsible for any associated clean-up costs as a result of the inspections. "Hazardous Substances" are defined in RCW 70.105D.020 (10).

A.24 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The APPLICANT represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the APPLICANT's performance under this Grant Agreement.

To the extent allowed by law, the APPLICANT further agrees to indemnify and hold harmless the DEPARTMENT and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the DEPARTMENT, as a result of the failure of the APPLICANT to so comply.

A.25 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

If federal funds are the basis for this Grant Agreement, the APPLICANT certifies that the APPLICANT is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Grant Agreement by any federal department or agency. If requested by the DEPARTMENT, the APPLICANT shall complete and sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the APPLICANT for this Grant Agreement shall be incorporated into this Grant Agreement by reference.

Further, the APPLICANT agrees not to enter into any arrangements or contracts related to this grant with any party that is on the "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs."

A.26 SINGLE AUDIT ACT REQUIREMENTS (INCLUDING ALL AMENDMENTS)

Non-federal APPLICANTS expending financial assistance of **\$500,000** or more in federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the Office of Management and Budget (OMB) Circular A-133-Audits of States, Local Governments, and Non-Profit Organizations (revised June 27, 2003, effective for fiscal years ending after December 31, 2003). Non-federal APPLICANTS that spend less than **\$500,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in Circular No. A-133. Circular A-133 is available at: <http://www.whitehouse.gov/omb/circulars/index.html>.

APPLICANTS required to have an audit must ensure the audit is performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General and the OMB Compliance Supplement.

The APPLICANT has the responsibility of notifying the State Auditor's Office and requesting an audit. Costs of the audit are allowable grant expenditures if the grant has not been closed.

The APPLICANT shall maintain records and accounts so as to facilitate the audit requirement and shall ensure that any subrecipients also maintain auditable records.

The APPLICANT is responsible for any audit exceptions incurred by its own organization or that of its subrecipients. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The APPLICANT must respond to DEPARTMENT requests for information or corrective action concerning audit issues within 30 days of the date of request. The DEPARTMENT reserves the right to recover from the APPLICANT all disallowed costs resulting from the audit.

Once the single audit has been completed, the APPLICANT must send a full copy of the audit to the DEPARTMENT and a letter stating there were no findings, or if there were findings, the letter should provide a list of the findings. The APPLICANT must send the audit and the letter no later than nine (9) months after the end of the APPLICANT'S fiscal year(s) to:

**Accounting Manager
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

In addition to sending a copy of the audit, the APPLICANT must include a corrective action plan for any audit findings and a copy of the management letter, if one was received.

The APPLICANT shall include the above audit requirements in any subcontracts.

A.27 PROJECT MANAGEMENT AND SUBGRANTEE MONITORING

The DEPARTMENT and the APPLICANT must conduct and monitor grant activities to confirm compliance with applicable Federal requirements and the requirements and special conditions of an approved project.

The APPLICANT agrees to:

- a. Assist in the preparation and writing of the Project Worksheets.
- b. Comply with all funding conditions of an approved project.
- c. Provide financial documentation to support requests for payments.
- d. Maintain records and documentation that adequately identify and directly support a project's eligible costs to the approved project worksheet. Pro-rate or percentage costs are not eligible for reimbursement.
- e. Cooperate with and participate in any scheduled or unscheduled monitoring or evaluation activities conducted by the DEPARTMENT or FEMA that are pertinent to this Grant Agreement or an approved Project Worksheet.
- f. Provide the DEPARTMENT with all documentation required to complete evaluations of eligible costs, and provide additional documentation that the DEPARTMENT or FEMA may request as a result of a monitoring visit, review and other or further evaluation of supporting financial documentation and/or reports. If requested documentation is not provided, all costs associated with the project may be determined to be ineligible.
- g. Submit a request for time extension not later than two weeks before a project's deadline.
- h. Notify the DEPARTMENT and request and receive approval for an alternate project prior to beginning construction. Failure to do so may jeopardize funding approval.
- i. Notify the DEPARTMENT and request and receive approval for an improved project prior to starting construction. Failure to do so may jeopardize funding approval.
- k. Immediately notify the DEPARTMENT if hidden damages are discovered, a change order is required, or the scope of work changes in an approved project.
- l. Submit quarterly reports to the DEPARTMENT.

m. Submit project completion certifications as required for small, large, alternate, or improved projects.

The DEPARTMENT agrees to:

- a. Provide technical assistance during all monitoring or evaluation activities. The DEPARTMENT will coordinate and schedule the meetings necessary to conduct and complete all monitoring and evaluation activities.
- b. Develop the APPLICANT's Project Worksheet(s) (PW) with FEMA and the APPLICANT's assistance based upon the eligible damages.
- c. Provide the APPLICANT with a copy of the approved Project Worksheet.
- d. Conduct site visits during a large project's construction.
- e. Regularly review the APPLICANT's financial documentation to confirm compliance with state and federal rules, authorities, and policies.
- f. Notify the APPLICANT when funding approval is received and issue payment per the process described in Article I, #3 – Payments of the Special Terms and Conditions. Large project final funding will include all costs determined to be eligible based upon the evaluation and review of the APPLICANT's financial documentation.
- g. Work with the APPLICANT to resolve any issues identified during the monitoring process.
- h. Review and respond appropriately to the APPLICANT's requests for time extensions and changes to an approved project.

A.28 SUBCONTRACTING

The APPLICANT shall use a competitive procurement process in the award of any contracts with contractors or subcontractors that are entered into under the original contract award. The procurement process followed shall be in accordance with Part 13 of 44 CFR, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments or with OMB Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable to the APPLICANT.

As required by Section 694 of the "Post-Katrina Emergency Management Reform Act" (P.L. 109-295), which amended section 307 of the Stafford Act, 42 U.S.C. 5150, contracts or agreements with private organizations, firms or individuals for debris clearance, distribution of supplies, reconstruction, and other major disaster assistance activities, shall be awarded to those organizations, firms and individuals residing or doing business primarily in the geographical area affected by the disaster, to the extent feasible and practicable. Such contracts or agreements with private organizations, firms, or individuals, not residing or doing business primarily in the geographical area affected by the declared disaster shall be justified in writing in the APPLICANT's contract file. Contracts in place prior to a declaration should be transitioned to such local organizations, firms or individuals unless the head of the APPLICANT organization determines that it is not feasible or practicable. This determination must be documented in the APPLICANT's contract file. The transition requirement should not be construed to require an APPLICANT to breach an existing contract.

All subcontracting agreements entered into pursuant to this Grant Agreement shall incorporate this Grant Agreement by reference.

A.29 PUBLICITY

The APPLICANT agrees to submit to the DEPARTMENT all advertising and publicity matters relating to this Grant Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The APPLICANT agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT. The APPLICANT may copyright original work it develops in the course of or under this Grant Agreement; however, pursuant to 44 CFR 13.34, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Grant Agreement shall include an acknowledgement of FEMA's financial support, by grant number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.30 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The APPLICANT must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.31 NONASSIGNABILITY

Neither this Grant Agreement, nor any claim arising under this Grant Agreement, shall be transferred or assigned by the APPLICANT.

A.32 DISCLOSURE

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the APPLICANT's responsibilities with respect to services provided under this Grant Agreement is prohibited except by prior written consent of the DEPARTMENT. However, the parties acknowledge that the DEPARTMENT, and state and local agencies as defined in RCW 42.56.010, are subject to RCW 42.56, the state Public Records Act.

A.33 LIMITATION OF AUTHORITY – Authorized Signature

Only the assigned Authorized Signature for the DEPARTMENT and the Authorized Signature or the assigned Applicant Agent or Alternate for the APPLICANT, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement.

Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by both authorized persons. Additionally, only these persons will have the signature authority to sign payment requests, certification of project completion, time extension requests, and requests for changes to project status (including improved or alternate project status), and Statements of Documentation for large projects.

