ITEM NO. 9

STAFF REPORT

CITY OF OCEANSIDE

DATE: April 17, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT WITH APACHE ASPHALT FOR REPAIRS AND SEALCOATING AT THE SAN LUIS REY WASTEWATER TREATMENT PLANT**

SYNOPSIS

Staff recommends that the City Council approve a professional services agreement in an amount not to exceed $62,522 with Apache Asphalt and Seal Corp of Vista for repairs and sealcoating the parking lots and roadways at the San Luis Rey Waste Water Treatment Plant (SLRWWTP); and authorize the City Manager to execute the agreement.

BACKGROUND

The SLRWWTP was last upgraded 15 years ago, at which time half the 357,457 square feet of pavement within the plant was replaced. It is starting to deteriorate and is in need of repairs. Staff recommends repairs be made in 19 locations and 357,457 square feet of pavement be sealcoated.

A request for proposals was issued for this project In January 2013, and three proposals were received from qualified contractors by February 28, 2013. The results are as follows:

Contractor	Total Proposal Cost
Apache Asphalt & Seal Corp	$62,522
Armorcote Asphalt	$66,418
Coastal Asphalt & Seal	$63,515

ANALYSIS

Water Utilities staff is recommending that that Apache Asphalt & Seal Corp be awarded this professional services agreement, as they provided the lowest responsible proposal for the work. Staff estimates that the repair sealcoating of the parking lots and roadways at the Plant will take approximately three weeks to complete.

FISCAL IMPACT

The FY 2012-13 adopted budget for the SLRWWTP Maintenance Fund/Repair (800805721.5320) has an available balance of $350,000. Therefore, sufficient funds are available for the project.

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 REPORT

This recommendation was presented to the City Utilities Commission at its March 19, 2013 meeting.

RECOMMENDATIONS

Staff recommends that the City Council approve a professional services agreement in an amount not to exceed $62,522 with Apache Asphalt and Seal Corp of Vista for repairs and sealcoating the parking lots and roadways at the San Luis Rey Waste Water Treatment Plant (SLRWWTP); and authorize the City Manager to execute the agreement.

PREPARED BY:

Jason Dafforn
Water Utilities Division Manager

SUBMITTED BY:

Peter Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Cari Dale, Water Utilities Director

Teri Ferro, Financial Services Director

Exhibit A: Professional Services Agreement

CITY OF OCEANSIDE

PROFESSIONAL CONTRACTOR SERVICES AGREEMENT

PROJECT: SAN LUIS REY WASTEWATER TREATMENT PLANT ASPHALT REPAIRS AND SEALCOATING - 800805721

THIS AGREEMENT, dated March 26, 2013 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and APACHE ASPHALT & SEAL CORP., hereinafter designated as "CONTRACTOR."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The CONTRACTOR desires to repair and sealcoat various areas of the San Luis Rey Wastewater Treatment Plant, the project is more particularly described in the CONTRACTOR's proposal dated February 28, 2013, attached hereto and incorporated herein as Exhibit 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.

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
Automobile Liability Insurance	$ 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.

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

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 $62,522.

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 ninety (90) calendar days from the 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.

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.

APACHE ASPHALT & SEAL CORP	CITY OF OCEANSIDE
By: _____ – President STEWART D. MCCLURE - President. Name/Title	By: _____ Peter Weiss, City Manager
By: _____ Name/Title	APPROVED AS TO FORM:
20-2083625 Employer ID No.	Bertram Hamilton, Asst. City Attorney

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California
County of San Diego

On 3-26-13 (Date) before me, Gary N Wayman Notary Public (Here Insert Name and Title of the Officer),
personally appeared Stewart Douglas McClure (Name(s) of Signer(s))
only,

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.

GARY NICHOLAS WAYMAN
Commission # 1974304
Notary Public - California
San Diego County
My Comm. Expires Apr 6, 2016

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.

Signature: _____ (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Professional Contractor Services Agreement

Document Date: 3-26-13 Number of Pages: 5

Signer(s) Other Than Named Above: 0

Capacity(ies) Claimed by Signer(s)

Signer's Name:	Signer's Name:
☐ Corporate Officer — Title(s):	☐ Corporate Officer — Title(s):
☐ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing:	Signer Is Representing:
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here

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Item #5907

Exhibit A

APACHE ASPHALT & SEAL CORP

Proposal and Contract

PO Box 2078, Vista, CA 92085-2078
(760)598-8855 Fax: (760)598-9285

Date: 2/28/2013 To: City of Oceanside hereinafter, "Owner."

