

PEND OREILLE COUNTY
RESOLUTION NO. 2020- 32

RESOLUTION REGARDING EXECUTION OF THE 2020 HFE-150 Oil Purchase Agreement
Schedule 2-Western States Asphalt, LLC

WHEREAS, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Pend Oreille County, Washington has the care of county property and the management of county funds and business; and

WHEREAS, the Board of County Commissioners approved the advertisement and award of the 2020 CAPP HFE-150 Schedule 2 Oil purchase; and

WHEREAS, the Board of County Commissioners awarded the contract to Western States Asphalt, LLC; and

WHEREAS, the County Public Works Department recommends the approval of the contract for the 2020 CAPP HFE-150 Schedule 2 Oil purchase with Western States Asphalt, LLC; and

WHEREAS, the Board of County Commissioners feels that the best interest of the public will be served by entering into the contact with Western States Asphalt, LLC.

THEREFORE BE IT RESOLVED by the Board of County Commissioners of Pend Oreille County, Washington, that the contact between Pend Oreille County and Western States Asphalt, LLC is hereby approved, and the Chair of the Board, or a majority of the Board is hereby authorized to execute it on behalf of Pend Oreille County.

APPROVED by the Board of County Commissioners of Pend Oreille County, Washington this 17th day of May 2020



Mike Manus, Chair



Stephen Kiss, Vice-Chair



Karen Skoog, Member

ATTEST: 

Crystal Zieske, Clerk of the Board



2020 CAPP HFE-150 OIL, SCHEDULE 2

THIS AGREEMENT made and entered into this 7th day of May, 2020 between the Board of County Commissioners of Pend Oreille County, State of Washington, acting under and by virtue of Title 36 Revised Code of Washington, as amended, hereinafter called the Board, and Western States Asphalt, LLC for themselves, their heirs, executors, administrators, successors and assigns, hereinafter called the Vendor.

WITNESSETH:

That in consideration of the payments covenants and agreements, hereinafter mentioned, to be made and performed by the parties hereto, the parties hereto covenant and agree as follows:

- I. The Vendor shall provide all materials and equipment necessary to complete the 2020 CAPP HFE-150 Project, Schedule 1, in accordance with and described in the Request for Bids dated March 27, 2020 and the bid submitted by the Vendor, dated April 21, 2020, now referred to and by such reference made a part hereof as fully for all purposes as if here set forth at length, and shall perform any changes in or addition to the work provided under this Contract and every part thereof. The Vendor 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 completing the work provided for in this Contract and every part thereof, except such as are mentioned in the Specifications. Vendor supplemental Trailer Lease Agreement is accepted as provided at time of bid.
- II. The County hereby promises and agrees with the Vendor to employ and does employ the Vendor to provide the labor, tools, materials and equipment to do and cause to have done the above described work and to complete and finish the same according to the Plans and Specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the Specifications and the attached schedule of unit or itemized prices, at the time and in the manner and upon the conditions provided for in this Contract and every part thereof.

The County further agrees to employ the Vendor to perform any changes in or additions to the material provided for in this Contract that may be ordered and to pay for the same under the terms of this Contract and the attached Plans and Specifications.
- III. The Vendor for himself/herself and for his/her heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Vendor.

- IV. It is further provided that no liability shall attach to the County, by reason of entering into this Contract, except as expressly provided herein, the Vendor agrees to protect and indemnify the County in regard to claims of any nature that may arise during the course of this project.
- V. The Contractor shall provide the following required items prior to a Notice to Proceed being issued:
 - a. Current W9; and
 - b. Certificate of Insurance, to specifications described in the Request for Quotations;
- VI. The awarded contract bid price: \$385.00 per ton, including applicable taxes in addition to \$30.00 per load Trailer Lease fee.

