

STAFF REPORT



CITY OF OCEANSIDE

DATE: February 22, 2012

TO: Honorable Mayor and City Council Members

FROM: Water Utilities Department

SUBJECT: **PROFESSIONAL CONTRACTOR SERVICES AGREEMENTS TO JOE'S PAVING FOR ROAD REPAIRS IN AREAS DAMAGED BY WATER INFRASTRUCTURE FAILURES**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve three professional services agreements with Joe's Paving of Valley Center for road repairs in areas damaged by water valve failures and the La Salina Wastewater Treatment Plant pipe failure: 1) in an amount not to exceed \$18,750 for repairs on North Avenue, 2) in an amount not to exceed \$14,898 for repairs on Avenida de la Plata, and 3) in an amount not to exceed \$7,985 for road repairs at the La Salina Wastewater Treatment Plant; and authorize the City Manager to execute the agreements.

BACKGROUND

Water Utilities had two significant valve failures, one at 4630 North Avenue and the other at the intersection of Avenida de la Plata and Avenida Sevilla. These two failures caused significant damage to the road and base structure requiring its complete removal and replacement.

ANALYSIS

Water Utilities staff obtained three proposals for this work. In accordance with the City's procedure for the purchasing process, staff evaluated the proposals. After a thorough review, staff recommends Joe's Paving. The bids were as follows:

Supplier	Bid Amount
Joe's Paving	\$33,647.50
Southland Paving	\$35,843.94
Apache	\$58,656.00

Staff is including another small paving project of \$7,985 from the recent pipe failure at the La Salina Wastewater Treatment Plant, bringing the combined total for paving work to \$41,633.

This agreement is being brought forward for Council approval since the cumulative total for Joe's Paving projects is over \$50,000. The extensive nature of the repair requires a specialty contractor to perform the work rather than using internal Public Works resources.

FISCAL IMPACT

The FY 11-12 adopted budget for the Water Operating Fund/Repair and Maintenance (750756711.5320) has an available balance of \$204,375; the water-related road repairs total \$33,648. The FY 11-12 adopted budget for the La Salina Plant Improvements (909955000722.5703.10600) has an available balance of \$235,297; the La Salina Plant road repair is \$7,985. Therefore, sufficient funds are available for the projects.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORTS

The Utilities Commission unanimously approved staff's recommendation at its regularly scheduled meeting on January 17, 2012.

RECOMMENDATION

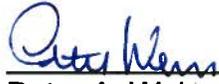
Staff and the Utilities Commission recommend that the City Council approve three professional services agreements with Joe's Paving of Valley Center for road repairs in areas damaged by water valve failures and the La Salina Wastewater Treatment Plant pipe failure: 1) in an amount not to exceed \$18,750 for repairs on North Avenue, 2) in an amount not to exceed \$14,898 for repairs on Avenida de la Plata, and 3) in an amount not to exceed \$7,985 for road repairs at the La Salina Wastewater Treatment Plant; and authorize the City Manager to execute the agreements.

PREPARED BY:



Greg Blakely
Administration Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Cari Dale, Water Utilities Director

Teri Ferro, Financial Services Director





- Exhibit A: North Avenue Professional Services Agreement
- Exhibit B: Avenida de la Plata Professional Services Agreement
- Exhibit C: La Salina Wastewater Plant Professional Services Agreement

CITY OF OCEANSIDE

PROFESSIONAL CONTRACTOR SERVICES AGREEMENT

PROJECT: NORTH AVENUE ROAD REPAIRS DUE TO DAMAGE FROM WATER VALVE FAILURES -

THIS AGREEMENT, dated _____, 2012 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and JOES'S PAVING CO., INC., hereinafter designated as "CONTRACTOR."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The CONTRACTOR desires to provide asphalt road repairs in areas damaged by infrastructure failures and is more particularly described in the CONTRACTOR'S proposals dated December 14, 2011, attached hereto and incorporated herein as Exhibits A.
2. **INDEPENDENT CONTRACTOR.** CONTRACTOR'S relationship to the CITY shall be that of an independent contractor. CONTRACTOR shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONTRACTOR shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

**North Avenue Road Repairs due to Damage
from Water Valve Failures**

4.2 CONTRACTOR shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONTRACTOR under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONTRACTOR to restore the required limits. The CONTRACTOR shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONTRACTOR resulting from any of the CONTRACTOR'S work.