A.34 ASSURANCES

The APPLICANT certifies that:

- a. They have the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal and non-state shares of the project cost) to ensure proper planning, management and completion of the project described in approved Project Worksheets.
- b. They will give the awarding agency, the Comptroller General of the United States and the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- c. They will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. They will record the federal interest in the title of real property in accordance with FEMA directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure non-discrimination during the useful life of the project.
- d. They will comply with the requirements of the DEPARTMENT and FEMA with regard to the drafting, review and approval of construction plans and specifications, and awarding of construction contracts.
- e. They will provide and maintain competent and adequate engineering supervision at construction sites to ensure that the completed work conforms to the approved plans and specifications and will furnish progress reports and such other information as may be required by either FEMA or the DEPARTMENT.
- f. They will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- g. They will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

- h. They will comply with the Intergovernmental Personnel Act of 1970, as amended (42 U.S.C. §§4701 et seq.) relating to prescribed personnel standards on a merit basis for programs funded under one of the 19 statutes or regulations specified in Appendix A of the federal Office of Personnel Management's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).
- i. They will comply with all applicable state and federal statutes, regulations and executive orders relating to nondiscrimination, including but not limited to: (a) Title VI of the Civil Rights Act of 1964 (PL 88-352, 42 U.S.C. 2000d) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C §§1681 et seq.), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973 (PL 93-112), as amended (29 U.S.C §794), which prohibits discrimination on the basis of disability; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C §§6101 et seq.), which prohibits discrimination on the basis of age; (e) the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); and (f) the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing. However, the requirements of Section 202 of Executive Order 11246, as amended, do not apply to a government contractor or subcontractor that is a religious corporation, association, educational institution or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
- j. They will comply, or have already complied, as applicable, with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (PL 91-646, 42 U.S.C. §§4601 et seq.) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.
- k. They will comply, as applicable, with provisions of the Hatch Act, as amended (5 U.S.C §§1501 et seq. and §§7321 et seq.) which limit the political activities of certain employees whose principal employment activities are funded in whole or in part with federal funds.
- l. They will comply, as applicable, with labor and wage provisions related to certain federally-assisted contracts (e.g., the wage rate requirements in the Davis-Bacon Act, as amended, 40 U.S.C. §§3141 et seq., the Copeland Anti-Kickback provisions in 40 U.S.C §3145 and 18 U.S.C §874, and the Contract Work Hours and Safety Standards in 40 U.S.C §§3701 et seq.).
- m. They will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (PL 93-234), as amended.
- n. They will comply, if applicable, with environmental standards prescribed pursuant to the following: (a) protection and enhancement of environmental quality pursuant to Executive Order (EO) 11514, as amended; (b) administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants, or loans pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990, as amended; (d) floodplains management pursuant to EO 11988, as amended; (e) the Coastal Zone Management Act of 1972 (P.L. 92-583), 16 U.S.C. §§1451 et seq., as amended; (f) Air Quality & Emission Limitations pursuant to 42 U.S.C. §§7401 et seq.; (g) the Safe Drinking Water Act of 1974 (PL 93-523), as amended; and, (h) the Endangered Species Act of 1973 (PL 93-205), as amended.
- o. They will comply, if applicable, with the Wild and Scenic Rivers Act (PL 90-542), 16 U.S.C. §§1271 et seq., as amended.
- p. They will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966 (PL 89-665), 16 U.S.C. §470, as amended; EO 11593 (protection and enhancement of the cultural environment); and the Archaeological and Historic Preservation Act, 16 U.S.C. §§469 et seq., as amended.
- q. They will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. chapter 63) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.
- r. They will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- s. They will comply with all applicable requirements of all other federal laws, executive orders, regulations, and policies governing this program.

- t. They will certify to the best of their knowledge and belief that the New Restrictions on Lobbying, 44 CFR Part 18, are complied with; i.e., that no federally appropriated funds have been paid or will be paid by or on behalf of the APPLICANT to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; that if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the APPLICANT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and that, as applicable, the APPLICANT will require that the language of this certification be included in the award documents for all subcontracts at all tiers and that all subrecipients shall certify and disclose accordingly.

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>May 4, 2009</u>	Execute Agreement <u>XX</u>	Consent Agenda <u>XX</u>
Subject: <u>RAP Project Agreement</u>	Pass Resolution <u>XX</u>	Public Hearing _____
Prepared by: <u>blt</u>	Pass Ordinance _____	1st Discussion _____
Reviewed by: <u>blt</u>	Pass Motion _____	2nd Discussion _____
	Other _____	Other _____

BACKGROUND INFORMATION

The County Road Administration Board has authorized partial funding for Nine Canyon Road, Phase 2, Beck Road to Mills Road. The partial Rural Arterial Program funds for Nine Canyon Road, Beck Road to Mills Road is \$701,397. Full funding will become available May, 2011 and will total \$2,543,000.

SUMMARY

A Project Agreement for Construction Proposal has been prepared.

RECOMMENDATION

Approve the Project Agreement and authorize the Board to sign.

FISCAL IMPACT

When full funding is available in 2011, CRAB will provide \$2,543,000, and Benton County's match will be \$283,000.

MOTION

Approve the Resolution authorizing the Board to sign the RAP Project Agreement for Construction Proposal.

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: AGREEMENT FOR CONSTRUCTION PROPOSAL - RURAL ARTERIAL PROGRAM FUNDS FOR IMPROVEMENTS TO NINE CANYON ROAD; PROJECT NUMBER 0309-01

WHEREAS, the County Road Administration Board has approved Rural Arterial Trust Account (RATA) Funding for Nine Canyon Road, M.P. 4.85 to M.P. 7.50; and

WHEREAS, a Project Agreement for Construction Proposal has been prepared for the funding; NOW, THEREFORE,

BE IT RESOLVED that the Project Agreement for Construction Proposal (copies attached) be and hereby is approved, and the Board is authorized to sign said Agreement.

Dated this 4th day of May, 2009.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

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

SWB:BLT:dlh

STATE OF WASHINGTON
COUNTY ROAD ADMINISTRATION BOARD

RURAL ARTERIAL PROGRAM
PROJECT AGREEMENT FOR CONSTRUCTION PROPOSAL

Submitting County: BENTON

Project Number: 0309-01

Road No. And Sequencer: 4891002

Name of Road: NINE CANYON ROAD 2

M.P. 04.85 To 07.50

Approval Date: 04-16-09

TOTAL AMOUNT OF AUTHORIZED RATA FUNDS: \$ 701,397

IN CONSIDERATION of the allocation by the County Road Administration Board (CRABoard) of rural arterial trust account (RATA) funds to the project in the amount set out above, the county hereby agrees that as condition precedent to payment of any RATA funds allocated at any time to the above referenced project, it accepts and will comply with the terms of this agreement, including the terms and conditions set forth in Chapter 49, Laws of 1983, 1st Ex. Sess. (RCW 36.79); the applicable rules and regulations of the CRABoard (WAC 136-100 et.seq.) and all representations made to the CRABoard upon which the fund allocation was based; all of which are familiar to and within the knowledge of the county and are incorporated herein and made a part of this agreement, although not attached. The officer of the county, by his/her signature below, hereby certifies on behalf of the county that matching funds and other funds represented to be committed to the project will be available as necessary to implement the projected development of the project as set forth in the construction proposal prospectus, and acknowledges that funds hereby authorized are for the development of the construction proposal as defined by RCW 36.79.

The county hereby agrees and certifies that:

- (1) It is in compliance with the provisions of WAC ch. 136-150 regarding eligibility for RATA funds. If the county is found not to be in compliance with the provisions of Chapter 150, such non-compliance may be cause for the CRABoard to withdraw or deny the Certificate of Good Practice of that County.
- (2) If the project is reconstruction in scope, the county will gain approval from WSDOT (RCW 43.32) for all deviations from the design standards listed in the Local Agency Guidelines prior to construction.
- (3) If the project is 3R (resurfacing restoration and rehabilitation) in scope, the county will document its design considerations for the proposed improvements in keeping with 3R standards as listed in the Local Agency Guidelines.
- (4) The project will be constructed in accordance with the information furnished to the CRABoard, and the plans and specifications prepared by the county engineer.
- (5) It will notify the CRABoard when a contract has been awarded and/or when construction has started, and when the project has been completed.
- (6) It will reimburse the RATA in the event a project post audit reveals improper expenditure of RATA funds.

If the costs of the project exceed the amount of RATA funds authorized by the CRABoard, set forth above, and the required matching funds and other funds represented by the local agency to be committed to the project, the local agency will pay all additional costs necessary to complete the project as submitted to the CRABoard.

IN CONSIDERATION of the promises and performance of the stated conditions by the county, the CRABoard hereby agrees to reimburse the county from RATA funds allocated, and not otherwise, for its reimbursable costs not to exceed the amount above specified. The CRABoard will reimburse counties on the basis of monthly progress payment vouchers received and approved on individual projects in the order in which they are received in the CRABoard office, and subject to the availability of RATA funds apportioned to the region. Such obligation to reimburse RATA funds extends only to project costs incurred after the date of project approval by the CRABoard, 04-16-09

This agreement supersedes all prior agreements issued using the project and work order numbers listed above and shall be valid and binding only if it is signed and returned to the CRABoard office within 45 days of its mailing by the CRABoard.

