

Agreement made on 6-2 1980, between the County of Mason, a municipal corporation of the State of Washington, herein referred to as COUNTY and Mason Shelton James Excavating City of Shelton State of Wash., herein referred to as CONTRACTOR, a person duly licensed as a contractor in the State of Washington.

COUNTY and CONTRACTOR, for the consideration set forth herein, agree as follows:

SECTION ONE
SCOPE OF WORK

The CONTRACTOR shall do all work and furnish all tools, materials, any additional materials needed for completion of the project, and equipment necessary to complete work consisting of the base bid for: TOP SOIL - MCRA

Contract Amount	\$	<u>14250.00</u>
5.1% Washington State Sales Tax	\$	<u>726.00</u>
Total Contract with Sales Tax	\$	<u>14976.75</u>

CONTRACTOR shall perform all work in accordance with and as described in the plans and specifications above mentioned and in full compliance with the terms, conditions and stipulations herein referred to and by such reference incorporated herein and made part thereof as fully for all purposes as is here set forth at length by this contract and every part thereof.

SECTION TWO
DRAWINGS AND SPECIFICATIONS

a. Such copies of the drawings and specifications as are reasonable required for the execution of the work will be furnished to CONTRACTOR free of charge unless otherwise provided.

b. CONTRACTOR shall keep himself supplied with the latest issues of all drawings and specifications and shall keep one copy thereof at the site of the work in good order available to COUNTY.

c. The drawings and specifications, and any copies thereof, are and shall remain the property of COUNTY and shall not be reused on other work by CONTRACTOR. Such documents shall be delivered to COUNTY at the completion of the work, or earlier if required.

d. COUNTY shall promptly furnish CONTRACTOR with such additional instruction by means of drawings or otherwise, as is required to proceed with the work. All such drawings and instruction shall be consistent with the contract and reasonable inferable therefrom. The work shall be executed in conformity with such instructions. CONTRACTOR shall do no work without proper drawings and instructions.

SECTION THREE
LIABILITY FOR DAMAGES

The CONTRACTOR agrees to indemnify and save harmless Mason County, its appointed and elective officers and employees, from and against all loss or expense, including attorney's fees and costs by reason of liability imposed by law upon the COUNTY, its elected or appointed officials or employees for damages because

of bodily injury including death at any time resulting therefrom sustained by any person or persons and on account of damage to property including loss of use thereof, arising out of or in consequence of the performance of this work, whether such injuries to persons or damage to property is due to the negligence of the CONTRACTOR, his agents or employees, his subcontractors, their employees, Mason County, its appointed or elected officers, employees, or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the COUNTY, its appointed or elected officials or employees.

SECTION FOUR
INSPECTION OF WORK AND MATERIALS

- a. COUNTY may appoint and employ such persons as may be necessary to act as inspectors or agents for the purpose of supervising in the interests of COUNTY, materials furnished and work done as the work progresses.
- b. COUNTY, its inspectors, agents, or representatives, shall, at all times, have unrestricted access to all parts of the work and to other places where or in which the preparation of materials and other integral parts of the work are being carried on and conducted.
- c. CONTRACTOR shall provide all facilities and assistance required or requested to carry out the work of supervision and inspection by CONTRACTOR, or his inspectors, agents, or representatives.
- d. Inspection of the work by these authorities or their representatives shall in no manner be presumed to relieve in any degree the responsibility or obligations of CONTRACTOR, or to constitute CONTRACTOR any agent of COUNTY.
- e. No material of any kind shall be used in the work until it has been inspected and accepted by COUNTY. All rejected materials shall be immediately removed from the premises. Any materials or workmanship found at any time to be defective shall be replaced or remedied at once regardless of previous inspection. Inspection of materials shall be promptly made, and, where practicable, at the source of supply.
- f. Whenever the specifications, the instructions of COUNTY, or the laws, ordinances, or regulations of any public authority require work to be specially tested or approved, CONTRACTOR shall give timely notice of its readiness for inspection, and if the inspection is by another authority, of the date fixed for such inspection.

SECTION FIVE
CHANGES IN THE WORK

The quantities of work as stated in the proposal or indicated on the drawings or specifications are only approximate, and during the progress of the work COUNTY may omit portions of the work and increase or decrease the quantity thereof up to a limit of ten percent (10%) of the total amount of the contract based on such estimated quantities. CONTRACTOR shall at no time make claim for anticipated profit or loss of profits because of any difference between the quantities of various classes of work actually done or of the material actually furnished and such estimated quantities.

SECTION SIX
CONTRACTOR'S BOND

CONTRACTOR shall make, execute and deliver to the COUNTY a good and sufficient bond, with two or more sureties, or with a surety company as surety, conditioned that CONTRACTOR shall faithfully perform all the provisions of such contract and pay all laborers, mechanics and subcontractors and material, men,

and all persons who shall supply CONTRACTOR, or subcontractors, with provisions and supplies for the carrying on of such work, which bond shall be filed with the County Auditor of the COUNTY.