4.4 All insurance companies affording coverage to the CONTRACTOR for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the CONTRACTOR pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

**North Avenue Road Repairs due to Damage
from Water Valve Failures**

- 4.6 CONTRACTOR shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONTRACTOR shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.
5. **CONTRACT BONDS (for contracts exceeding \$25,000).** If the total contract price specified in Section 7 of this Agreement exceeds \$25,000, or if any amendment to this Agreement causes the total contract price to exceed \$25,000, before entering upon the performance of work, CONTRACTOR shall provide two good and sufficient bonds in the amounts listed below:
- Performance Bond in a sum not less than one hundred percent (100%) of the total contract price, to guarantee faithful and timely performance of all work, in a manner satisfactory to the CITY, and further to guarantee that all materials and workmanship will be free from original or developed defects
 - Payment Bond that meets the requirements of California Civil Code section 3248, in a sum not less than one hundred percent (100%) of the total contract price, to satisfy claims of material suppliers, mechanics and laborers employed by CONTRACTOR on the work that is the subject of this Agreement
6. **CONTRACTOR'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, CONTRACTOR shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the CONTRACTOR, or its employees, agents, subcontractors, or others

**North Avenue Road Repairs due to Damage
from Water Valve Failures**

in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONTRACTOR'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONTRACTOR.

CONTRACTOR'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONTRACTOR.

7. **COMPENSATION.** CONTRACTOR'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$14,897.50.

No work shall be performed by CONTRACTOR in excess of the total contract price without prior written approval of the CITY. CONTRACTOR shall obtain approval by the CITY prior to performing any work that results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the CITY within five (5) calendars from notice to proceed.
9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONTRACTOR concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.
10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONTRACTOR shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN DIEGO

On FEB 13, 2012 before me, CHARLES J CETOLA, Notary Public
(Here insert name and title of the officer)

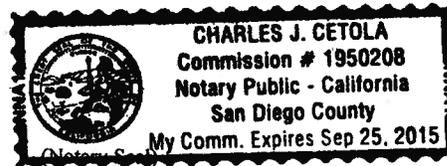
personally appeared CAROLYN J HICKEY

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Charles J Cetola
Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

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State of California

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On FEB 14, 2012 before me, CHARLES J CETOLA, Notary Public
(Here insert name and title of the officer)

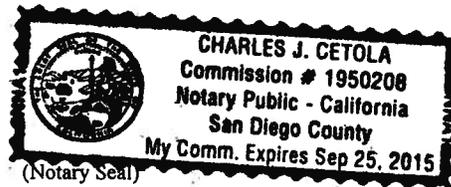
personally appeared SEAN REGAN REPKO

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

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(Title or description of attached document continued)

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(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

PRIME CONSTRUCTION CONTRACT
THIS AGREEMENT IS BETWEEN
JOE'S PAVING CO., INC. (JPI)
CA LIC# A & C 12 806124
SINCE 1972

Exhibit B

AND: Oceanside Water
4927 Oceanside Ave.
Oceanside, CA. 92054
760-801-0548/ fax: 760-435-5984
Attn: Robert Guterrez

PROJECT: 4630 North Avenue
Oceanside, CA.

Our Office Tel. Numbers
760-749-0519/ fax 760-749-6415
BID DATE 12/14/2011

Equipment & Labor good thru 01/20/12

SCOPE OF WORK:

DATE: 12/14/2012

Excavate, Pave with 4" 2,950 sq. ft. on North Ave.

ITEM # 1 HEADER GRIND AROUND THE PERIMETER OF THE MARKED AREA WITH A 12" PATH, A MINIMUM OF 1.5" IN DEPTH. CLEAN UP GRINDINGS. EXCAVATE ALL OF THE COLD TEMPORARY MIX 4" BELOW THE GRADE OF THE ROAD WITHIN THE MARKED AREA MEASURING APPROX. 2,950 SQUARE FEET PER FIELD MEASUREMENTS. HAUL OFF THE SPOILS. COMPACT THE SUBGRADE. APPLY SS1H TACK COAT TO THE EDGES OF THE PATCH AREA PAVE WITH 4" OF ASPHALT CONCRETE(MATERIAL: ½" REG. PG64-10 HOTMIX) AND ROLL FOR COMPACTION AND SMOOTHNESS. ADJUST ALL WATER CANS TO ROAD GRADE. TACK THE EDGES OF THE NEW PAVEMENT UPON COMPLETION. PROJECT INCLUDES PROVIDING TRAFFIC CONTROL AND PERMITS.

