

Contract

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, between Pacific County, hereinafter called the COUNTY, and _____, hereinafter called the CONTRACTOR.

COUNTY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1 - Work

- 1.1 CONTRACTOR shall complete all work and furnish all materials and equipment as specified or indicated in the Contract Documents for:

HECKARD ROAD AND CAMP ONE ROAD INTERSECTION IMPROVEMENT PROJECT

- 1.2 The CONTRACTOR shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in the Contract Documents except those items mentioned therein to be furnished by the COUNTY.

Article 2 - Contract Time

- 2.1 The Work of the Contract shall be physically completed and ready for final payment within thirty (30) working days from the date of the Notice to Proceed, and the Contract Time continues to run as specified in the Standard Specifications. CONTRACTOR acknowledges that no specific start date and no specific season of the year for performing the Work is guaranteed.
- 2.2 Liquidated Damages. COUNTY and CONTRACTOR recognize that time is of the essence of this agreement and that COUNTY will suffer financial loss if the Work is not completed within the times specified in Paragraph 2.1 of this agreement, plus any extensions thereof allowed in accordance with Section 1-08.5 of the Special Provisions. They also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by COUNTY if the Work is not substantially and physically completed on time. Accordingly, instead of requiring any such proof, COUNTY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay COUNTY the amounts specified in Section 1-08.9 of the Standard Specifications, as may be supplemented by the Special Provisions, for each working day that expires after the times specified in Paragraph 2.1 of this Agreement.

Article 3-Contract Price

- 3.1 COUNTY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an estimated Contract Price as provided in CONTRACTOR's Bid Form attached as Exhibit A.

Article 4-Payment Procedures

- 4.1 CONTRACTOR shall submit Applications for Payment in accordance with the Standard Specifications. Applications for Payment will be processed by COUNTY as provided in the Standard Specifications.
- 4.2 COUNTY will make monthly progress payments on the basis of CONTRACTOR's Applications for Payment each month during construction as provided below. All progress payments will be on the basis of the measured or estimated number of units of Unit Price work completed.

In accordance with RCW 60.28.011 no final payment will be made until such time as all claims have been satisfied.

- 4.3 Upon final completion and acceptance of the Work in accordance with the Contract Documents, COUNTY shall pay the remainder of the Contract Price, provided that there are no related liens registered against the project at that time, and provided that the industrial insurance premiums with the Department of Labor and Industries are current.

Article 5-Contractor's Representations

CONTRACTOR makes the following representations:

- 5.1 CONTRACTOR is familiar with the nature and extent of the Contract Documents, Work site, locality, availability of labor, union or non-union practices, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 5.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Special Provisions of the Contract Documents, and accepts the determination set forth in the Special Provisions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.
- 5.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 5.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance of the Work at the Contract price, within the

Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

- 5.4 CONTRACTOR has reviewed and checked all information and data shown or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. CONTRACTOR shall perform, at CONTRACTOR'S sole expense, all such additional examinations, investigations, explorations, tests, reports, studies or similar information or data with respect to said underground facilities which are or will be required to perform and furnish the Work at the Contract Unit Prices, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
- 5.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
- 5.6 CONTRACTOR has given COUNTY written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by COUNTY is acceptable to CONTRACTOR.
- 5.7 CONTRACTOR is experienced and qualified to perform the services described herein, and is properly staffed and organized and financed to perform such services. CONTRACTOR shall act as an independent contractor and not as an employee or agent of COUNTY in performing its services, maintaining control over its employees and managing all subcontractors and suppliers.

Article 6-Contract Documents

The Contract Documents which comprise the entire Agreement between COUNTY and CONTRACTOR concerning the Work consist of the following:

- 6.1 Notice to Contractors.
- 6.2 CONTRACTOR'S Bid Form, including Appendix A, attached as Exhibit A.
- 6.3 Addenda Numbers 1 to 1 inclusive, attached as Exhibit B.
- 6.4 Notice of Award, attached as Exhibit C.
- 6.5 This Contract.
- 6.6 Project Manual, including Instructions to Bidders, Amendments to the Standard specifications, Special Provisions, and Drawings, attached as Exhibit D.
- 6.7 Performance and Construction Payment Bonds, attached as Exhibit E.
- 6.8 2018 Standard Specifications for Road, Bridge, and Municipal Construction, as published by W.S.D.O.T.
- 6.9 Certificates of Insurance, attached as Exhibit F.
- 6.10 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

All written Amendments and other documents amending, modifying, or supplementing the Contract Documents.

- 6.11 There are no Contract Documents other than those listed in this Article 6. The Contract Documents may only be amended, modified, or supplemented as provided in the Special Provisions.