COUNTY ROAD ADMINISTRATION BOARD:

BENTON COUNTY:

By: _____

By: _____

Date: _____

Date: _____

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>May 4, 2009</u>	Execute Agreement <u>XX</u>	Consent Agenda <u>XX</u>
Subject: <u>RAP Project Agreement</u>	Pass Resolution <u>XX</u>	Public Hearing _____
Prepared by: <u>blt</u>	Pass Ordinance _____	1st Discussion _____
Reviewed by: <u>blt</u>	Pass Motion _____	2nd Discussion _____
	Other _____	Other _____

BACKGROUND INFORMATION

The County Road Administration Board added \$740,500 in Rural Arterial Program funds for Nine Canyon Road, Mills Road to CR397, MP 7.50 to MP10.82, bringing the total amount of authorized RATA funds to \$2,740,500.

SUMMARY

A Project Agreement for Construction Proposal has been prepared.

RECOMMENDATION

Approve the Project Agreement and authorize the Board to sign.

FISCAL IMPACT

CRAB will provide \$2,740,500, and Benton County's match is \$304,500.

MOTION

Approve the Resolution authorizing the Board to sign the RAP Project Agreement for Construction Proposal.

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: AGREEMENT FOR CONSTRUCTION PROPOSAL - RURAL ARTERIAL PROGRAM FUNDS FOR IMPROVEMENTS TO NINE CANYON ROAD; PROJECT NUMBER 0307-01

WHEREAS, the County Road Administration Board has approved Rural Arterial Trust Account (RATA) Funding for Nine Canyon Road, M.P. 7.50 to M.P. 10.82; and

WHEREAS, a Project Agreement for Construction Proposal has been prepared for the funding; NOW, THEREFORE,

BE IT RESOLVED that the Project Agreement for Construction Proposal (copies attached) be and hereby is approved, and the Board is authorized to sign said Agreement.

Dated this 4th day of May, 2009.

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

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

SWB:BLT:dlh

STATE OF WASHINGTON
COUNTY ROAD ADMINISTRATION BOARD

RURAL ARTERIAL PROGRAM
PROJECT AGREEMENT FOR CONSTRUCTION PROPOSAL

Submitting County: BENTON

Project Number: 0307-01

Road No. And Sequencer: 4891001

Name of Road: NINE CANYON ROAD

M.P. 07.50 To 10.82

Approval Date: 04-19-07

TOTAL AMOUNT OF AUTHORIZED RATA FUNDS: \$ 2,740,500

IN CONSIDERATION of the allocation by the County Road Administration Board (CRABoard) of rural arterial trust account (RATA) funds to the project in the amount set out above, the county hereby agrees that as condition precedent to payment of any RATA funds allocated at any time to the above referenced project, it accepts and will comply with the terms of this agreement, including the terms and conditions set forth in Chapter 49, Laws of 1983, 1st Ex. Sess. (RCW 36.79); the applicable rules and regulations of the CRABoard (WAC 136-100 et.seq.) and all representations made to the CRABoard upon which the fund allocation was based; all of which are familiar to and within the knowledge of the county and are incorporated herein and made a part of this agreement, although not attached. The officer of the county, by his/her signature below, hereby certifies on behalf of the county that matching funds and other funds represented to be committed to the project will be available as necessary to implement the projected development of the project as set forth in the construction proposal prospectus, and acknowledges that funds hereby authorized are for the development of the construction proposal as defined by RCW 36.79.

The county hereby agrees and certifies that:

- (1) It is in compliance with the provisions of WAC ch. 136-150 regarding eligibility for RATA funds. If the county is found not to be in compliance with the provisions of Chapter 150, such non-compliance may be cause for the CRABoard to withdraw or deny the Certificate of Good Practice of that County.
- (2) If the project is reconstruction in scope, the county will gain approval from WSDOT (RCW 43.32) for all deviations from the design standards listed in the Local Agency Guidelines prior to construction.
- (3) If the project is 3R (resurfacing restoration and rehabilitation) in scope, the county will document its design considerations for the proposed improvements in keeping with 3R standards as listed in the Local Agency Guidelines.
- (4) The project will be constructed in accordance with the information furnished to the CRABoard, and the plans and specifications prepared by the county engineer.
- (5) It will notify the CRABoard when a contract has been awarded and/or when construction has started, and when the project has been completed.
- (6) It will reimburse the RATA in the event a project post audit reveals improper expenditure of RATA funds.

If the costs of the project exceed the amount of RATA funds authorized by the CRABoard, set forth above, and the required matching funds and other funds represented by the local agency to be committed to the project, the local agency will pay all additional costs necessary to complete the project as submitted to the CRABoard.

IN CONSIDERATION of the promises and performance of the stated conditions by the county, the CRABoard hereby agrees to reimburse the county from RATA funds allocated, and not otherwise, for its reimbursable costs not to exceed the amount above specified. The CRABoard will reimburse counties on the basis of monthly progress payment vouchers received and approved on individual projects in the order in which they are received in the CRABoard office, and subject to the availability of RATA funds apportioned to the region. Such obligation to reimburse RATA funds extends only to project costs incurred after the date of project approval by the CRABoard, 04-19-07

This agreement supersedes all prior agreements issued using the project and work order numbers listed above and shall be valid and binding only if it is signed and returned to the CRABoard office within 45 days of its mailing by the CRABoard.

COUNTY ROAD ADMINISTRATION BOARD:

BENTON COUNTY:

By: _____

By: _____

Date: _____

Date: _____

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION</u>		
Meeting Date :	May 4, 2009	Execute Contract :	_____	Consent Agenda : _____ X
Subject :	Consultant Agreement	Pass Resolution :	_____ X	Public Hearing : _____
Prepared by :	SWB	Pass Ordinance :	_____	1st Discussion : _____
Reviewed by :	_____	Pass Motion :	_____	2 nd Discussion : _____
		Other :	_____	Other : _____

BACKGROUND INFORMATION

When federal money's are being used in a project, an Area of Potential Effects (APE) letter and a cultural resources review must be undertaken on the project site. The FHWA has granted us a conditional break in access to allow the study within the I-882 area of the proposed interchange. Landowners between I-82 and SR-224 have granted us permission to trespass on their property to do the study.

A permanent break in access will not be granted by FHWA until a satisfactory report has been completed

SUMMARY

We have selected J-U-B Engineers, Kennewick, Washington to prepare the APE letter. They in turn have selected Reiss-Landreau Research to do the cultural review. Reiss- Landreau did the cultural review of the Horse Heaven Vista for us.

RECOMMENDATION

This department would recommend approval of the Consultant Agreement

FISCAL IMPACT

We have received \$259,500.00 in federal money. The contract with J-U-B would be for \$17,300.00. Federal money can pay for \$14,964.50. The remaining \$2,335.50 would come from County funds.

MOTION

Move to approve the consultant agreement as a part of the consent agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: LOCAL AGENCY CONSULTANT AGREEMENT – RED MOUNTAIN INTERCHANGE

WHEREAS, a Local Agency Consultant Agreement with J-U-B Engineers, Inc., Kennewick, Washington to establish an alignment, prepare an area of Potential Effects letter and conduct a cultural resources review under the Section 106 process for the Red Mountain Interchange and road connecting to SR-224 has been prepared; and

WHEREAS, the Agreement, having been Approved as to Form by the Prosecuting Attorney's Office is recommended for approval; NOW, THEREFORE,

BE IT RESOLVED that the Consultant Agreement with J-U-B Engineers, Inc. to establish an alignment, prepare an area of Potential Effects letter and conduct a cultural resources review under the Section 106 process for the Red Mountain Interchange and road connecting to SR-224 is hereby approved, and the Chairman of the Board of County Commissioners is authorized to sign the Agreement.

Dated this 4th day of May 2009.

Chairman.

Chairman Pro-Tem.

Member

Attest: _____
Clerk of the Board

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

SWB

Local Agency Standard Consultant Agreement		Consultant/Address/Telephone J-U-B ENGINEERS, INC. 2810 W. Clearwater Ave, STE 201 Kennewick, WA 99336 (509) 783-2144 FAX (509) 736-0790	
<input checked="" type="checkbox"/> Architectural/Engineering Agreement <input type="checkbox"/> Personal Services Agreement Agreement Number J-U-B Prj. No. 30-09-010 Federal Aid Number		Project Title And Work Description Red Mountain I/C Section 106 Study - using an established alignment for a road connecting E. Jacobs Road and SR-224; prepare an Area of Potential Effects (APE) letter and conduct a cultural resources review under the Section 106 process.	
Agreement Type (Choose one) <input checked="" type="checkbox"/> Lump Sum Lump Sum Amount \$ <u>17,300.00</u> <input type="checkbox"/> Cost Plus Fixed Fee Overhead Progress Payment Rate _____ % Overhead Cost Method <input type="checkbox"/> Actual Cost <input type="checkbox"/> Actual Cost Not To Exceed _____ % <input type="checkbox"/> Fixed Overhead Rate _____ % Fixed Fee \$ _____ <input type="checkbox"/> Specific Rates Of Pay <input type="checkbox"/> Negotiated Hourly Rate <input type="checkbox"/> Provisional Hourly Rate <input type="checkbox"/> Cost Per Unit of Work		DBE Participation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No _____ % Federal ID Number or Social Security Number 82-0290774 Do you require a 1099 for IRS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Completion Date December 31, 2009	
		Total Amount Authorized \$ <u>16,500.00</u> Management Reserve Fund \$ <u>800.00</u> Maximum Amount Payable \$ <u>17,300.00</u>	

