Contract

THIS AGREEMENT, made and entered into this 18th day of May, 2015, between Pacific County, hereinafter called the COUNTY, and Naselle Rock & Asphalt, 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:

SANDRIDGE ROAD RESURFACING PROJECT MP 7.00 TO MP 8.30

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 Ø to Ø 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 2014 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 The CONTRACTOR, including its successors and assigns, shall indemnify, defend, and save harmless the COUNTY and all officers, employees and agents of the COUNTY from all claims, suits, or actions brought for injuries to, or death of, any persons or damages resulting from construction of the work or in consequence of any negligence regarding the work, the use of any improper materials in the work, caused in whole or in part by any act or omission by the CONTRACTOR or his agents or employees during performance or at any time before final acceptance. In addition to any remedy authorized by law, the COUNTY may retain as much of the money due the CONTRACTOR as deemed necessary to assure indemnification until disposition has been made of such suits or claims. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney's fees shall be allowed to the prevailing party.

The CONTRACTOR, including its successors and assigns, shall indemnify, defend, and save harmless any city or district, its officers, and employees connected with the work, within the limits of which city or district the work is being performed, all in the same manner and to the same extent as provided above for the protection of the COUNTY, its officers and employees, provided that no retention of money due the CONTRACTOR be made by the COUNTY except as provided in Chapter 60.28 RCW, pending disposition of suits or claims for damages brought against the city or district.

The CONTRACTOR will not be required to indemnify, defend, or save harmless the COUNTY as provided in the preceding paragraphs of this Article if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the COUNTY. Where such claims, suits, or actions result from the concurrent negligence of (a) the COUNTY or the COUNTY'S agents or employees and (b) the CONTRACTOR or the

CONTRACTOR'S agent or employees, the indemnity provisions provided in the preceding paragraphs of this Article shall be valid and enforceable only to the extent of the CONTRACTOR'S negligence or the negligence of its agents and employees.

It is further specifically and expressly understood that the indemnification provided in this Article constitutes the Contractor's waiver of immunity under industrial insurance and Title 51 RCW solely for the purposes of this indemnification and not with respect to claims by any third party. This waiver has been mutually negotiated by the parties.

Article 8-Assignment

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

Article 9 - Binding Effect

9.1 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 10 – Severability

10.1 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 11 - Venue

11.1 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 12 - Entire And Complete Agreement

12.1 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 28th day of May, 2015.

Contractor

Naselle Rock & Asphalt Co.
Company

President
Title

P.O. Box 5
Address

Naselle, WA 98638
City, State, Zip Code

Board of County Commissioners
Pacific County, Washington

Chairperson

Commissioner

Commissioner

Approved As To Form:

Attest:

Marie Guernsey 5/18/15
Clerk of the Board