Contact Name: Mark Patnode Phone: (760)435-5840 Ext Fax: (760)435-6062

Job Address: City of Oceanside
SLR Water Reclamation Facility
3950 N River Rd (1066-F7)
Oceanside, CA 92058

Cell: (760)535-0535

Apache Asphalt & Seal Corp (hereinafter "Contractor") proposes to furnish all materials and perform labor necessary to complete the following as described below.

NOTE: The below work includes pricing for a performance bond but does not include prevailing wages. The property is in severe need of seal-coating to help preserve the existing pavement.

Repairs: Asphalt skin patch low and sunken areas throughout complex totaling 733 square feet (19 locations). Many of these areas are trip hazards and could become sink hole problems if not filled with hot asphalt. Fill in 57 small indentations caused by different types of equipment (tractors to dumpsters) using 0"-1" of hot mix asphalt. Sawcut and remove 506 square feet of badly sunken and or broken asphalt (17 locations). Fill in areas using 4" of properly compacted asphalt. Some of this is caused by roots, sink holes, and heavy truck traffic. Raise one sunken water lid in front of walkway (trip hazard). Asphalt patch and install Gator Patch on top of 288 lineal feet of damaged asphalt berm to help preserve them. Cost = $10,388.00

Area 1: (Brown) Clean and apply quality rubberized cracksealer to 375 lineal feet of cracks throughout area. NOTE: Cracksealer will not make cracks disappear completely and may retain a slightly sunken look. Rubberized cracksealer will keep water from entering into cracks, which creates more pavement damage. Clean and sealcoat areas totaling 94,830 square feet using quality Ace Seal. Apache Asphalt uses only a 5%-10% mixture of water in our seal which gives a longer lasting finish. New seal cannot be driven on for 24 hours and may take longer to dry in cool or shady conditions. Cost = $10,654.00

Area 2: (Blue) Clean and apply quality rubberized cracksealer to 550 lineal feet of cracks throughout area. NOTE: Cracksealer will not make cracks disappear completely and may retain a slightly sunken look. Rubberized cracksealer will keep water from entering into cracks, which creates more pavement damage. Clean and sealcoat areas totaling 141,800 square feet using quality Ace Seal. Apache Asphalt uses only a 5%-10% mixture of water in our seal which gives a longer lasting finish. New seal cannot be driven on for 24 hours and may take longer to dry in cool or shady conditions. Repaint 13 lines, 100 lineal feet of white hash lines, and a ½ basket-ball court. Cost = $16,248.00

Area 3: (Pink) Clean and apply quality rubberized cracksealer to 280 lineal feet of cracks throughout area. NOTE: Cracksealer will not make cracks disappear completely and may retain a slightly sunken look. Rubberized cracksealer will keep water from entering into cracks, which creates more pavement damage. Clean and sealcoat areas totaling 109,500 square feet using quality Ace Seal. Apache Asphalt uses only a 5%-10% mixture of water in our seal which gives a longer lasting finish. New seal cannot be driven on for 24 hours and may take longer to dry in cool or shady conditions. Repaint 109 line stripes, 6 handicap stalls, and 500 lineal feet of white hash lines. Cost = $13,015.00

Area 4: (Yellow) Clean and apply quality rubberized cracksealer to 180 lineal feet of cracks throughout area. NOTE: Cracksealer will not make cracks disappear completely and may retain a slightly sunken look. Rubberized cracksealer will keep water from entering into cracks, which creates more pavement damage. Clean and sealcoat areas totaling 113,276 square feet using quality Ace Seal. Apache Asphalt uses only a 5%-10% mixture of water in our seal which gives a longer lasting finish. New seal cannot be driven on for 24 hours and may take longer to dry in cool or shady conditions. Repaint 3 line stripes, and 2 handicap stalls. Cost = $12,217.00

All of the above work is to be completed in a substantial and workmanlike manner according to standard practices for the sum of stated Dollars ($): $62,522.00

Sixty-two thousand five hundred twenty-two.