@ \$ 5.05 PER S.F.

ESTIMATED QUANTITY 2,950 S.F.

ESTIMATED COST

initials _____

\$14,897.50

PROJECT INCLUDES: 1 MOVE-IN, (Additional move-ins at your request will be charged at \$ 1,000.00 per). ALL LABOR, MATERIALS, EQUIPMENT, INSURANCE, TRAFFIC CONTROL, WARRANTY. PRICE SUBJECT TO FINAL FIELD MEASUREMENT AT UNIT PRICES. PAYMENT IS DUE AT THE COMPLETION OF THIS JOB. THIS PROPOSAL AND NEXT 2 PAGES CONSTITUTE ENTIRE CONTRACT.

PROJECT EXCLUDES: HERBICIDES, PERMITS, TESTING, INSPECTIONS, ENGINEERING, FEES, WATER SUPPLY, IMPORT/EXPORT OF DIRT/SOIL MATERIAL, CONCRETE REMOVAL OR VEGETATION REMOVAL.

PROPOSAL ACCEPTED: _____ DATE: _____

SEAN REPKO, Exec. V.P. /Owner #858-204-6190

CITY OF OCEANSIDE

PROFESSIONAL CONTRACTOR SERVICES AGREEMENT

PROJECT: AVENIDA DE LA PLATA AT SEVILLA ROAD REPAIRS DUE TO DAMAGE FROM WATER VALVE FAILURES -

THIS AGREEMENT, dated _____, 2012 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and JOES'S PAVING CO., INC., hereinafter designated as "CONTRACTOR."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The CONTRACTOR desires to provide asphalt road repairs in areas damaged by infrastructure failures and is more particularly described in the CONTRACTOR'S proposals dated December 12, 2011, attached hereto and incorporated herein as Exhibits A.
2. **INDEPENDENT CONTRACTOR.** CONTRACTOR'S relationship to the CITY shall be that of an independent contractor. CONTRACTOR shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONTRACTOR shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

Avenida de la Plata Road Repairs due to Damaged by Water Valve Failures

4.2 CONTRACTOR shall maintain liability insurance in the following minimum limits:

<u>Comprehensive General Liability Insurance</u> (bodily injury and property damage)	
Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*
<u>Commercial General Liability Insurance</u> (bodily injury and property damage)	
General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000
<u>Automobile Liability Insurance</u>	\$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONTRACTOR under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONTRACTOR to restore the required limits. The CONTRACTOR shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONTRACTOR resulting from any of the CONTRACTOR'S work.

4.4 All insurance companies affording coverage to the CONTRACTOR for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the CONTRACTOR pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

Avenida de la Plata Road Repairs due to Damaged by Water Valve Failures

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- 4.7 CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONTRACTOR shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.
5. **CONTRACT BONDS (for contracts exceeding \$25,000).** If the total contract price specified in Section 7 of this Agreement exceeds \$25,000, or if any amendment to this Agreement causes the total contract price to exceed \$25,000, before entering upon the performance of work, CONTRACTOR shall provide two good and sufficient bonds in the amounts listed below:
- **Performance Bond** in a sum not less than one hundred percent (100%) of the total contract price, to guarantee faithful and timely performance of all work, in a manner satisfactory to the CITY, and further to guarantee that all materials and workmanship will be free from original or developed defects
 - **Payment Bond** that meets the requirements of California Civil Code section 3248, in a sum not less than one hundred percent (100%) of the total contract price, to satisfy claims of material suppliers, mechanics and laborers employed by CONTRACTOR on the work that is the subject of this Agreement
6. **CONTRACTOR'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, CONTRACTOR shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the CONTRACTOR, or its employees, agents, subcontractors, or others

**Avenida de la Plata Road Repairs due to
Damaged by Water Valve Failures**

in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONTRACTOR'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONTRACTOR.

CONTRACTOR'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONTRACTOR.

7. **COMPENSATION.** CONTRACTOR'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$18,750.