IN WITNESS WHEREOF, The said Vendor has executed this instrument on the day and year first below written, and the Board of County Commissioners of the aforesaid County, pursuant to resolution duly adopted, has caused this instrument to be executed by and in the name of said Board, duly attested by its Clerk and the seal of said Board to be hereunto affixed the day and year first above written.

This AGREEMENT is made and signed this 7th day of May, 2020

CONTRACTOR

Western States Asphalt, LLC

Evan Hennings
Authorized Agent (Print Name)

[Signature]
Signature

603-577-408

UBI No.

BOARD OF COUNTY COMMISSIONERS

PEND OREILLE COUNTY, WASHINGTON

[Signature]
Mike Manus, Chair

[Signature]
Steve Kiss, Vice-Chair

[Signature]
Karen Skoog, Member

Approved as to Form:

[Signature]
Dolly Hunt, Prosecuting Attorney

Attest:

Crystal Zieske
Crystal Zieske, Clerk of the Board

EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT (herein the "Agreement") is made this 5th day of May, 2020, by and between Western States Asphalt, LLC, a Washington limited liability company (herein the "Company"), having a place of business at 4327 N. Thor St., Spokane, WA 99217 and Pend Oreille County (such company being referred to hereinafter as "County"), having a place of business at 625 W. 4th Street, Newport WA 99156. Company and County may be individually described herein as a "Party" or collectively as the "Parties."

RECITALS

- A. WHEREAS, County desires to lease from Company certain trailers; and
- B. WHEREAS, Company desires to lease to County such trailers.

NOW THEREFORE, in consideration of the foregoing promises, the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agrees as follows:

AGREEMENT

1. Property Leased. Company hereby leases to County certain trailers, (hereinafter the "Trailers"), the identification of which is more particularly described in Exhibit A attached hereto and incorporated as if fully set forth herein.

2. Term. The term of this Agreement shall commence upon the execution of this Agreement and remain in effect thereafter until terminated at any time upon thirty (30) days prior written notice from one Party to the other.

3. Use of the Trailers. County agrees to comply with all applicable local, state and federal laws and regulations, including compliance with all laws and regulations governing the placarding of the Trailers. County agrees to hold Company harmless from any claim, citation, demand or any other type of action resulting from County's failure to comply with said laws and regulations. County shall not use or allow the Trailers to be used for any illegal purpose; and County shall use the Trailers exclusively for the transportation of goods for Company.

4. Consideration; Payment. In consideration of Company leasing the Trailers to County, County will perform, at its sole cost and expense, any required maintenance (the terms of which are more fully set forth in Section 8, below) on the Trailers during the term of this Agreement. As further consideration, County agrees to pay Company a fee of \$30.00 per load. Company shall invoice County and payment shall be due Net 30 Days from the date of invoice.

5. Title. This Agreement creates a bailment only for the period of time any Trailers are leased to County, and Company shall remain the sole owner of the Trailers. County shall acquire no right, title or other interest in or to the Trailers other than that of a bailee.

6. Condition of Trailers. County acknowledges that it has had full opportunity to inspect the Trailers, and is fully informed, independent of Company, as to the character and construction of the Trailers, and accepts each of the Trailers "AS IS/WHERE IS" WITH ALL FAULTS". Prior to the use hereunder of any of the Trailers, County may inspect same, and in any event will satisfy itself as to the condition of the Trailers prior to commencing the use of any such Trailers. If, following such inspection, County is not satisfied with using any such Trailers in its "AS IS" condition, County will notify Company of such determination.

7. Return. County, at its expense, shall pick up the Trailers and upon termination of this Agreement, the Trailers shall, unless the Parties otherwise mutually agree, be returned to Company's facility, or other location as directed by Company, in the same condition as at the commencement of the Agreement, reasonable wear and tear excepted. In the event that the Trailers are not, in Company's sole opinion, returned to Company in the same condition as when originally leased, reasonable wear and tear excepted, Company may expend such sum as may be necessary to place the Trailers in the same condition as when originally leased, reasonable wear and tear excepted, and County shall pay immediately upon demand from Company all such sums expended by Company.

