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Ferry County

Consultant County Engineer
Professional Services Agreement

THIS AGREEMENT is made and entered into this 25th day of June, 2012 by and between Ferry County, hereinafter referred to as the "COUNTY" and Robert Breshears, hereinafter referred to as the "CONSULTANT COUNTY ENGINEER."

WITNESSETH:

WHEREAS, RCW 36.80.010 allows counties to contract and employ an engineer on a part-time basis; and

WHEREAS, by resolution of the Board of County Commissioners, the terms of this contract are adopted by reference pursuant to WAC 136-12-070; and

WHEREAS, the CONSULTANT COUNTY ENGINEER represents that he is a duly licensed and qualified civil engineer who possesses technical and professional expertise, to perform the services and/or tasks set forth in the Agreement.

NOW THEREFORE, in consideration of the following terms and conditions, the parties hereto agree as follows:

1. **SCOPE OF SERVICES**

   The CONSULTANT COUNTY ENGINEER shall, under the direction of and in consultation with the designated Public Works Director and the Board of County Commissioners, perform the tasks and duties of the licensed County Engineer as provided for, in and in accordance with, Washington State statutes. Depending upon need, the CONSULTANT COUNTY ENGINEER shall be available to the COUNTY for a minimum of one (1) day per week.

2. **TERM**

   This contract shall begin July 1, 2012 and shall remain in effect until June 30, 2015.

3. **COMPENSATION AND METHOD OF PAYMENT**

   A. Payments for services provided hereunder shall be made monthly following the performance of such services, unless otherwise permitted by law and approved in writing by the COUNTY. The payment for all services as provided for in this Agreement shall be at the rate of $60 an hour. There shall be no additional compensation for fringe benefits as defined by labor law.

   B. Necessary personal vehicle mileage will be reimbursed at current rate of Washington State Office of Financial Management vehicle reimbursement rate.

   C. No payment shall be made for any service rendered by the CONSULTANT COUNTY ENGINEER except for services identified and set forth in this agreement and detailed

Ex. #1

in any voucher or invoice submitted to the COUNTY for payment as hereinafter provided.

D. On a monthly basis, The CONSULTANT COUNTY ENGINEER shall submit a COUNTY approved voucher or invoice to the COUNTY'S Public Works Director for services rendered. The COUNTY shall initiate authorization for payment after receipt of said approved voucher or invoice and shall make payment to the CONSULTANT COUNTY ENGINEER no later than thirty (30) days thereafter.

E. The COUNTY shall not be responsible for the payment or provision of any benefits normally provided COUNTY employees such as annual leave (vacations), paid holidays, medical leave, or medical insurance.

4. **REPORTS AND INSPECTIONS**

A. The CONSULTANT COUNTY ENGINEER at such times and in such forms as the COUNTY may require, shall furnish to the COUNTY such statements, records, reports, data, and information as the COUNTY may request pertaining to matters covered by this Agreement.

B. The CONSULTANT COUNTY ENGINEER shall at any time during normal business hours and as often as the COUNTY or State Examiner may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the County or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The COUNTY shall receive a copy of all audit reports made by the agency or firm as to the CONSULTANT COUNTY ENGINEER'S activities. The COUNTY may, at its discretion, conduct an audit, at its expense, using its own or outside auditors, of the CONSULTANT COUNTY ENGINEER'S activities related, directly or indirectly, to the Agreement.

5. **PUBLIC WORKS STAFF RELATIONSHIP AND WORKING CONDITIONS**

A. In the performance of the services herein contemplated, the CONSULTANT COUNTY ENGINEER is not an independent contractor and shall have authority to control and direct the performance of the details of the work only to the extent delegated by the Public Works Director or the Board of County Commissioners, and, furthermore, the result of the work contemplated herein must meet the approval of the COUNTY and shall be subject to the COUNTY'S general rights of inspection and review to secure the satisfactory completion thereof. The CONSULTANT COUNTY ENGINEER shall advise, consult with and carry out the directions of the Public Works Director or the board of County Commissioners in the performance of his duties as if the CONSULTANT COUNTY ENGINEER were an employee of the COUNTY and, furthermore, for those duties of the County Engineer specifically requiring the judgment, professional experience and approval of a licensed Professional Engineer as provided for in State Statute, the CONSULTANT COUNTY ENGINEER shall exercise such judgment and make such decisions based on education, training and experience and within the limitations of State Statues and Regulations.