Article 7-Indemnification

- 7.1 **Indemnification by Contractor** – To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney’s fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any action or omission, negligent or otherwise, of the CONTRACTOR, its employees, agents or volunteers or CONTRACTOR’s subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; 3) are based upon the CONTRACTOR’s or its subcontractors’ use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the CONTRACTOR shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the CONTRACTOR shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen’s compensation act, disability benefit act or other employee benefit act, and the CONTRACTOR hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into the Contract, are reflected in the CONTRACTOR’s compensation, and have been mutually negotiated by the parties.
- 7.2 **Participation County – No Waiver** – The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONTRACTOR’s indemnity obligations under the Contract.
- 7.3 **Survival of Contractor’s Indemnity Obligations** - The CONTRACTOR agrees all CONTRACTOR’s indemnity obligations shall survive the completion, expiration or termination of this Contract.

Article 8 – Public Records Act

This Agreement and all public records associated with this Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the “Act”). To the extent that public records then in the custody of the CONTRACTOR are needed for the COUNTY to respond to the request under the Act, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the

COUNTY. If the CONTRACTOR considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the CONTRACTOR shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the CONTRACTOR and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the CONTRACTOR (a) of the request and (b) of the date that such information will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the CONTRACTOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONTRACTOR for releasing records not clearly identified by the CONTRACTOR as confidential or proprietary. The COUNTY shall not be liable to the CONTRACTOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

CONTRACTOR agrees to indemnify and, to the greatest extent legally possible, to hold harmless the COUNTY in any action by a third party due to the negligence, recklessness or intentional actions by the CONTRACTOR relating to performance of this contract. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

Article 9 – Ownership

Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the CONTRACTOR or the CONTRACTOR'S subcontractors or consultants for delivery to the COUNTY under this Agreement shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the CONTRACTOR uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the CONTRACTOR and is not "work made for hire" within the terms of the Agreement.

Article 10 –Insurance

Without limiting the CONTRACTOR's indemnification of COUNTY, and prior to commencement of this Contract, CONTRACTOR shall obtain, provide and maintain during the terms of this Contract, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

1. **General Liability Insurance** – CONTRACTOR shall maintain commercial general liability insurance with at least as broad as Insurance Service Office from CG 00 0, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
2. **Professional Liability (Errors & Omissions) Insurance** - CONTRACTOR shall maintain professional liability insurance that covers the services to be performed in connection with this Contract, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and CONTRACTOR agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Contract.
3. **Workers' Compensation Insurance** – CONTRACTOR shall, at its own expense, maintain Workers' Compensation Insurance (statutory limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).
4. **Waiver of Subrogation** – All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

The CONTRACTOR must name the COUNTY as an additional insured. The CONTRACTOR agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state.

Article 11 – Attorney's Fees/Cost of Suit and Venue

If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit. The parties agree that any suit pertaining to this Contract shall be filed in the Pacific County Superior Court.

1. **Disputes** – Differences 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 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 their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue**.
2. **Choice of Law, Jurisdiction and Venue** – 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.

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 Pacific County, Washington.

3. **Severability** – 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 the Contract did not contain the particular provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

Article 12-Assignment

- 12.1 The Contractor shall not assign any rights or obligations under or arising from this Agreement without the prior written consent of the COUNTY.

Article 13 - Binding Effect

- 13.1 COUNTY and CONTRACTOR each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

Article 14 – Severability

- 14.1 The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any provision of this Agreement is unenforceable for any reason whatsoever, that provision shall be appropriately limited and given effect to the extent that it may be enforceable.

Article 15 - Venue

- 15.1 In the event that either party shall bring a suit or action on or arising out of this contract, it is mutually agreed that such suit or action shall be brought only in Pacific County, Washington.

Article 16 - Entire and Complete Agreement

- 16.1 This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral.

In the event of any conflict between the language set forth in this Agreement, any of the exhibits hereto, Standard Specifications, or Special Provisions, the language in this Agreement shall prevail, and this Agreement shall be interpreted as if that conflicting language was not a part of the agreement between the parties.

IN WITNESS WHEREOF, the CONTRACTOR has executed this instrument, on the day and first below written, and the County Legislative Authority has caused this instrument to be executed by and in the name of said PACIFIC COUNTY the day and year first above written.

Executed by the Contractor on this _____ day of _____, _____.

Contractor

**Board of County Commissioners
Pacific County, Washington**

Company

Frank Wolfe, Chair

Title

Lisa Olsen, Commissioner

Address

Mike Runyon, Commissioner

City, State, Zip Code

Approved As To Form:

Attest:

Marie Guernsey
Clerk of the Board

Date