Index of Exhibits (Check all that apply):

- | | |
|---|--|
| <input checked="" type="checkbox"/> Exhibit A-1 Scope of Work | <input type="checkbox"/> Exhibit G-2 Fee-Sub Specific Rates |
| <input type="checkbox"/> Exhibit A-2 Task Order Agreement | <input type="checkbox"/> Exhibit G-3 Sub Overhead Cost |
| <input type="checkbox"/> Exhibit B-1 DBE Utilization Certification | <input checked="" type="checkbox"/> Exhibit H Title VI Assurances |
| <input type="checkbox"/> Exhibit C Electronic Exchange of Data | <input checked="" type="checkbox"/> Exhibit I Payment Upon Termination of Agreement |
| <input checked="" type="checkbox"/> Exhibit D-1 Payment - Lump Sum | <input checked="" type="checkbox"/> Exhibit J Alleged Consultant Design Error Procedures |
| <input type="checkbox"/> Exhibit D-2 Payment - Cost Plus | <input checked="" type="checkbox"/> Exhibit K Consultant Claim Procedures |
| <input type="checkbox"/> Exhibit D-3 Payment - Hourly Rate | <input type="checkbox"/> Exhibit L Liability Insurance Increase |
| <input type="checkbox"/> Exhibit D-4 Payment - Provisional | <input checked="" type="checkbox"/> Exhibit M-1a Consultant Certification |
| <input checked="" type="checkbox"/> Exhibit E-1 Fee - Lump/Fixed/Unit | <input checked="" type="checkbox"/> Exhibit M-1b Agency Official Certification |
| <input type="checkbox"/> Exhibit E-2 Fee - Specific Rates | <input checked="" type="checkbox"/> Exhibit M-2 Certification - Primary |
| <input checked="" type="checkbox"/> Exhibit F Overhead Cost | <input type="checkbox"/> Exhibit M-3 Lobbying Certification |
| <input checked="" type="checkbox"/> Exhibit G Subcontracted Work | <input type="checkbox"/> Exhibit M-4 Pricing Data Certification |
| <input type="checkbox"/> Exhibit G-1 Subconsultant Fee | <input type="checkbox"/> App. 31.910 Supplemental Signature Page |

THIS AGREEMENT, made and entered into this _____ day of _____, 2009, between the Local Agency of Benton County, Washington, hereinafter called the "AGENCY", and the above organization hereinafter called the "CONSULTANT".

WITNESSETH THAT:

WHEREAS, the AGENCY desires to accomplish the above referenced project, and

WHEREAS, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I General Description of Work

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor, and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

II Scope of Work

The Scope of Work and projected level of effort required for this PROJECT is detailed in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT.

III General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY and/or such Federal, State, Community, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

The CONSULTANT, and each SUBCONSULTANT, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT, and each SUBCONSULTANT, shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT that may result in the termination of this AGREEMENT.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made a part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY'S "DBE Program Participation Plan". The mandatory DBE participation goals of the AGREEMENT are those established by the WSDOT'S Highway and Local Programs Project Development Engineer in consultation with the AGENCY.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

IV Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY.

All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

V Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "D" attached hereto, and by reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the State Auditor, WSDOT External Audit Office and/or at the request of the AGENCY'S PROJECT Manager.

VI Sub-Contracting

The AGENCY permits sub-contracts for those items of work as shown in Exhibit "G" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "G."

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this AGREEMENT.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for sub-contracting shall create, between the AGENCY and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum amount of their sub-contracted agreement that is established by the WSDOT Highways and Local Programs Project Development Engineer in consultation with the AGENCY.

VII Employment

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a

third party as a consequence of any act or omission on the part of the CONSULTANT'S employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, or the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

VIII Nondiscrimination

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975
(42 USC Chapter 76 Section 6101 et seq.)

Civil Rights Restoration Act of 1987
(Public Law 100-259)

American with Disabilities Act of 1990
(42 USC Chapter 126 Section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "H" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "H" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit "I" for the type of AGREEMENT used.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT'S failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the PROJECT, or dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. This subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY'S concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided, however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J", and disputes concerning claims will be conducted under the procedures found in Exhibit "K".

XII Venue, Applicable Law, and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in the county in which the AGENCY is located.

XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT'S negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY or the STATE against and hold harmless the AGENCY or the STATE from claims, demands or suits based solely upon the conduct of the AGENCY or the STATE, their agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT'S agents or employees, and (b) the AGENCY or the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the AGENCY or the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT'S negligence or the negligence of the CONSULTANT'S agents or employees.

The CONSULTANT'S relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the PROJECT. Subject to the processing of a new sole source, or an acceptable supplemental agreement, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the AGENCY will be named on all policies as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by the AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the AGENCY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT'S professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater, unless modified by Exhibit "L". In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIV Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment", hereafter referred to as "CLAIM", under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XV Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XVI Federal and State Review

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

XVII Certification of the Consultant and the Agency

Attached hereto as Exhibit "M-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "M-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "M-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "M-4" Certificate of Current Cost or Pricing Data. Exhibit "M-3" is required only in AGREEMENTS over \$100,000 and Exhibit "M-4" is required only in AGREEMENTS over \$500,000.

XVIII Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

XIX Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

By Richard H. Door By _____

Consultant J-U-B Engineers Agency _____

Exhibit A-1
Scope of Work - JUB Engineers, Inc.
March 2009

Red Mountain I/C
Section 106 Study

Benton County

Project Description and Background

The future Red Mountain Interchange will serve central Benton County and provide access to West Richland and Benton City. The proposed Interchange and corridor is part of the wider Red Mountain Vision encompassing the long term comprehensive plans of these agencies along with a strong coalition of resource agencies and project supporters. In 2000, the Red Mountain Area Transportation Study evaluated traffic volumes and potential corridors. The location of the future Red Mountain Interchange and potential realignments of county roads were established. Benton PUD used the planned corridor location in the design and construction of a transmission line in the vicinity of the future junction with SR-224. The proposed location has not been established to the same detail south of the new Benton PUD transmission line.

This scope of work provides for the field staking of the proposed alignment for a road connecting E. Jacobs Road and SR-224 as established in the 2000 Red Mountain Area Transportation Study; preparation of the Area of Potential Effects (APE) letter and conduct a cultural resources review under the Section 106 process. This study is important in evaluating route location and determining any potential mitigation related to cultural resources.

Duties and Responsibilities of Consultant

TASK 1 - PROJECT ADMINISTRATION

CONSULTANT shall oversee project tasks and coordinate with AGENCY representatives to manage the scope, schedule and budget for the study phase.

Subtask 1.1 - Project Management

This task includes preparing monthly invoices and status reports, overall project coordination, managing sub-consultant, monitoring the project schedule and keeping the project documentation and files up to date. For budgeting purposes, we estimate this project scope will be accomplished in 6 months. Project meetings with Agency will not be necessary.

Deliverables:

- Monthly invoices and Project Updates via email.

TASK 2 -FIELD STAKING

CONSULTANT shall conduct the following tasks to establish the location between SR-224 and E. Jacobs Road.

Subtask 2.1 - Field Staking Corridor Centerline

CONSULTANT shall utilize the 2000 Red Mountain Area Transportation Study alignment as a basis for the APE boundary and field staking.

Field stakes shall consist of 36" wood lathe marked with "CL". The corridor shall be established as 100 feet either side of centerline lathe. This scope does not include the requirements of an Engineer's Report per Title 36 RCW.

Deliverables

- Wooden lathe placed at intervals providing visibility between staked locations. GPS Coordinates will be referenced to each Lathe.

TASK 3 - CULTURAL RESOURCES STUDY AND DOCUMENTATION

The CONSULTANT shall conduct Cultural Resources study per Section 106 and WSDOT Local Agency Guidelines.

Subtask 3.1 - Area of Potential Effect

CONSULTANT will determine the Area of Potential Effect (APE) and submit an APE letter through the WSDOT Local Programs Engineer for routing and approval.

Subtask 3.2 - Cultural & Historic Resources Study and Report

CONSULTANT will utilize the services of a qualified SUBCONSULTANT (Reiss-Landreau) to conduct a Cultural Resource Survey of the project area as defined in the APE. SUBCONSULTANT shall research previous documented studies in preparation of report. SUBCONSULTANT shall conduct a field survey of the APE to investigate any physical evidence and determination of significance. A report will be prepared for AGENCY review with the final report being submitted to Department of Archaeology and Historic Preservation (DAHP) via WSDOT South Central Region Local Programs and Headquarters Local Programs Environmental Office.