Progress payments shall be made as follows:

Payments due as each section of work is completed (i.e. Section 1, 2, 3, etc.). Thank you.

APACHE ASPHALT & SEAL CORP

Proposal and Contract

PO Box 2078, Vista, CA 92085-2078
(760)598-8855 Fax: (760)598-9285

The remaining balance is to be paid within two (2) days after project completion. The proposal is valid until: 4/15/2013
If the proposal is accepted, then work will commence on a pre-scheduled date, which may be subject to delays caused by acts of God, stormy weather, uncontrollable trouble, or unforeseen contingencies. Any alteration or deviation from the above specifications, including but not limited to any such alteration or deviation, the additional and/or labor costs, will be executed only upon a written order for same, signed by Client and Contractor If there is any charge for such alteration or deviation, the additional charge will be added to the contract price of this contract. If any payment is not made when due, Contractor may suspend work on the job until such time as all payments due have been made. A failure to pay for a period in excess of two (2) days from the due date shall be deemed a material breach of this contract. Apache Asphalt is not responsible for the following: 1. Backfill and compaction completed by others. 2. American Disibilities Act (ADA) specifications, unless the contract calls for them. 3. Any damage to underground utilities. 4. Water puddling caused by asphalt overlays. If fills or rough grading of the site is to be made by others, the site must be left for Contractor at an elevation within on-tenth foot plus or minus of finished sub grade elevation and be of such material as will readily provide a firm and stable sub grade. Apache Asphalt is not resposible for proper drainage of asphalt with less than two percent of fall. Client assumes full resposibility for design of grade, provision for drainage and discharge of waters from the site, and Contractor shall have no liability or responsibility thereof. Apache Asphalt is no responsible for any damages that are caused by others, (vehicles driving and/or people/pets walking through work areas, etc.) This may/will be repaired at Clients expense. Client is responsible for turning off irrigation systems prior to contractors arrival and during course of work.
Engineering, construction surveying, testing, and inspection fes to be paid by the client. Any conditions causing the shutdown of work and requiring an extra move-in not caused by contractor will be billed as extra work. Water is to be furnished by Client. All vehicles and obstacles are to be removed from area-prior to contractors arrival. Contractor is not responsible for scuffing due to power steering and/or hot weather. Longer dry time may be needed due to cold and/or wet weather. All cracks are subject to re-opening at any time, and there is no guarantee on crackfilling. Contractor is not responsible for residual pavement cracking due to expansion and/or contraction of pavement.

Name of Salesperson who solicited or negotiated this contract:
Stewart McClure

Signature of Authorized Apache Asphalt & Seal Corp Agent:

Respectfully submitted,
Apache Asphalt & Seal Corp
PO Box 2078
Vista, CA 92085-2078 (760) 598-8855
Contractor's State License No: 856867

ACCEPTANCE

You are hereby authorized to furnish all materials and labor required to complete the work mentioned in this Proposal, for which I/we agree to pay the contract price listed in this Proposal, and according to the terms thereof. I/we have read and agree to the provisions contained herein, and in any attachments hereto, which are made a part hereof and are described as:

Owner's Name/Address: _____

Business Name/Phone: _____

Accepted _____
Contractors are required by law to be licensed and regulated by the Contractor's State License Board, which has jurisdiction to investigate complaints against contractors if a complaint is filed within three years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar Contractor's State License Board, PO Box 26000, Sacramento, CA. 95826

2587078

State of California

SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

DEC 3 0 2004

Kevin Shelley

Secretary of State

Sec/State Form CE-107 (rev. 1/03)

OSP 03 80510

2587078

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

DEC 23 2004

KEVIN SHELLEY
Secretary of State

ARTICLES OF INCORPORATION

OF

APACHE ASPHALT & SEAL CORP.

I

The name of this corporation is **APACHE ASPHALT & SEAL CORP.**

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process is:

Stewart D. McClure
2259 Lone Oak Lane
Vista, CA 92084

IV

This corporation is authorized to issue only one class of shares of stock; and the total number of shares which this corporation is authorized to issue is 800,000.

V

The liability of the directors of this Corporation for monetary damages shall be eliminated to the fullest under California law.

DATED: December 23, 2004

KRISTIN YOUNG RAYDER,
Incorporator

OFFICE OF THE SECRETARY OF STATE