SECTION SEVEN INSURANCE

CONTRACTOR shall not commence work under this contract until he has obtained all insurance required under this section and such insurance has been approved by COUNTY. Likewise, CONTRACTOR shall not allow any approved subcontractor to commence work on his subcontract until all similar insurance required of subcontractor has been so obtained and approved. The following insurance shall be required:

- a. Workmen's Compensation Insurance for all of contractor's employees engaged in work at the site of the project.
- b. Public liability and property damage insurance to protect CONTRACTOR and all of his approved construction subcontractors from claims for damages for personal injury, accidental death, and damage to property, in the following amounts:

SECTION EIGHT EMPLOYMENT OF STATE RESIDENTS

CONTRACTOR or subcontractor shall employ ninety-five percent (95%) or more bona fide Washington residents as employees where more than forty persons are employed, and ninety percent (90%) or more bona fide Washington residents as employees where forty or less persons are employed. The term "resident" as used in this section, shall mean any person who has been a bona fide resident of the State of Washington for a period of ninety (90) days prior to such employment: PROVIDED, that this section shall not apply to any employees who are residents of any state bordering the State of Washington if such bordering state does not restrict the right of a resident of Washington to be employed in the performance of all contracts let by the bordering state or any department thereof, or any county, city, or town for the erection, construction, alteration, demolition, or repair of any public building, structure, bridge, highway, or any other kind of public work or improvement.

In the event a sufficient number of Washington residents shall not be available the CONTRACTOR or subcontractor shall immediately notify the COUNTY of such facts, and shall state the number of nonresidents needed. The COUNTY shall immediately investigate the facts and if the conditions are as stated the COUNTY shall, by a written order, designate the number of nonresidents and the period for which they may be employed: PROVIDED, That should residents become available within the period, such residents shall be immediately employed and the period shortened consistent with the supply of resident labor.

Any CONTRACTOR or subcontractor who shall employ a nonresident in excess of the percentage preferences, excepting as herein permitted, shall have deducted, for every violation, from the amount due him, the prevailing wages which should have been paid to a displaced resident. The money so deducted shall be retained by the public body for whom the contract is being performed.

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor.

SECTION NINE WAGE RATES

- a. Every mechanic, laborer, workman or other person performing

work contemplated by this contract, whether employed by CONTRACTOR or any subcontractor, shall be paid not less than the prevailing rate of wages as provided for by RCW 39.12. In conformance with such statute, employees engaged in work under this contract in the trades or occupations listed below shall be paid not less than the hourly rate set opposite such occupation:

Occupation	Hourly Wage Rate
_____	_____
_____	_____
_____	_____
_____	_____

If any other occupation is required on the work, CONTRACTOR shall request the chief fiscal officer of COUNTY for a supplemental schedule covering such occupation.

b. If COUNTY orders CONTRACTOR to perform extra or additional work that makes it necessary for CONTRACTOR or subcontractor to employ in the performance of such work any person in any trade or occupation for which no minimum wage rate is specified herein, COUNTY will include in the contract order for such extra or a additional work a minimum wage rate for such trade or occupation, and any employee engaged in work in such trade or occupation shall be paid not less than the wage rate so included.

c. Before any payment is made by the COUNTY of any sums due under this contract the CONTRACTOR and each subcontractor shall submit a "Statement of Intent to Pay Prevailing Wages". Following the acceptance of the project, the CONTRACTOR and each subcontractor shall submit an "Affidavit of Wages Paid" certifying that all prevailing wage requirements have been satisfied. In addition, the prime CONTRACTOR shall submit to the Washington Department of Labor and Industries a "Release for the Protection of Property Owners and General Contractor" form provided by the Department of Labor and Industries. These affidavits will be required before any funds retained according to the provisions of RCW 60.28.010 are released to the CONTRACTOR.

SECTION TEN
STATE TAXES

Before paying the retained percentage to the CONTRACTOR the CONTRACTOR shall secure from the State Department of Revenue a certificate that all taxes due with respect to such contract have been paid in full. When any payments by the CONTRACTOR to the State Department of Revenue are due and unpaid whether such taxes are based upon this contract or not, the COUNTY shall deduct from any sums due the CONTRACTOR the amount of such payments and pay the same into the proper state fund.

SECTION ELEVEN
PROHIBITION OF DISCRIMINATION

The CONTRACTOR shall comply with all state laws and regulations which are in effect pertaining to Non-Discrimination, and in addition or contracts financed in whole or in part with federal funds he shall comply with all federal laws and regulations which are in effect.

