2015 341B

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AN AGREEMENT FOR CERTIFICATION ACCEPTANCE SERVICES BETWEEN THE CITY OF PROSSER AND BENTON COUNTY

WHEREAS, the City has been awarded federal STP funds for the 7th Street ADA Sidewalk Improvements Project at the intersections of 7th Street and Bennett Ave., 7th Street and Meade Ave., and 7th Street and Dudley Ave. (hereinafter the "Project"); and,

WHEREAS, the City desires to undertake the Project using federal funds; and,

WHEREAS, the expenditure of federal funds requires that the Project be designed and administered in accordance with the Washington State Department of Transportation Local Agency Guidelines, including certification by a certified acceptance agency (CA agency); and,

WHEREAS, the City is not certified to administer federal aid projects; and,

WHEREAS, the County is certified to administer federal aid projects; and,

WHEREAS, The Local Agency Guidelines provides that a noncertified local agency may enter into agreement with a CA agency to have the CA agency perform project development and/or contract administration; and,

WHEREAS, the completion of the Project is a benefit to the regional transportation system; and,

WHEREAS, the County Engineer has recommended approval of said Certification Acceptance Services Agreement, **NOW, THEREFORE**,

BE IT RESOLVED that the Certification Acceptance Services Agreement by and between the City of Prosser and Benton County for the 7th Street ADA Sidewalk Improvements Project at the intersections of 7th Street and Bennett Ave., 7th Street and Meade Ave., and 7th Street and Dudley Ave. is hereby approved and the Chairman is authorized to sign said agreement.

Dated this 5th day of May 2015.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig. Public Works

M.H. Ames

Return to: Benton County Engineer
P.O. Box 1001
Prosser, WA 99350

AGREEMENT FOR CERTIFICATION ACCEPTANCE SERVICES

THIS AGREEMENT is entered into between Benton County, Washington (hereinafter the "County") through its Public Works Department whose address is P.O Box 1001, Prosser, Washington 99350, and the City of Prosser (hereinafter the "City") whose address is 601 7th Street, Prosser, Washington 99350 pursuant to RCW 39.34.080.

WHEREAS, the City has been awarded federal TAP funds for the 7th Street ADA Sidewalk Improvements Project at the intersections of 7th Street and Bennett Ave., 7th Street and Meade Ave., and 7th Street and Dudley Ave. (hereinafter the "Project"); and,

WHEREAS, the City desires to undertake the Project using these federal funds; and,

WHEREAS, the expenditure of federal funds requires that the Project be designed and administered in accordance with the Washington State Department of Transportation Local Agency Guidelines, including certification by a certified acceptance agency (CA agency); and,

WHEREAS, the City is not certified to administer federal aid projects; and,

WHEREAS, the County is certified to administer federal aid projects; and,

WHEREAS, The Local Agency Guidelines provides that a noncertified local agency may enter into agreement with a CA agency to have the CA agency perform project development and/or contract administration; and,

WHEREAS, the completion of the Project is a benefit to the regional transportation system.

NOW, THEREFORE IT IS HEREBY AGREED as follows:

1. The County will administer and certify the Project for the City in accordance with the Washington State Department of Transportation Local Agency Guidelines.

2. The City will:

   2.1. Prepare all of the Project plans, specifications, and estimates in accordance with the Local Agency Guidelines;

   2.2. Provide construction inspection services through the City's consultant in accordance with the Local Agency Guidelines; and

   2.3. Reimburse the County for services provided by the County on a time and materials basis when billed by the County. Time will be direct time plus fringe benefits plus a ten percent administration fee. Vehicle fees will be vehicle fee plus a ten percent administrative fee. Materials will be direct cost plus a ten percent administrative fee.

3. This Interlocal Agreement shall be in full force and effect when executed by the City and County.

4. **Administration:** No new or separate legal or administrative entity is created to administer the provisions of this agreement. This Agreement will be administered by the Benton County Engineer or his or her designee.

5. **Duration of Agreement - Termination:** This agreement shall remain in force until cancelled by either part in writing. This written notice must be served on the other party within sixty days (60) of the date of termination.

6. **Compliance with Legal Requirements:** Each party accepts responsibility for compliance with federal, state or local laws and regulations including, in particular, bidding requirements applicable to its acquisition of goods and services or disposal of property.