B. The CONSULTANT COUNTY ENGINEER shall perform project responsibilities out of an office and with facilities provided by the COUNTY as a member of the County's

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Department of Public Works. The COUNTY shall also provide a vehicle for use by the CONSULTANT COUNTY ENGINEER for the periods the CONSULTANT COUNTY ENGINEER is on-site, however the CONSULTANT COUNTY ENGINEER is responsible for providing transportation from his home office to and from Ferry County.

6. **CONSULTANT COUNTY ENGINEER EMPLOYEES/AGENTS**

The CONSULTANT COUNTY ENGINEER for this Agreement shall have no other employees other than himself. He shall employ, direct and control only personnel within the Public Works Department directly related to the completion of the tasks and duties of the County Engineer as per the current approved Public Works Department Table of Organization.

7. **HOLD HARMLESS AND INDEMNIFICATION**

A. Given the consultant-client relationship of the Agreement and the close professional relationship of the CONSULTANT COUNTY ENGINEER and COUNTY Public Works Staff it is not reasonable to request the CONSULTANT COUNTY ENGINEER hold the COUNTY harmless as in the normal consultant relationship. The CONSULTANT COUNTY ENGINEER, working as a member of the Public Works Department, shall be exercising the direction of the Public Works Director and the Board of County Commissioners and not his sole personal, professional and/or independent judgment and decisions. For those reasons, the COUNTY shall consider Mr. Breshears a COUNTY employee for purposes of indemnification and hold him and his marital community harmless for personal liability in the performance of County Engineer responsibilities. During the course of his employment as the CONSULTANT COUNTY ENGINEER, Mr. Breshears shall be included as an "additional named insured" on the COUNTY'S general liability insurance and the COUNTY shall provide the necessary bond as required by RCW 36.80.020.

B. No liability shall attach to the COUNTY by reason of entering into this Agreement except as expressly provided herein.

8. **INSURANCE**

The CONSULTANT COUNTY ENGINEER shall procure and maintain for the duration of the Agreement, automobile liability insurance with limits which satisfy standard State of Washington legal requirements and to be applicable only to the CONSULTANT COUNTY ENGINEER'S use of his personal vehicle as may be necessary.

The CONSULTANT COUNTY ENGINEER shall be solely responsible for procuring and maintaining any other insurance of any kind including medical insurance and payment of any deductibles.

9. **TREATMENT OF ASSETS**

Title to all property furnished by the COUNTY shall remain in the name of the COUNTY and the COUNTY shall be the owner of the work product and other documents, if any, prepared by the CONSULTANT COUNTY ENGINEER pursuant to the Agreement including but not limited to:

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A. All digital files including project schedules, plans, records, spreadsheets, word processed documents, graphics, etc.

B. All map and engineering drawing files, etc. including their digital form.

10. **PRODUCT STANDARDS**

The COUNTY shall have the right to require delivery of services and products in a format compatible with COUNTY standards. Such standards may include by are not limited to:

A. Map and drawing digital files.

B. Word processing text and documents.

C. Graphics files.

D. Document size and shape.

11. **COMPLIANCE WITH LAWS**

A. The CONSULTANT COUNTY ENGINEER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services.

B. The CONSULTANT COUNTY ENGINEER specifically agrees to pay any applicable business and occupation (B&O) taxes, Federal Income taxes, Federal Social Security taxes and other taxes that may be due as a result of this Agreement.

12. **NONDISCRIMINATION**

A. Nondiscrimination in Employment. In the performance of the Agreement, the CONSULTANT COUNTY ENGINEER will not discriminate against any employee on the grounds of race, creed, color, national origin, sex, marital status, age, sexual orientation, religion, veteran's status, or the presence of any sensory, mental or physical handicap or any other bases prohibited by applicable Federal, State or Local law; provided that the prohibition against discrimination in employment is because of the particular work involved.