8. Warranty by County. County represents and warrants that it is familiar with and has knowledge of applicable and relevant environmental, health, and safety laws, statutes, regulations, and ordinances, whether federal, state or local, pertaining to the operation and maintenance of the Trailers. County hereby assumes full responsibility for the operation of the Trailers in compliance with all applicable and relevant environmental, health and safety laws, statutes, regulations and ordinances, whether federal, state or local.

9. Maintenance. County shall be solely responsible for the routine maintenance of the Trailer's brakes, tires, lighting, etc. Further, County shall use reasonable efforts to coordinate maintenance and repair activities with Company and procure Company's prior approval for any maintenance or repair activities which are not of a general or routine nature. Company shall be responsible for the integrity of the Trailer, its vessel and frame. If the integrity of the Trailer, vessel or frame is compromised due to no fault of County, Company will pay for the necessary repairs.

10. Substantial Loss or Damage. County shall bear the risk of loss to any or all of the Trailers during the period used and leased hereunder. If the Trailers are stolen, disappear or are damaged beyond reasonable repair during such period, or cannot be returned to Company in as good of condition as when originally leased, reasonable wear and tear excepted, for any reason, and such loss or damage is not covered by the insurance required in Section 10, County shall immediately pay to Company the fair market value of such Trailers as they existed prior to the damage or loss.

10.1 Company reserves the right to request County to return one or more of the Trailers to locations of Company's choice and leave the Trailers at said locations for a reasonable time for no additional cost. During this time, when County has relinquished control over the Trailers, County will be released from liability ONLY as to: any damage sustained by the Trailers which occurred through no fault of County; and the theft or disappearance of the Trailers.

11. Insurance. County shall maintain insurance as required by applicable law and the applicable rules and regulations of all governmental bodies and agencies. Further, County shall maintain insurance as required by Exhibit B.

12. Taxes and Licenses. Company shall furnish license plates for the Trailers, and shall pay and be responsible for all property taxes on the Trailers based upon value only. County shall pay and be responsible for the payment of all taxes based upon income or use of the Trailers, regardless of however and whenever these costs may be assessed.

13. Assignment. This Agreement may not be assigned by either party without the written consent of the non-assigning party, and such consent shall not be unreasonably withheld. Any assignment made in contravention of these provisions shall be void. County shall not sublease any of its rights and obligations under this Agreement without the prior written consent of Company.

14. Inspection. County agrees to permit Company to inspect and examine any of the Trailers at any time.

15. No Warranty. COMPANY MAKES NO WARRANTY OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE TRAILERS.

16. Waiver. The failure of Company to object to any breach of any of the terms, covenants or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights or privileges, but the same shall continue and remain in force and effect as if no such forbearance or waiver had occurred.

17. Indemnity. To the fullest extent permitted by law, County shall defend, protect, indemnify and hold Company, its parent, subsidiaries, and any other related or affiliated entities, and their respective officers, directors, and employees (collectively referred to for purposes of this paragraph as "Indemnitees") harmless from and against all claims, demands, lawsuits, causes of action, strict liability claims, penalties, fines, administrative law actions and orders, expenses (including, but not limited to attorneys' fees) and costs of every kind and character arising out of or in any way incident to the operation, possession or use of the Trailers by County, its subcontractor, or the employees of either, or while County, its subcontractor, or the employees of either are performing any service for Company wherein said Trailers are used, or other work or services performed hereunder by County, its subcontractor, or the employees of either, on account of personal injuries, death, damage to or loss of property or goods, or damage to the environment, regardless of whether such harm is to County, Indemnitees, the officers or employees or either, or any other person or entity and regardless of whether such harm is caused or contributed to by the negligence of the Indemnitees or any third party, but excluding harm to the extent caused by the sole (100%) negligence of Indemnitees.