SECTION TWELVE
SAFETY PRECAUTIONS

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of all applicable laws and building and construction codes shall be observed. Machinery, equipment, and all hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction published

by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable laws.

SECTION THIRTEEN COMPLIANCE WITH LAWS

CONTRACTOR and every subcontractor or person doing or contracting to do any work contemplated by this contract shall keep himself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of his contract or any extra work, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances, or regulations are mentioned herein, and shall indemnify COUNTY, its officers, agents, and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, or regulations.

SECTION FOURTEEN CERTIFICATES AND PERMITS

CONTRACTOR shall secure at his own expense all necessary certificates and permits from municipal or other public authorities required in connection with the work contemplated by this contract or any part thereof, and shall give all notices required by law, ordinance, or regulation. He shall pay all fees and charges incident to the due and lawful prosecution of the work contemplated by this contract, and any extra work performed by him.

SECTION FIFTEEN TERMINATION

a. If CONTRACTOR (1) is adjudged bankrupt, (2) makes a general assignment for the benefit of his creditors, (3) has a receiver appointed on account of his insolvency, or (4) persistently or repeatedly refuses or fails, in cases for which extension of time in writing is provided, to supply enough properly skilled workmen or proper materials, fails to make prompt payment for materials or labor, persistently disregards laws, ordinances, or instructions of COUNTY, ceases operations under the contract at any time for a period of working days, or otherwise is guilty of a substantial violation of any provision of the contract, then COUNTY, may, without prejudice to any other right or remedy and after giving CONTRACTOR and his surety 30 days written notice, terminate the employment of CONTRACTOR, take possession of the premises and of all materials, tools, and appliances thereon, and finish the work by whatever method COUNTY may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the expense of finishing the work, including compensation for additional material and administrative services, such excess shall be paid to CONTRACTOR. If such expense exceeds the unpaid balance, CONTRACTOR shall pay the difference to COUNTY.

b. If the work is stopped under order of any court or other public authority for a period of two months, through no act or fault of CONTRACTOR, then CONTRACTOR may, on 30 days' written notice to COUNTY, and provided the order of court or public authority is still in effect, stop work or terminate the contract, and recover from COUNTY payment for all work executed and any loss sustained on any plant or material and other reasonable damages.

SECTION SIXTEEN EXTRA WORK AND MATERIALS

CONTRACTOR shall do any work and furnish any materials not specifically provided for herein, which, in the opinion of COUNTY may be found necessary or advisable for the proper completion of the work or the purposes thereof. All extra work and materials

shall be ordered in writing by COUNTY and in no case will any such work or materials in excess of the amount shown by the plans and specifications be paid for unless so ordered, and then only when an itemized claim therefor is presented to COUNTY for allowance at the close of the calendar month in which the same has been done or furnished. Otherwise, all claim for such work or materials shall be absolutely waived by CONTRACTOR, and COUNTY shall not be required to allow payment for the same or any part thereof.

As full compensation for such extra work and materials, CONTRACTOR will accept the unit price bid in case of items covered by unit prices in the proposal and for such items as are not covered by a unit price, the reasonable cost as determined by COUNTY of all necessary labor and materials, and the prorated cost of labor liability insurance plus percent (%) for superintendence, the use of tools, and plant and overhead expense. CONTRACTOR shall give COUNTY access to all accounts, bills, pay-rolls, and vouchers relating to such extra work. CONTRACTOR shall have no claim for compensation for such work in the case of items not covered by unit prices unless a statement in writing of the actual cost of the same, fully itemized as to labor, equipment, and materials, is presented to COUNTY before the day of the month following that within CONTRACTOR complied with such specific order.

SECTION SEVENTEEN
ACCEPTANCE OF WORK

No act of COUNTY or CONTRACTOR, or of any representative of either, in superintending or directing the work, or any extension of time for the completion of the work, shall be regarded as an acceptance of such work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final certificate of COUNTY. Before any final certificate will be allowed, CONTRACTOR will be required to swear to and sign a statement on the certificate that he accepts the same in full payment and settlement of all claims on account of work done and materials furnished under this CONTRACT and that all claims for materials provided or labor performed have been paid and set aside in full. No waiver of any breach of this contract by COUNTY or anyone acting on its behalf shall be held as a waiver of any other subsequent breach thereof. Any remedy provided herein shall be taken and construed as cumulative.

SECTION EIGHTEEN
METHOD OF PAYMENT

CONTRACTOR agrees to timely perform all work involved in this contract and COUNTY agrees to pay CONTRACTOR for the work completed and materials located on site upon the terms set forth in the specifications or if not specifically listed therein, the following payment schedule shall apply:

(A) Lump Sum: CONTRACTOR shall receive lump sum payment of \$ _____ plus sales tax of \$ 14976.75 for total payment of _____ for all work performed upon completion of contract work which has been approved by the Building Code Division of Mason County. Ten percent (10%) of lump sum payment shall be retained and paid to CONTRACTOR per RCW Chapters 60.38 and 39.12.

