

CONTRACT  
Small Works

THIS AGREEMENT, made and entered into this 15<sup>th</sup> day of August, 2016, by and between Clark County, a political subdivision, hereinafter called the "Owner", and McNealy Excavating, Inc. hereinafter called "Contractor",

WITNESSETH:

WHEREAS, the Purchasing Department of Clark County established small works roster provisions pursuant to Revised Code 39.04.155 and requested Quotes for Fairgrounds Parking Lot F Rehabilitation, Alternate No. 1,

WHEREAS, the Clark County Purchasing Office on the 20<sup>th</sup> day of July 2016, opened said quote and did, on the 21<sup>st</sup> day of July 2016, accept the quote of the Contractor herein as the lowest responsible bidder for Clark County Quote No. 0224 their total amount being \$269,655.84 now; therefore,

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

ARTICLE I. THE WORK AND SERVICES

The Contractor for the consideration specified in the "Contract Documents" as enumerated herein below, shall be in strict accordance with ALL of the provisions therein, perform all work and provide all materials and/or such product called for by the Contract Documents.

ARTICLE II. DURATION

Contractor will start construction within five (5) calendar days after receiving written notice to proceed, and shall be physically completed on or before November 30, 2016.

ARTICLE III. CONTRACTOR

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 this contract and every part thereof, except such as are mentioned in the specifications to be furnished by Clark County.

#### Article IV. COMPENSATION

The Parties mutually agree that in no event shall the amount of billing exceed \$269,655.84 without prior written approval of the County.

#### ARTICLE V. CONTRACT DOCUMENTS

The Contract Documents consist of this agreement, all conditions of Clark County Quote No. 0224 (general, special and supplementary and other conditions, drawings, specifications and addendum) and other documents listed below issued prior to the execution of this agreement and all modifications and change orders issued subsequent thereto. These form a contract and all are as fully a part of the contract as if attached to this agreement or repeated herein. Where provisions of the Contract conflict with the provisions of the quote, the provisions of the contract will control.

An enumeration of the contract documents is set forth below.

1. The general, special and technical provisions of Clark County Quote No. 0224 and
2. This agreement; and
3. The proposal of the contractor herein dated July 20, 2016, signed by Chris McNealy, President,

#### ARTICLE VI. RELATIONSHIP OF THE PARTIES

The parties intend that an independent contractor relationship will be created by this agreement. The County is interested only in the results to be achieved, and the conduct and control of all services or work will lie solely with the Contractor. No agent, employee, servant or otherwise of the Contractor shall be or shall be deemed to be an employee, agent, servant or otherwise of the County for any purpose, and the employees of the Contractor are not entitled to any of the benefits that the County provides for County employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors, or otherwise during the performance of this contract. In the performance of the services herein contemplated, the Contractor is an independent contractor with the authority to control and direct the performance and details of the work, the County being interested only in the results obtained; however, the work contemplated herein must meet the approval of the County pursuant to the provisions of the bid under which the services and work were let to the Contractor.

#### ARTICLE VII. INDEMNIFICATION / HOLD HARMLESS

The Contractor shall defend, indemnify and hold the County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees,

arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the County. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the County, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

#### ARTICLE VIII. VENUE STIPULATION

This agreement has and shall be construed as having been made and delivered within the State of Washington and the laws of the State of Washington shall be applicable to its construction and enforcement. Any action at law, suit in equity or judicial proceeding for the enforcement of this agreement or any provisions hereto shall be instituted only in the Courts of competent jurisdiction within Clark County, Washington.

#### ARTICLE IX. COMPLIANCE WITH LAWS

The Contractor in the performance of this agreement agrees to comply with all applicable federal, state and local laws, prevailing wage requirements, ordinances and regulations including but not limited to those pertaining to civil rights. The Contractor may not, without the prior written approval of the County, assign, sublet or transfer in whole or in part his interest in this agreement.

Article X. PUBLIC RECORDS ACT: Notwithstanding the provisions of this Agreement, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, RCW Chapter 42.56, as may hereafter be amended, Contractor agrees to maintain all records constituting public records and to produce or assist Clark County in producing such records, within the time frames and parameters set forth in state law. Contractor further agrees that upon receipt of any written public record request, Contractor shall, within two business days, notify Clark County by providing a copy of the request to the Clark County Public Records Officer/Department of Public Works.

ARTICLE XI. APPENDIX

The terms of Appendix C, Hazard Communication Program are incorporated herein by this reference.

ARTICLE XII. INTEGRATION

The Contract Documents contain all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise regarding the subject matter of the Contract Documents shall be deemed to exist or to bind any of the parties. All parties have read and understand the above contract and now state that no representations, promises, or agreements not expressed by the Contract Documents have been made to induce the other to execute the same.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year set forth hereinabove.

Approved As To Form Only:

ANTHONY F. GOLIK  
Prosecuting Attorney

By   
Deputy Civil Prosecutor

  
Mark McCauley, County Manager

By   
McNealy Excavating, Inc.

**Vendor/Contractor:**

Have you or any of your employees who will be directly compensated retired from a Washington State Retirement System using the 2008 Early Retirement Factor?

Yes

No

If yes, please provide the name and social security number for each retiree to Clark County Purchasing.