Deliverables

- Draft APE letter to AGENCY and WSDOT for review and approval.
- Final APE letter submitted through WSDOT Local Programs.
- Draft Section 106 report for AGENCY and WSDOT review.
- Final Section 106 report incorporating review comments.

Exhibit D-1 Payment (Lump Sum)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31. The estimate in support of the lump sum amount is attached hereto as Exhibit "D" and by this reference made part of this AGREEMENT.

- A. **Lump Sum Agreement:** Payment for all consulting services for this PROJECT shall be on the basis of a lump sum amount as shown in the heading of this AGREEMENT.
 - 1. **Management Reserve Fund:** The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."
 - 2. **Maximum Total Amount Payable:** The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- B. **Monthly Progress Payments:** The CONSULTANT may submit billings to the AGENCY for reimbursement of costs on a monthly basis. To provide a means of verifying the billed salary costs for the CONSULTANT'S employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rate, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

- D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

Exhibit E-1
Consultant Fee Determination - Summary Sheet
(Lump Sum, Cost Plus Fixed Fee, Cost Per Unit of Work)
Benton County

Project: Red Mountain Interchange Section 106 Study

Direct Salary Cost (DSC):

Classification	Person-hours	Rates of Pay	Estimated Costs
Principal	2.0	\$61.10	\$122.20
Kennewick Transportation Manager	15.0	\$56.57	\$848.55
Project Engineer	16.0	\$39.10	\$625.60
Professional Land Surveyor	1.0	\$41.93	\$41.93
Senior Survey Technician	2.0	\$29.29	\$58.58
Two-Person Survey Crew	12.0	\$43.76	\$525.12
Design Engineer	2.0	\$27.55	\$55.10
CADD Technician	2.0	\$18.86	\$37.72
Clerical	3.0	\$18.50	\$55.50
Total DSC =			\$2,370.30
Overhead (OH Cost - including Salary Additives):			
OH Rate x DSC	of	178.28%	= \$4,225.75
Fixed Fee (FF):			
35.00%			\$829.61
Total DSC, OH & FF			\$7,425.66
Reimbursables:			
Travel and Per Diem			
Per Diem	1	days @	\$40.00
Air Travel	0	trips @	\$300.00
Mileage	560	miles @	\$0.50
Lodging	0	nights @	\$80.00
Car Rental	0	days @	\$40.00
			\$600.00
Office and Equipment			
GPS Equipment	12.0	hours @	\$50.00
			\$600.00
Reproduction/Mailing Expenses			
Plan Copies			\$0.00
FedEx			\$300.00
Exhibit Mounting	0	SF @	\$4.00
			\$0.00
Communications			
Conference Calls	0	each @	\$24.00
			\$0.00
Reimbursable Sub-Total			\$1,520.00
Subconsultant Costs: (See Exhibit G):			
		Rebss-Landreau Research	\$7,600.00
Subconsultant Total			\$7,600.00
TOTAL BASE AGREEMENT			\$16,545.66
TOTAL (ROUNDED \$100)			\$16,500
5% MANAGERIAL RESERVE (ROUNDED \$100)			\$800
TOTAL MAX. AMT. AUTHORIZED			\$17,300.00
Prepared by: R. Door			
Date:			2/25/2009

EXHIBIT F

Breakdown of Overhead Cost for ITD & WSDOT

Year Ending December 31, 2006

FRINGE BENEFITS		
	Beginning Total	% of Direct Labor
Direct Labor	\$2,370.30	
FICA	\$313.80	13.24%
Unemployment	\$24.60	1.04%
Medical Aid and Industrial Insurance	\$18.81	0.79%
Company Insurance and Medical	\$327.52	13.82%
Vacation, Holiday, and Sick Leave	\$447.38	18.87%
Commission, Bonuses/Pension Plan	\$132.04	5.57%
Total Fringe Benefits	\$1,264.15	53.33%
GENERAL OVERHEAD		
State B & O Taxes	\$34.31	1.45%
Insurance	\$117.07	4.94%
Administration and Time Not Assignable	\$1,613.97	68.09%
Printing, Stationery, and Supplies	\$141.05	5.95%
Professional Services	\$115.89	4.89%
Travel Not Assignable	\$120.44	5.08%
Telephone and Telegraph Not Assignable	\$77.77	3.28%
Fees, Dues, Professional Meetings	\$18.99	0.80%
Utilities and Maintenance	\$69.63	2.94%
Professional Development	\$37.35	1.58%
Rent	\$278.66	11.76%
Equipment Support (computer); Depreciation: Computer	\$238.04	10.04%
Cost of money	\$29.36	1.24%
Office Miscellaneous, Postage	\$69.08	2.91%
Total General Overhead	\$2,961.60	124.95%
Total Overhead Fringe + General	\$4,225.75	178.28%

Exhibit G Subcontracted Work

The AGENCY permits subcontracts for the following portions of the work of this AGREEMENT:

REIS-LANDREAU RESEARCH

Archaeological and Biological consulting firm that will provide the cultural resource survey under the
Section 106 process. See attached letter dated February 13, 2009 and proposed scope of work dated
February 13, 2009 with associated fee of \$7600.00

REISS-LANDREAU RESEARCH

Archaeological and Biological consulting

PO Box 2215 Yakima WA. 98907 Phone/Fax (509) 952-5130, 498-9818
chrislandreau@charter.net

Mr. Travis Marden
J-U-B Engineers, Inc.
2810 W. Clearwater Ave, Suite 201
Kennewick, WA 99336

February 13, 2009

Dear Mr. Marden:

Enclosed you will find a proposal for an archaeological surveys of the proposed 180 acre Red Mountain I-82 interchange project for Benton County. We believe that this survey should satisfy the federal requirements for a Section 106 archaeological review of the project area. If you would like any changes to the proposal, or have any questions, please do not hesitate to contact us.

Thanks



Christopher Landreau
Reiss-Landreau Research

REISS-LANDREAU RESEARCH

Archaeological and Biological consulting

PO Box 2215 Yakima WA. 98907 Phone/Fax (509) 952-5130, 498-9818
chrislandreau@charter.net

Project Report

Reiss-Landreau Research will submit a draft and a final report detailing the findings of the survey. The report will include all appropriate maps, photos, sketches, site forms, and a bibliography of all consulted source material. The report will include section 106 discussions for Cultural Resources within the project area.

Total Projected Costs

\$ 7600

5. Timetable: five weeks from inception, for a draft report and recommendations

This project can be initiated immediately, and a draft report will be submitted within three weeks of the beginning of the project. After comment, a final report will be issued within twenty days.

If any unforeseen difficulties arise in process, JUB will be informed directly within two days with a letter, and work schedules can be re-arranged. If at any time during this process, large or unforeseen archaeological properties are discovered, work will stop in that area, and the evaluation will continue. If any inadvertent human remains are found on site, the nearest tribes, as well as the county sheriff will be contacted and work will stop at that portion of the site, as is standard procedure for inadvertent discovery.

At no time does final issuance of this report mean that the entire 106 process is complete. There must be concurrence with Washington DAHP; and tribal compliance with the final report is also critical.

Exhibit H Title VI Assurances

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.
2. **Non-discrimination:** The CONSULTANT, with regard to the work performed during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. **Solicitations for Sub-consultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by AGENCY, STATE or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY, STATE or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the CONSULTANT'S non-compliance with the non-discrimination provisions of this AGREEMENT, the AGENCY shall impose such AGREEMENT sanctions as it, the STATE or the FHWA may determine to be appropriate, including, but not limited to:
 - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
 - Cancellation, termination, or suspension of the AGREEMENT, in whole or in part

6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub-consultant or procurement as the AGENCY, STATE or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY and the STATE enter into such litigation to protect the interests of the AGENCY and the STATE and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

Exhibit I
Payment Upon Termination of Agreement
By the Agency Other Than for
Fault of the Consultant

(Refer to Agreement, Section IX)

Lump Sum Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Cost Plus Fixed Fee Contracts

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the Project. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

Specific Rates of Pay Contracts

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

Cost Per Unit of Work Contracts

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

Exhibit J

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 – Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Highways and Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 - Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 – Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 – Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide H&LP, through the Region

Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.

- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Step 5 – Forward Documents to Highways and Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Highways and Local Programs Engineer to H&LP for their review and consultation with the FHWA. H&LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, H&LP will request assistance from the Attorney General's Office for legal interpretation. H&LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. H&LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Exhibit K Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 – Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 – Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Highways and Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Highways and Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

Exhibit M-1(a)
Certification Of Consultant

Project No. 30-09-010

Local Agency Benton County

I hereby certify that I am Richard H. Door and duly authorized representative of the firm of J-U-B ENGINEERS, INC. whose address is 2810 W. Clearwater Ave., Ste 201, Kennewick, WA 99336 and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure the AGREEMENT;
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

4-08-09

Date

Richard H. Door

Signature

Exhibit M-1(b)
Certification Of Agency Official

I hereby certify that I am the AGENCY Official of the Local Agency of Benton County, Washington, and that the consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- (a) Employ or retain, or agree to employ to retain, any firm or person; or
- (b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

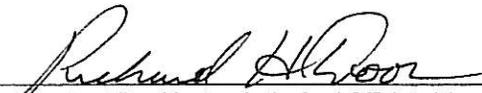
Exhibit M-2
Certification Regarding Debarment, Suspension, and Other Responsibility
Matters-Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (I) (B) of this certification; and
 - D. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): J-U-B ENGINEERS, INC.

4-08-09

(Date)



(Signature) President or Authorized Official of Consultant

RESOLUTION

K

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING THE PERSONAL SERVICE CONTRACT TO JACQUELINE MOORE & ASSOCIATES TO PERFORM A MEDICAL EVALUATION SERVICE AUDIT FOR THE BENTON COUNTY SHERIFF'S OFFICE, CURRENT EXPENSE FUND, FUND NUMBER 0000101, SHERIFF CUSTODY DEPARTMENT 120.

WHEREAS, per resolution 04-534, "...that for all contracts for non-public works services the county need not advertise or follow a formal competitive bidding procedure, but shall instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost."; and

WHEREAS, the Benton County Sheriff's Office wants to perform a medical evaluation service audit of all current medical policies and procedures in order to bring Benton County in line with the National Commission on Correctional Health Care (NCCHC) standards and reduce Benton County's exposure to liability; and

WHEREAS, Jacqueline Moore & Associates is a well known correctional health care consultant; and

WHEREAS, the Benton County Undersheriff has reviewed the Contract for completeness and recommends contracting with Jacqueline Moore & Associates to perform said service; **NOW THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board concurs with the Undersheriff's recommendation and hereby awards the personal service contract to Jacqueline Moore & Associates in an amount up to \$4,950.00 including WSST; and

BE IT FURTHER RESOLVED the term of the attached contract commences when executed by the Board of Benton County Commissioners and expires on December 31, 2009.

Dated this _____ day of _____, 2009.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

Orig: Sheriff's Office
cc: Auditor, R. Ozuna, Jacqueline Moore

Prepared by: K. Mercer

**PERSONAL SERVICES CONTRACT
TERMS AND CONDITIONS**

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and Jacqueline Moore & Associates, with its principal offices at 5861 S. Albion Ct. Greenwood Village, CO 80121, (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of the following documents:

- a. [Exhibit A, Scope of Work; and]
- b. [Exhibit B, Compensation.]

2. DURATION OF CONTRACT

The term of this Contract shall begin immediately upon execution by the COUNTY, and shall expire on December 31, 2009. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. A detailed description of the services to be performed by the CONTRACTOR is set forth in [Exhibit A], which is attached hereto and incorporated herein by reference.
- b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.
- c. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- e. The CONTRACTOR shall confer with the COUNTY from time to

time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

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

- a. For CONTRACTOR: Jacqueline Moore & Associates
 5861 S. Albion Ct.
 Greenwood Village, CO 80121
 (303) 771-1637

- b. For COUNTY: Paul Hart, Undersheriff
 7122 W. Okanogan Place Bldg. A
 Kennewick, WA 99336
 (509) 735-6555

5. COMPENSATION

For the services performed hereunder, the CONTRACTOR shall be paid as follows:

- a. A detailed description of the compensation to be paid by the COUNTY is set forth in Exhibit B, "Compensation", which is attached hereto and incorporated herein by reference.

- b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed \$10,000.

- c. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

- d. The CONTRACTOR may, in accordance with [Exhibit B], submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.

- e. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- f. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.
- g. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

6. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the CONTRACTOR'S

acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.

- b. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section [7] shall survive termination and expiration of this Contract.
- c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, the CONTRACTOR'S employees, agents or subcontractors.

8. INSURANCE

- a. **Professional Legal Liability:** Prior to the start of work under this Contract, the CONTRACTOR, if he, she or it is a licensed professional, shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the CONTRACTOR'S profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) per occurrence, loss or person. If the policy contains a general aggregate or policy limit it shall be at least two times the incident, loss or person limit.

The coverage shall apply to liability for a professional

error, act or omission arising out of the scope of the CONTRACTOR'S services defined in this Contract. Coverage shall not exclude bodily injury or property damage. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. The policy shall state that coverage is claims made, and state the retroactive date.

CONTRACTOR is also required to buy claims made professional liability insurance for a period of 36 months after completion of this Contract, which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy. CONTRACTOR shall annually provide COUNTY with proof of all such insurance.

- b. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation; employers liability, commercial liability or commercial umbrella liability insurance.

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.

Certain work or services under this Contract may require insurance coverage for long shore or harbor workers other than seaman as provided in the Long Shore and Harbor Workers Compensation Act [33 U.S.C.A. Section 901 et

seq.]. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. CONTRACTOR is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. CONTRACTOR is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.

Certain work or services under this Contract may require insurance coverage for seamen injured during employment resulting from the negligence of the owner, master or fellow crew members as provided in 46 U.S.C.A. Section 688. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. CONTRACTOR is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. CONTRACTOR is responsible for all civil and criminal liability that may arise from the failure to maintain coverage.

- c. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability coverage (policy form CG0001 or equivalent) for wrongful death, bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).

The general commercial liability policy will contain an endorsement naming the COUNTY as an additional insured (CG2010) and an endorsement that specifically states that CONTRACTOR's general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

The CONTRACTOR will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section [7]. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

If CONTRACTOR has any employees, CONTRACTOR also shall maintain employers liability insurance with limits of not

less than one million dollars (\$1,000,000) each incident for bodily injury by accident or one million dollars (\$1,000,000) each employee for bodily injury by disease.

d. **Other Insurance Provisions:**

- (1) The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
- (2) The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
- (3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
- (4) The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
- (6) The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
- (7) The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section [8(a)], shall be written on an Occurrence Policy form. Professional liability insurance on a Claims Made form shall have a retroactive date prior to or

coincident with the effective date of this Contract.

e. **Verification of Coverage and Acceptability of Insurers:** All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Benton County Risk Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

- (1) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered Acord form certificates of insurance and, if requested, a signed policy endorsement(s) which shall clearly evidence all required insurance prior to commencing work under this Contract. The certificates will, at a minimum, list limits of liability and coverage. For any professional liability insurance, the CONTRACTOR agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the COUNTY by the CONTRACTOR. For other insurance policies, CONTRACTOR shall not cancel or allow the insurance contract to expire except on forty-five (45) days prior written notice to the COUNTY. CONTRACTOR shall also instruct the insurer to give the COUNTY forty-five (45) days advanced written notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the COUNTY as an additional insured of cancellation.
- (2) The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.
- (3) Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.

- (4) If the CONTRACTOR or any subcontractor or sub-subcontractor has any employees, CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.
- (5) All written notices under this Section [8] and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:

Benton County Risk Manager/Personnel Dept.
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336
- (6) The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager.
- (7) If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, CONTRACTOR must describe its financial condition and the self-insured funding mechanism.

9. TERMINATION

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.
- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this

Contract shall be allowed.

- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

11. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

12. INDEPENDENT CONTRACTOR

- a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S' own activities in providing the agreed

services in accordance with the specifications set out in this Contract.

- b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section [5] of this Contract, and neither the CONTRACTOR nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to COUNTY employees.
- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.
- d. CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state or local law which are now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S contract representative or designee.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

15. NONDISCRIMINATION

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

origin, honorably discharged veteran or military status, disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- a. All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.
- b. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the COUNTY, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTY of any notice of such claim.

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken.

Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

The CONTRACTOR, its employees, subcontractors, and their employees shall maintain the confidentiality of all information

provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

20. CHOICE OF LAW, JURISDICTION AND VENUE

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, indemnification provisions (Sections [7] and [17]); extended reporting period requirements for professional liability insurance (Section [8(a)]); inspection and keeping of records and books (Section [14]); litigation hold notice (Section [26]); Public Records Act (Section [27]) and confidentiality (Section [19]).

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section [14] of this agreement may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule as set out above in Section [14].

27. PUBLIC RECORDS ACT

CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, RCW 42.56 et seq. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records actually in its possession or deemed by judicial determination to be in its possession, which may include records provided to the COUNTY by CONTRACTOR that CONTRACTOR might regard as confidential or proprietary. To the extent that CONTRACTOR provides any records

to the COUNTY that it regards as confidential or proprietary, it agrees to conspicuously mark the records as such. CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

The parties to this Contract have executed this Contract to take effect as of the date written below.