No work shall be performed by CONTRACTOR in excess of the total contract price without prior written approval of the CITY. CONTRACTOR shall obtain approval by the CITY prior to performing any work that results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the CITY within five (5) calendars from notice to proceed.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONTRACTOR concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONTRACTOR shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Avenida de la Plata Road Repairs due to Damaged by Water Valve Failures

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

- 11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
- 12. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party. If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONTRACTOR for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONTRACTOR only for work performed in accordance with the Agreement up to and including the date of termination.
- 13. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONTRACTOR and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Contractor Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

JOE'S PAVING CO., INC.

CITY OF OCEANSIDE

By: [Signature], CEO/SEC. OF CORP.
Name/Title

By: _____
Peter Weiss, City Manager

By: [Signature] President
Name/Title

APPROVED AS TO FORM:

[Signature]
City Attorney

91-2164895 NA
Employer ID No.

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN DIEGO

On FEB 13, 2012 before me, CHARLES J CETOLA Notary Public
(Here insert name and title of the officer)

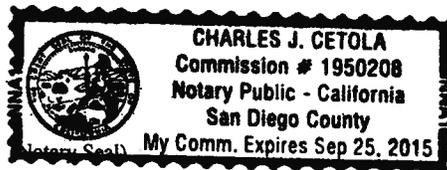
personally appeared CAROLYN J HICKLEY

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Charles J Cetola
Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

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- Securely attach this document to the signed document

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN DIEGO

On FEB 14, 2012 before me, CHARLES J CETOLA, Notary Public
(Here insert name and title of the officer)

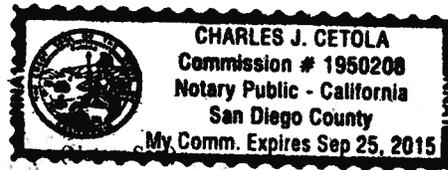
personally appeared SEAN REGAN REPKO

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Charles J. Cetola
 Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

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(Title or description of attached document)

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Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

PRIME CONSTRUCTION CONTRACT
THIS AGREEMENT IS BETWEEN
JOE'S PAVING CO., INC. (JPI)

Exhibit A

CA LIC# A & C 12 806124
SINCE 1972

AND: Oceanside Water
4927 Oceanside Ave.
Oceanside, CA. 92054
760-801-0548/ fax: 760-435-5984
Attn: Robert Guitierrez

PROJECT: Ave. de la Plata & Sevilla
Oceanside, CA.

Our Office Tel. Numbers
760-749-0519/ fax 760-749-6415
BID DATE 12/12/2011

Equipment & Labor good thru 01/20/12

SCOPE OF WORK:

DATE: 12/12/2011

Excavate, Pave with 4" 4,081 sq. ft. on Ave. de la Plata at Sevilla.

ITEM # 1 HEADER GRIND AROUND THE PERIMETER OF THE MARKED AREA WITH A 12" PATH, A MINIMUM OF 1.5" IN DEPTH. CLEAN UP GRINDINGS. EXCAVATE ALL OF THE COLD TEMPORARY MIX 4" BELOW THE GRADE OF THE ROAD WITHIN THE MARKED AREA MEASURING APPROX. 4,081 SQUARE FEET PER FIELD MEASUREMENTS. HAUL OFF THE SPOILS. COMPACT THE SUBGRADE. APPLY SS1H TACK COAT TO THE EDGES OF THE PATCH AREA PAVE WITH 4" OF ASPHALT CONCRETE(MATERIAL: ½" REG. PG64-10 HOTMIX) AND ROLL FOR COMPACTION AND SMOOTHNESS. ADJUST ALL WATER CANS TO ROAD GRADE. TACK THE EDGES OF THE NEW PAVEMENT UPON COMPLETION. PROJECT INCLUDES PROVIDING TRAFFIC CONTROL PLANS AND PERMITS.

@ \$ 4.5945 PER S.F.

ESTIMATED QUANTITY 4,081 S.F.

ESTIMATED COST

initials _____

\$ 18,750.00

PROJECT INCLUDES: 1 MOVE-IN, (Additional move-ins at your request will be charged at \$ 1,000.00 per). ALL LABOR, MATERIALS, EQUIPMENT, INSURANCE, TRAFFIC CONTROL/PLANS AND TRAFFIC PERMITS, WARRANTY. PRICE SUBJECT TO FINAL FIELD MEASUREMENT AT UNIT PRICES. PAYMENT IS DUE AT THE COMPLETION OF THIS JOB. THIS PROPOSAL AND NEXT 2 PAGES CONSTITUTE ENTIRE CONTRACT.