B. Nondiscrimination in Services. The CONSULTANT COUNTY ENGINEER will not discriminate against any recipient of any services, or benefits provided for in the Agreement of the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

C. If any assignment and/or subcontracting has been authorized by the COUNTY, said assignment or subcontract shall include appropriate safeguards against discrimination. The CONSULTANT COUNTY ENGINEER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

13. **ASSIGNMENT/SUBCONTRACTING**

A. The CONSULTANT COUNTY ENGINEER shall not assign its performance under the Agreement or any portion of this Agreement without the written consent of the COUNTY, and it is further agreed that said consent must be sought in writing by the CONSULTANT COUNTY ENGINEER not less than ten (10) days prior to the date of any proposed assignment. The COUNTY reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of the Agreement and proper bidding procedures where applicable as set forth in Local, State and/or Federal statutes, ordinances and guidelines.

14. **CHANGES**

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached and made a part of this Agreement.

15. **MAINTENANCE AND INSPECTION OF RECORDS**

A. The CONSULTANT COUNTY ENGINEER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of the Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the COUNTY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

B. The CONSULTANT COUNTY ENGINEER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The CONSULTANT COUNTY ENGINEER agrees that the COUNTY or its designee shall have full access and rights to examine any of said materials at all reasonable times during said period.

16. **POLITICAL ACTIVITY PROHIBITED**

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

17. **PROHIBITED INTEREST**

No member, officer, or employee of the COUNTY shall have any interest, direct or indirect, in the Agreement or the proceeds thereof.

18. **OUTSIDE EMPLOYMENT**

The CONSULTANT COUNTY ENGINEER may engage in other employment when not actively engaged in providing the contracted County Engineer services to the COUNTY,

provided however that said other employment shall not result in a conflict of interest as provided in RCW 42.23.

19. **TERMINATION**

A. Termination for Convenience. The CONSULTANT COUNTY ENGINEER may terminate this Agreement, in whole or in part, at any time, by at least ninety (90) days written notice to the other party.

The CONSULTANT COUNTY ENGINEER shall be paid his costs, including Agreement close-out costs, and profit on work satisfactorily performed, up to the time of termination. The CONSULTANT COUNTY ENGINEER shall promptly submit a termination claim to the COUNTY. If the CONSULTANT COUNTY ENGINEER has any property in his possession belonging to the COUNTY, the CONSULTANT COUNTY ENGINEER will account for the same, and dispose of it in the manner directed by the COUNTY.

B. The COUNTY may terminate the contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interest of the public. Whenever the contract is terminated in accordance with this paragraph, the CONTRACTOR shall be entitled to payments for actual work performed. Termination of this contract by the COUNTY at any time during the term, whether for default or convenience shall not constitute a breach of contract by the COUNTY.

20. **NOTICE**

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

21. **ATTORNEY'S FEES AND COSTS**

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

22. **JURISDICTION AND VENUE**

A. This Agreement has been and shall be construed as having been made and delivered with the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of the Agreement or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Ferry County, Washington.

23. **SEVERABILITY**

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining

provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof 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.

24. **ENTIRE AGREEMENT**

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modifications of the Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of the Agreement does not constitute a waiver of any other of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed June 25, 2012.

Robert Breshears
PO Box 102
Davenport, WA 99122

Robert Breshears, P.E.
ROBERT BRESHEARS

Dated: 6/25/2012

Adopted by Resolution No. 2012-20 dated June 25, 2012

Ferry County Board of County Commissioners
290 East Tessie Avenue
Republic, WA 99166

BOARD OF COUNTY COMMISSIONERS
OF FERRY COUNTY, WASHINGTON

ATTEST:

BRIAN DANSEL, CHAIRMAN

CLERK OF THE BOARD

ROBERT "BOB" HEATH, COMMISSIONER

BRAD MILLER, COMMISSIONER

Approved as to Form:

Ferry County Prosecuting Attorney

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