(B) Monthly Progress Payments: COUNTY shall pay percent (%) of the labor and material incorporated into the work (plus sales tax on such amount) determined as of the day of each month upon request by CONTRACTOR, less any previous payments made. Retainage as required by law, shall also be made upon monthly payments (10%).

SECTION NINETEEN
INCORPORATION OF PROVISIONS REQUIRED BY LAW

Each provision and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, the contract shall be amended to make such insertion on application of either party.

SECTION TWENTY
MODIFICATIONS

COUNTY may modify this contract with respect to the arrangement, character, alignment, grade, or size of the work or appurtenances whenever in its opinion it shall deem it necessary or advisable to do so. CONTRACTOR shall accept such modifications when ordered in writing by COUNTY. Any such modifications shall not subject CONTRACTOR to increased expense without equitable compensation, which compensation shall be determined by COUNTY. If any modification results in a decrease in the cost of work involved, an equitable deduction from the contract price shall be made. Such deductions shall be determined by COUNTY. The determination of any such additional compensation or deduction shall be based on the bids submitted and accepted. No modifications in the work shown on the plans and described in the specifications shall be made, unless the nature and extent thereof has first been certified by COUNTY in writing and sent to CONTRACTOR.

SECTION TWENTY-ONE
ASSIGNMENT

CONTRACTOR shall not sublet any part of the work under this contract or assign any moneys due him hereunder without first obtaining the written consent of COUNTY. This contract shall inure to the benefit of and shall be binding on the parties and on their respective successors and assigns. Neither party shall assign or transfer his or its interest herein in whole or in part without the written consent of the other.

SECTION TWENTY-TWO
WITHDRAWAL OF RETAINED PAYMENTS

CONTRACTOR may withdraw the whole or any portion of any amount retained from payments to CONTRACTOR pursuant to the terms of this contract, on depositing with COUNTY corporate stock or bonds of the municipality, or securities of the United States government, of a market value equal to the amount so withdrawn. COUNTY shall collect all interest or income on any stocks or bonds so deposited and shall pay the same to CONTRACTOR. If coupon bonds are deposited, the coupons as they respectively become due shall be delivered to CONTRACTOR.

SECTION TWENTY-THREE
COMPLETENESS OF CONTRACT

The written terms and provisions of this contract shall supersede all prior verbal statements of any officer or other representative of COUNTY, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this contract or the contract documents.

SECTION TWENTY-FOUR
GUARANTY OF WORK

- a. CONTRACTOR agrees to guarantee all work under this contract for a period of -0- year(s) from the date of final settlement thereof.
- b. If any unsatisfactory condition or damage develops within

the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with the contract, contractor shall, whenever notified by COUNTY, immediately place such guaranteed work in a condition satisfactory to COUNTY and make repairs of all damage to the buildings, equipment, and grounds made necessary in the fulfillment of the guaranty.

c. If CONTRACTOR fails to proceed promptly to comply with the terms of any guaranty under this contract, CONTRACTOR agrees that COUNTY may have such work performed as COUNTY considers necessary to fulfil such guaranty or may allow the damage or defective work to remain as it is. In the first instance, CONTRACTOR shall promptly pay COUNTY such sums as were expended in fulfilling the guaranty; in the second instance, he shall promptly pay COUNTY such sums of money as it would have been necessary to expend to fulfil them. Usual wear and tear and the results of accidents not chargeable to CONTRACTOR or his agents are excepted from the above requirements. Everything necessary for the fulfillment of any guaranty must be done without any expense to COUNTY.

d. To secure performance of CONTRACTOR'S guaranty, COUNTY shall retain for a period of 0 year(s) from the date of final settlement 0 percent (0%) of the contract price. If at the expiration of such period CONTRACTOR has fulfilled his guaranty to the satisfaction of COUNTY, the sum so retained shall be paid to CONTRACTOR. As an alternative, CONTRACTOR may furnish a specific performance bond that will meet the requirements of this section.

SECTION TWENTY-FIVE
TIME OF COMPLETION

CONTRACTOR hereby agrees to complete the work under this contract by 19 . If CONTRACTOR has not completed all work by said date, CONTRACTOR will pay liquidated damages to COUNTY at the rate of \$ per day until completion.

IN WITNESS WHEREOF the parties hereto have cause this agreement to be executed the day and year first hereinabove written.

CONTRACTOR

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON

James Excavating Co.

[Signature]
Chairman

By: William E. James
(Title)

APPROVED AT BOARD MEETING OF
4/2, 1980

PO Box 385 Shelton, wa.
(Address) 58584