PROJECT EXCLUDES: PREVAILING WAGE RATES, HERBICIDES, BONDS, PERMITS, TESTING, INSPECTIONS, ENGINEERING, FEES, WATER SUPPLY, IMPORT/EXPORT OF DIRT/SOIL MATERIAL, CONCRETE REMOVAL OR VEGETATION REMOVAL.

PROPOSAL ACCEPTED: _____ DATE: _____

SEAN REPKO, Exec. V.P. /Owner #858-204-6190

CITY OF OCEANSIDE

PROFESSIONAL CONTRACTOR SERVICES AGREEMENT

**PROJECT: LA SALINA WASTEWATER TREATMENT PLANT ROAD
REPAIRS DUE TO DAMAGED BY INFRASTRUCTURE FAILURE**

THIS AGREEMENT, dated _____, 2012 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and JOES'S PAVING CO., INC., hereinafter designated as "CONTRACTOR."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The CONTRACTOR desires to provide asphalt road repairs in areas damaged by infrastructure failures and is more particularly described in the CONTRACTOR'S proposals dated January 12, 2012, attached hereto and incorporated herein as Exhibits A.
2. **INDEPENDENT CONTRACTOR.** CONTRACTOR'S relationship to the CITY shall be that of an independent contractor. CONTRACTOR shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
4. **LIABILITY INSURANCE.**
 - 4.1. CONTRACTOR shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

**La Salina Wastewater Treatment Plant
Road Repairs due to Damage from
Infrastructure Failure**

4.2 CONTRACTOR shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
---------------------------------------	--------------

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONTRACTOR under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONTRACTOR to restore the required limits. The CONTRACTOR shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONTRACTOR resulting from any of the CONTRACTOR'S work.

4.4 All insurance companies affording coverage to the CONTRACTOR for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the CONTRACTOR pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

**La Salina Wastewater Treatment Plant
Road Repairs due to Damage from
Infrastructure Failure**

- 4.6 CONTRACTOR shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONTRACTOR shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.
5. **CONTRACT BONDS (for contracts exceeding \$25,000).** If the total contract price specified in Section 7 of this Agreement exceeds \$25,000, or if any amendment to this Agreement causes the total contract price to exceed \$25,000, before entering upon the performance of work, CONTRACTOR shall provide two good and sufficient bonds in the amounts listed below:
- **Performance Bond** in a sum not less than one hundred percent (100%) of the total contract price, to guarantee faithful and timely performance of all work, in a manner satisfactory to the CITY, and further to guarantee that all materials and workmanship will be free from original or developed defects
 - **Payment Bond** that meets the requirements of California Civil Code section 3248, in a sum not less than one hundred percent (100%) of the total contract price, to satisfy claims of material suppliers, mechanics and laborers employed by CONTRACTOR on the work that is the subject of this Agreement
6. **CONTRACTOR'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, CONTRACTOR shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or

**La Salina Wastewater Treatment Plant
Road Repairs due to Damage from
Infrastructure Failure**

conduct of the CONTRACTOR, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONTRACTOR'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONTRACTOR.

CONTRACTOR'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONTRACTOR.

7. **COMPENSATION.** CONTRACTOR'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$7,985.

No work shall be performed by CONTRACTOR in excess of the total contract price without prior written approval of the CITY. CONTRACTOR shall obtain approval by the CITY prior to performing any work that results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the CITY within five (5) calendars from notice to proceed.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONTRACTOR concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONTRACTOR shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

**La Salina Wastewater Treatment Plant
Road Repairs due to Damage from
Infrastructure Failure**

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

- 11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

- 12. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party. If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONTRACTOR for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONTRACTOR only for work performed in accordance with the Agreement up to and including the date of termination.

- 13. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONTRACTOR and the CITY.

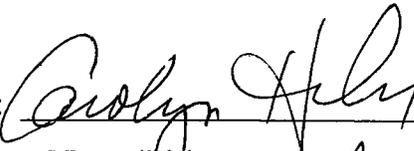
IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Contractor Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

JOE'S PAVING CO., INC.