DATED: _____

DATED: 7-27-09

BENTON COUNTY BOARD OF COMMISSIONERS

CONTRACTOR
Jacqueline Moore & Associates

Jacqueline Moore

Chairman

[Print Name] JACQUELINE MOORE

Member

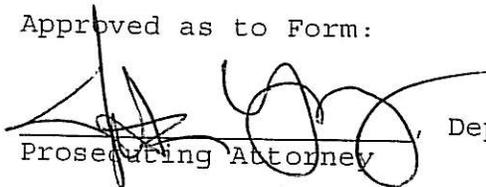
Its PRESIDENT

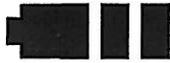
Member

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

Attest: _____
Clerk of the Board

Approved as to Form:

 Deputy
Prosecuting Attorney



III. Project Approach and Work Plan

Our consulting team will function as the County's advocate in the development of recommendations that are both creative, yet practical options for the County as a whole. Our approach for conducting studies of this nature ensures a thorough and comprehensive audit effort.

Our study approach is comprised of various phases and tasks we believe provide the foundation for meeting the needs and objectives of the County. However, our approach is flexible. During the initial phase of the project, we may determine in conjunction with the County, that modification to our approach may be necessary.

Our intent is to work with the County to solidify the most desirable approach, prior to initiating the audit, in order to ensure the highest quality of service.

Project Task I: A. Proposed Approach Development and Scheduling of Work Plan

Our experience tells us that effective planning facilitates successful audit completion. During this phase, key consulting team members will meet with appropriate County representatives to plan the project. Project plan, scope and timing of activity, responsibility and sequence will be discussed and modified according to the County's input. In addition, the County will need to designate a project liaison.

B. Fact Finding and Analysis

During this phase audit team members will gain an understanding of relevant medical service program goals, operating methods, and procedures through interviews, site visits, and a review of written material and data. It is our belief that interviews are a critical component of most review efforts. Since



the best ideas for making improvements often come from those individuals involved directly involved in day to day operations, our approach values the participation and input of both correctional and health care management and line staff. We will schedule on-site interviews with the current health care provider to gather history, concerns and feedback. We will meet with specific community providers to gather information regarding provision of inpatient and outpatient care to the inmate population at Benton County Jail.

Recognizing the unique health care delivery problems associated with a contemporary corrections environment, Moore & Associates will conduct an on-site operational and fiscal review of the medical, dental, mental health and drug treatment services provided to the inmates incarcerated at the Benton County Jail. A written report will be provided regarding the existing medical services with specific recommendations on service delivery and cost containment. The review encompass various strategies for cost within the contract provisions such as fixed dollar pricing, cost sharing on certain items of cost, aggregate or other catastrophic stop loss limits.

In performing a needs analysis, Moore & Associates will review the following areas:

1. Access to Health Care

Access to health care is provided in a variety of ways, including daily sick call, scheduled appointments with staff providers, consultations with private specialists (both on and off site) and outpatient treatment in community hospitals.

A review of the health care services will include:

- An examination of the initial screening and classification performed at intake,
- Routine history and physical examinations,
- Sick call process and triaging methods, timeframe and backlog (if any) of inmates waiting to see various providers (e.g. physician, dentist, psychiatrist, etc.),
- Provision of emergency care and off-site care.

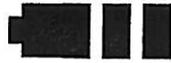
The needs of the health care delivery system will be reviewed regarding the need for other institutional and security requirements. For example, it is



realized that certain security operations (e.g. population count, transport to court, meals, visitation, etc) restrict inmate movement and must be considered in the design of an efficient health care delivery system.

2. Adequacy of medical care:

- Sick-call procedures, i.e., how the inmate notifies someone that he/she wishes to see a physician or nurse.
- How the sick call complaint is reviewed and by whom.
- Utilization of sick call services, average sick call requests for the past 12 months.
- Number of inmates with infectious diseases, e.g., AIDS, tuberculosis.
- Medical care delivery procedure whereby inmates in isolation, segregation or lockdown receive care.
- Chronic disease and specialty clinics conducted at the facility or at off-site locations including dental services, x-ray services, dialysis, OB/GYN.
- Utilization of services in emergency room, hospitalizations, length of stay (Los), etc.
- Identity and location of nearest hospital.
- A brief description of all inmates hospitalized last year, length of stay, treatment received, and a review of pre and post-hospital course.
- A review of the procedures utilized in the initial intake evaluation and physical examination of all incoming inmates including diagnostic studies routinely done.
- Diagnostic Studies including x-ray, ob/gyn, specialty consults
- Infirmiry Patients including patient acuity and total care



- Procedure for special diets.
- Special medical programs that are in effect.
- Adequacy of medical supplies, equipment and space.
- Equipment needed.

3. Emergency Services

In reviewing emergency costs, we will review policies and procedures for obtaining emergency care, local arrangements with ambulances, walk-in clinics, etc., and first aid and CPR training procedures of medical and correctional staff. We will review emergency equipment on –site, the ability to perform some procedures e.g. sutures, EKG, and the availability of radiology services.

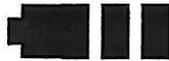
4. Pharmaceutical Services and Supplies

This section will examine strategies to control spending for medications and other pharmaceutical supplies that have been adapted by various county jails. These strategies include:

- Negotiating better prices for pharmaceuticals.
- Managing the utilization of prescription drugs by:
formularies
- computerization
- unit dose
- commissary distribution of over the counter medicines
- filling medications for a 30 or less day supply.

In reviewing pharmaceutical services we will review:

1. Type of medications supplied.
2. Monitoring devices, i.e., side effects, chronic disease patients.
3. Administration procedures.



4. Number of inmates receiving medications.
5. Number of inmates receiving psychotropic medication.

Inherent in the discussion of pharmaceutical management will be a discussion of protease inhibitors and new therapies used to treat AIDS patients as well as atypical psychotropics. We will review all pharmaceutical services and make recommendations.

5. Mental Health

In evaluating the mental health component of the program, we would review the following areas:

- Intake procedures for identifying mental health needs and suicidal inmates.
- Availability and adequacy of a suicide plan which would include housing considerations, monitoring of suicidal inmates, and training of staff.
- Description of current mental health staff and services offered.
- Type of special counseling programs offered, such as drug/alcohol abuse, sex offender programs, etc.
- Current case law regarding mental health programs in jail settings;

6. Organizational Structure Components

One of the most important considerations impacting on the ability of a correctional health care delivery system to attain its goals is the organizational structure under which it operates. The placement of the health services program in an organizational chart is often a reflection of the perceived importance of health care in relation to the department's total mission.

In reviewing the organizational structure of the health services, an evaluation



would be made regarding the reporting process qualifications and responsibilities of the unit Director of Health Services, areas included under the auspices of health services, authority of the administrator over unit personnel, fiscal management, and approval and review of budget and expenditures.

7. Staffing

Approximately 60% of the medical budget of any contract is for staffing. Thus, we will review the current staffing pattern, its adequacy in meeting the needs of the program. Areas that will be assessed will be mixture by discipline of providers, availability of staff, vacancy rates, salary scales, traditional versus flexible scheduling, and training needs of the staff.

In determining staffing requirements the following areas will be considered:

- acuity level of inmates housed at the institution;
- classification and other factors affecting inmate movement;
- requirements for special nursing activities, e.g. special housing areas, segregation units, mental health units; infirmary.
- skill level of current providers;
- placement of medical unit in the prison and existence of structural support, e.g. exam rooms, equipment, etc;
- productive versus non-productive time;
- use of ancillary and clerical staff.

8. Special Treatment Populations

A description of the incidence of special treatment populations, i.e., elderly, mentally ill, HIV positive patients and a projection of their anticipated medical costs will be compiled. In review of this service, we would review accessibility, availability and timeliness of the consult. Feasibility of specialty clinics conducted on-site would be evaluated. We will evaluate the cost of provider networks, discounts offered. We will compare these services with Medicaid rates and other available networks.

9. Utilization of Health Services

Choices about the kinds and amounts of health services provided to inmates are important determinants of spending levels in any health care delivery



system. One approach to reducing spending levels involves shaping these choices so that unnecessary requests are minimized and cost-efficient types of services are delivered. An examination of the patterns of service utilization of the facility will encompass:

- Provision of on-site versus off-site specialty care;
- Availability of arrangements for inpatient services at secure hospital units;
- Per diem versus discount off charges;
- Length of hospital stay;
- Utilization review and approval procedures;
- Strategies for controlling utilization;
- Co-payment programs;
- Second opinion and retrospective review.