7. **Property Acquisition/Financing:** It is anticipated that no joint property will be acquired under this agreement. In the event that joint property is acquired, then it shall be distributed, when the agreement is terminated, to the parties in proportion to that party's contribution to purchase such property. There shall be no joint financing under this agreement.

8. **Filing:** Executed copies of this agreement shall be filed as required by Section 39.34.040 of the Revised Code of Washington prior to this agreement becoming effective.

9. **No Third-Party Rights.** Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the covenants and agreements herein not to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of nonperformance hereunder.

10. **Hold Harmless and Indemnification:** a. The City 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, which are caused in whole or in part by any act or omission, negligent or otherwise, of the City or its subcontractors, which arise in connection with the work performed under the Project or this Agreement, or are caused or occasioned in whole or in part by reason of the presence of the City or its subcontractors or their property upon or in the proximity of the property of the County. PROVIDED, that the City's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the 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 City, 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 City 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 City expressly waives any immunity the City might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Agreement, the City 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 City makes with any subcontractor or agent performing work hereunder. City's obligations under this Section [10] shall survive termination and expiration of this Contract.**

c. The City'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 City, the City's employees, agents or subcontractors.

11. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provisions of this Agreement, which shall prove to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provisions herein, and such other provisions shall remain in full force and effect.

12. **Entire Agreement.** This Agreement and any amendments thereto mutually agreed to by the parties, constitutes the entire Agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties. Either party may request changes to the Agreement. Proposed changes that are mutually agreed upon shall be incorporated by written amendment hereto.

13. **Dispute Resolution.** It is the parties' intent to resolve any disputes relating to the interpretation or application of this Agreement informally through discussions at the staff level.

14. **Litigation.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court for Benton County, Washington.

15. N**otices.** All notices and demands shall be in writing and sent to the parties hereto at their address as follows:

To Benton County:	Benton County Public Works P.O. Box 1001 Prosser, WA 99350-0954
To City of Prosser:	City of Prosser 601 7th Street Prosser, WA 99350

16. **Evidence of Authority.** This agreement shall be executed in duplicate originals. Upon execution of this Agreement, the City shall provide Benton County and Benton County shall provide the City with a copy of the resolution, ordinance, or other authority given to execute this Agreement pursuant to RCW 39.34.030(2), and said document will be attached hereto and incorporated herein as **Exhibit "A"** (City) and **Exhibit "B"** (County).

IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

CITY OF PROSSER,
WASHINGTON

By: _____
Mayor

Attest:

_____
City Clerk

Date: 4/22/2015

Approved as to form:

_____
Attorney, City of Prosser

Date: 4/22/2015

BENTON COUNTY,
WASHINGTON

By: _____
Chairman, Board of County Commissioners

Attest:

_____
Clerk of the Board

Date: 5/5/15

Approved as to form:

_____
Benton County Prosecuting Attorney

Date: _____

From: Reid Hay
To: Paul Schut
Cc: Mary Ames
Subject: RE: Approval as to form
Date: Wednesday, April 29, 2015 12:13:54 PM

Paul,

Thank you for the clarification. The DOT agreement was a separate matter. I spoke to Mary Ames, and she reminded me about the particulars of the Prosser agreement. Also, taking another look at the agreement, I am reminded of changes that I suggested and that she incorporated into the document before sending it to Prosser.

It is approved as to form. Sorry for the gaps in memory.

Thanks,
-- Reid

Reid Hay
Deputy Prosecuting Attorney
Benton County Prosecuting Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

This email, any and all attachments hereto, and all information contained and conveyed herein may contain and be deemed confidential attorney client privileged and/or work product information. If you have received this email in error, please delete and destroy all electronic, hard copy and any other form immediately. It is illegal to intentionally intercept, endeavor to intercept or procure any other person to intercept or endeavor to intercept, any wire, oral or electronic communication.

From: Paul Schut
Sent: Wednesday, April 29, 2015 11:28 AM
To: Reid Hay
Subject: RE: Approval as to form

I guess I wasn't clear enough, that was my bad, but the agreements are between with the City of Prosser not with the DOT. We are doing it because the DOT requires that it is done on federally funded projects.

Thanks,

Paul Schut
Financial Analyst
Benton County Commissioners' Office
PO Box 190
Prosser WA 99350

2015 341B

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Dated this 5th day of May 2015.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig. Public Works

M.H. Ames