CITY OF OCEANSIDE

By: 
Name/Title CEO/SEC. OF
CORP.

By: _____
Peter Weiss, City Manager

By: 
Name/Title Resident

APPROVED AS TO FORM:

91-2164895 NA
Employer ID No.


City Attorney

**La Salina Wastewater Treatment Plant
Road Repairs due to Damage from
Infrastructure Failure**

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN DIEGO

On FEB 13, 2012 before me, CHARLES J CETOLA, Notary Public
(Here insert name and title of the officer)

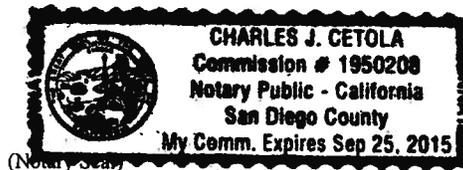
personally appeared CAROLYN J HICKEY

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Charles J Cetola
Signature of Notary Public



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- Securely attach this document to the signed document

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(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

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- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

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State of California

County of SAN DIEGO

On FEB 14, 2012 before me, CHARLES J CETOLA, NOTARY PUBLIC
(Here insert name and title of the officer)

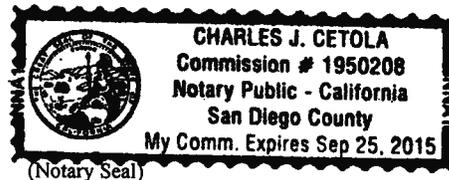
personally appeared SEAN PERAN REPLO

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Charles J. Cetola
Signature of Notary Public



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(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

PRIME CONSTRUCTION CONTRACT

Exhibit C

THIS AGREEMENT IS BETWEEN

JOE'S PAVING CO., INC. (JPI)

CA LIC# A & C12 806124

SINCE 1972

AND: City of Oceanside Water Dept.

4927 Oceanside Ave.

Oceanside, CA. 92054

760-801-0548/ fax: 760-435-5984

Attn: Robert Guiterrez

Equipment & Labor good thru 2/30/12

PROJECT: Tait & Croswaithe

Pave Sewer Treatment Plant

Office Tel. Number

760-749-0519/ fax 760-749-6415

BID DATE 01/12/12

SCOPE OF WORK:

DATE: 01/12/12

Asphalt Paving over Grade and CLII by Oceanside Water

ITEM # 1: PAVE A SECTION MEASURING 3,000 SQUARE FEET OVER CLASS II BASE MATERIAL PLACED AND COMPACTED BY OCEANSIDE WATER WITH 1/2" REG. PG64-10 HOTMIX . ROLL FOR PROPER COMPACTION AND SMOOTHNESS.

@ \$ 2.662 PER S.F.

ESTIMATED COST

ESTIMATED QUANTITY 3,000 S.F.

initials _____

\$7,985.00

*NOTE: IF ADDITIONAL WORK IS ADDED OUTSIDE OF THE SCOPE OF WORK OUTLINED HERE-IN, A CHANGE ORDER WILL BE REQUESTED AND APPROVED BEFORE THE ADDITIONAL WORK BEGINS.

PROJECT INCLUDES: 1 MOVE-IN, (Additional asphalt move-ins at your request will be charged at \$ 1,000.00 per). PRICE SUBJECT TO FINAL FIELD MEASUREMENT AT UNIT PRICES. PAYMENT IS DUE UPON COMPLETION. MATERIAL, LABOR, EQUIPMENT, INSURANCE, WARRANTY.

PROJECT EXCLUDES: PREVAILING WAGES, SWPP, HERBICIDE, HEADER CUT, BUILDER'S RISK INSURANCE, FEES FOR ADDITIONAL INSURANCE, PAYMENT OR PERFORMANCE BONDS, REMOVAL OF TEMPORARY UTILITIES, PRIME COAT, PERMITS, TESTING, INSPECTIONS, ENGINEERING, WATERSUPPLY, ASPHALT BERMS, IMPORT/EXPORT OF DIRT/SOIL, MATERIAL, TRAFFIC CONTROL PLANS OR PERMITS, CONCRETE REMOVAL OR VEGETATION REMOVAL, RE-STRIPE OR SLURRY (type 1 or 2) SEAL.

SEAN REPKO, ESTIMATOR cell # 858-204-6190