10. Controlling Expenditures

Hospital services are especially costly for a County system. Lacking a fiscal intermediary such as a commercial insurer that will negotiate reduced rates, jails have typically paid full fare for services without any discounts. Moreover, the cost of providing around the-clock security to inmates often doubles the cost of a hospital stay. To contain spending for hospitalization, correctional institutions have adopted several strategies such as negotiating rates of reimbursement, negotiating discounts with local hospitals and providers, creating inpatient management procedures.

In reviewing this area, the examination will focus on current spending for health care, trends in health care spending, factors affecting health care spending (e.g. population increase, increase in prices of health care services, implementation of new health care programs or treatment modalities).

We will evaluate the current vendors program for pre-certification, and utilization review, case management, network negotiations and excess loss interface (early notification of potential cases).

11. Pricing Reimbursement Requirements

We will perform a cost analysis of the various options available for contracted services. These will include:



- Fixed Price or capitated budget
- Fee for service
- Options of services included or excluded by service component
- Number of contracts to be awarded and advantages of sole vendor versus multiple vendors
- Performance Guarantees and fiscal impact
- Fines or Liquidated damages imposed for non-performance and impact on vendor pricing

12. Management Information System

If correctional health care administrators are to manage health services successfully, they need to monitor many different aspects of the correctional health system. They need to know what kinds of resources are being employed, the cost of these resources, the inmates demand and utilization of services and what outcomes are being achieved. An analysis will be conducted regarding the current system of data collection, with recommendations made as to the type of data that should be collected and an identification of the data sources.

13. Use of Telemedicine/EMR

An analysis will be conducted on the use of telemedicine for the Benton County Jail and costs involved. We will also review the feasibility of an electronic medical record.

14. Research and Comparative Best Practices

As a national consultant, Moore & Associates has traveled to almost every State and hundreds of Counties either for an accreditation survey or for a consultation review. As a result, Moore & Associates is familiar with strategies employed by other County's to improve quality, reduce cost, and curb recidivism. As the editor of Correctional Health Report, published by Civic Research Institute she has published a number of best practices found in many State and County systems. She will share these strategies with the Benton County Jail.

Dr. Moore and Mendel have written numerous State and County RFP's and are familiar with the cost of care and the contractors that provide these services. We will provide an analysis of the cost of similar size systems as



the Benton County Jail.

15. Data Sources and Methods of Study

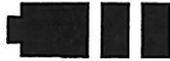
For the purposes of describing and assessing the health care delivery in the County's correctional facilities, data will be collected and analyzed from a variety of sources. These include the following:

- Site visits and interviews;
- Self reports on structural characteristics and specialty services;
- Review of utilization data reported by the institution;
- Expenditure data by component of service delivery, i.e., salaries, hospitalization, pharmaceuticals for FY 2006 through 2008;
- NCCHC and ACA accreditation reports;
- Analysis of personnel positions, vacancy rate and salary scales;
- Review of encounter forms;
- Health Services Monthly and Quarterly Reports;
- Copies of contracts with hospitals and private health care providers;
- Copies of relevant administrative and statutory laws affecting health care;
- Federal court orders pertaining to health care;
- Fiscal and Budgetary reports; including amount authorized for the health care system;
- Copies of purchasing guidelines which would an RFP;
- Copies of Insurance and Legal requirements affecting contracted medical care

16. Deliverables

Deliverables for this project shall include:

- Written industry review and presentation
- Written report analyzing the current system of providing health care
- Written document discussing strategies for the provision of inmate health care with specific recommendations to accomplish each task
- Provision of a recommended plan of inmate health care with alternative and options considering expense efficiency, effectiveness, and continuity of service. The plan will also include management



techniques for cost control in essential areas of activity such as personnel, off-site utilization and pharmaceutical medications.



Project Task II: Preparation of Draft Summary Report

During this phase we will identify findings related to programmatic and financial efficiency and effectiveness and develop preliminary recommendations. The recommendations will be designed to provide innovative, yet cost conscious, feasible solutions for improved operating efficiency and effectiveness.

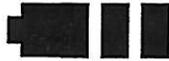
The results of our analysis, the specific issues addressed, alternatives developed and related recommendations will be summarized in a written report and present to appropriate County officials for review. We will include tables, graphs, and or charts as appropriate to facilitate understanding of the ideas presented. The report will also identify areas outside the scope of this project, but which we believe may be in need of further study and evaluation.

Project Task III: Preparation and Presentation of Final Report

We will prepare a final report regarding our observations, findings, analysis and recommendations resulting from the aforementioned process. We will meet with the County representatives on a regular basis to share out observations and recommendations. We will provide a written recommendation of service mix and requirements for future inmate health care. Identification of cost control within the mix will be essential. Recommendations for the health services and management will be presented in terms of expense; efficiency, potential obstacles, and possible solutions related to the proposed mix or cost controls.

Project Task IV: Contracting with Private Firms to Deliver Health Care

Counties have the option of contracting with private firms to manage their inmate health care or to manage and operate such services in house. This section of the review will focus on the scope of contracted services (e.g.



some or all of the clinical services); the reasons for choosing to privatize; the benefits of contracting; the risks to the County of contracting and managing risks by quality assurance and monitoring procedures.

Project Task V: Request for Proposal

Following a review of the facilities, a written report will be forwarded to the steering committee delineating utilization, budget statistics and overall description of the facilities, staffing and services rendered. The needs analysis will be used in developing the request for proposal.

A. Development of RFP

Moore & Associates will perform the following tasks in development of the RFP:

1. Draft a Request for Proposal for medical, dental and mental health services,
2. Evaluate proposals received in response to the Jail's request for proposal to provide service.
3. Will work with the evaluation committee selected by the Jail to read, analyze and evaluate the proposals submitted by prospective providers.
4. Will actively participate in formal oral presentations by the companies submitting proposals, on site at a location to be determined by the Evaluation Committee.
5. Will remain available for telephonic and written consultation to the Evaluation Committee during this process.

Project Task VI: Selection Process for Prospective Contractors

Moore & Associates will design an evaluation and selection process, which will assist Benton County Jail in selecting a qualified vendor. We will conduct



confidential review session with the Benton County Jail .

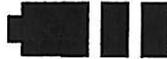
Areas that would be considered are the following:

- Corporate Experience
- Quality of Technical Proposal to meet contract specifications
- Recruitment and Staffing Plan
- References
- Quality Improvement and Utilization Management Program
- Litigation History and Contract renewals
- Innovations of the Program Proposed
- Price
- Assessment of financial stability
- Evaluation of ability to meet bond and insurance requirements

In computing points for each of the above criteria, the evaluation team will take each area into consideration. Initially proposals will be evaluated to determine if the minimum requirements are met. This review will pertain to such matters as understanding the nature of the project, responsiveness to conditions of the RFP, and technical presentation. Moore & Associates will act as a facilitator in the selection process and will provide oversight to the selection committee. We will assume a **non-voting** position on the evaluation team to avoid any conflicts of interest.

Project Task VII: Monitoring of the Contract

Once a vendor is selected, Moore & Associates will assist the County with the development of forms and tools to be used to monitor the contract. The contract will be monitored in regard to utilization of services, staffing plans and vacancies, budgetary information and quality of care. Forms will be designed that are specific to the County's needs. Should the County desire a contract monitor, we will assist them in the identification of such individuals from the County or will provide the monitoring ourselves depending upon the needs of the County.



Program Implementation

Upon acceptance of this proposal, Moore & Associates will focus our efforts on implementing this project. The following section outlines our start-up plan and timetable for service delivery. **Table 1, Time Line** follows:

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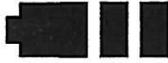
Proposed Task	Expected Duration
Develop questionnaire for analysis of service delivery	Week 1
Prepare list of documents regarding service delivery which will be reviewed	Week 1
Develop questionnaire and interview forms for analysis of cost data	Week 1
Develop a list of documents regarding cost of services which will be reviewed	Week 1
Conduct interviews with purchasing , legal, jail administration and medical staff regarding the RFP	Week 2 "
Analyses of Data collected,	Week 2
Development of RFP and vendors list	Week 2
Receipt and review of RFP by vendors	Week 4
Pre Bid Conference and Survey of Facility	Week 6
Submission of Proposal by Vendors	Week 10
Evaluation of Proposal	Week 12



by selection committee	
Oral Presentation by Vendors	Week 13
Final Evaluation of Proposal	Week 13
Development of a Contract	Week 14
Transition for new contract	Week 15-20

Exhibit B - Compensation

JACQUELINE
MOORE &
ASSOCIATES



Project Cost

The cost for this project is estimated at **\$4,950**. The price is inclusive of all travel and development costs and will include all on-site visits. The visit will be to perform the needs analysis and present the report.

If the County decides to contract services to a private vendor than an additional **\$2,500** will be required to develop the RFP, spearhead the bidders conference, assist with any addendum, and to assist with the oral presentation and evaluation of the vendors.