18. Force Majeure. Neither party shall be liable for failure to perform or for delay in performing this Agreement, where such failure or delay is occasioned by (i) storm or flood; (ii)

acts of God or of the public enemy, war, riots or police action; or (iii) changes in any law, regulation or ordinance of any government or government agency or instrumentality enacted or adopted after the date of this Agreement. The party asserting that an event of force majeure has occurred shall send the other party notice thereof no later than three (3) days after the beginning of such claimed event, setting forth a description of the event of force majeure, an estimate of its effect upon the party's ability to perform its obligations under this Agreement, and the duration thereof. The notice shall be supplemented by such other information or documentation as the party receiving the notice may reasonably request. As soon as possible after the cessation of any event of force majeure, the party which asserted such event shall give the other party written notice of such cessation. Whenever possible, each party shall give the other party notice of any threatened or impending event of force majeure.

18.1 If the Trailers are destroyed by some force beyond the control or fault of either Company or County, neither party shall be required to return the Trailers to their original state, and this Agreement will be canceled without penalty to either party, except County shall be liable for loss or damage as provided in Section 9.

19. Applicable Law; Venue. This Agreement is made in accordance with and shall be interpreted and governed by the laws of the State of Washington. If any action or other proceeding shall be brought on or in connection with this Agreement, the venue of such action shall be in Spokane County, Washington.

20. Attorney's Fees. In the event of any litigation to enforce the terms of this Agreement or otherwise arising out of this Agreement, the prevailing party shall be entitled to recover from the other party all of its reasonable attorneys' fees and other reasonable costs and expenses incurred in connection with such litigation, including fees and other reasonable costs and expenses incurred on appeal.

21. Notices. Any and all notices or other communications required or permitted to be given under any provisions of this Agreement shall be in writing, shall be addressed to the relevant Parties as set forth below, and shall be deemed to have been duly given (i) if personally delivered, when delivered, or (ii) if mailed by first class registered mail, return receipt requested, addressed to the parties at the address set forth below, five (5) days after mailing:

21.1 If to Company:

Western States Trucking, LLC
Attn: Evan Henninger,
4327 N. Thor St.
Spokane, WA 99217

21.2 If to County:

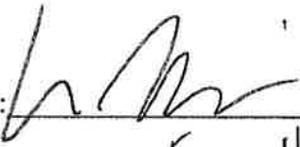
Any Party may by notice to the other parties, given as aforementioned, change its address, authorized representative or telephone number for notification purposes.

22. Entire Agreement. This Agreement and any exhibits and attachments represent the entire agreement between the Parties. This Agreement shall not be amended except by an agreement in writing signed by the Parties.

23. Lease Agreement Term. This Agreement and any exhibits and attachments is subject to the 2020 Chip Seal Construction season period defined as June 1st through August 31st. At which time; this lease agreement will terminate and a New Lease agreement will be signed for further use of the equipment.

EXECUTED by the Parties as of the day and year first above written.

**Western States Trucking, LLC, a
Washington limited liability company**

By: 
Printed Name: Evan Hennings
Title: Sales Manager

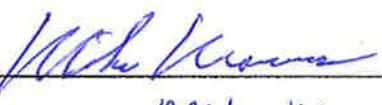
By: 
Printed Name: Mike Manus
Title: County Commissioner,
Chair

EXHIBIT A
List of Equipment

**Based off 2019, this agreement is valid only for use during RD-2019 CAPP Schedule
3 – HFE-150 (vendor Supplied Tank Trailer-County Haul)**

Equipment Number	VIN#	Year	Make	Model
C7501	1PMA14325J1009306	1988	Polar	
	Or			
32T	1E9T4830XNE007111	1992	Etnyre	

Please Note: Western States Trucking, LLC agrees to lease one of the listed trailers or equivalent trailer if either of the listed trailers are otherwise indisposed at time of need. Specific trailer is subject to availability.