



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: October 6, 2020

Agenda Item CeN

**Approvals:**

City Manager ES

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

**Department:** Utilities  
**Prepared By:** David Rebensdorf, Utilities Director [Signature]

**Subject:** *CONSTRUCTION CONTRACT CONTINGENCY INCREASE TO ALL AMERICAN ASPHALT FOR STREET REHABILITATION FOR VIA PICO PLAZA, PROJECT NO. 13315; CALLE DE INDUSTRIAS AND AVENIDA NAVARRO, PROJECT NO. 16352; CALLE DE LOS MOLINOS, PROJECT NO. 16353; AND AVENIDA PICO, PROJECT NO. 17329.*

**Fiscal Impact:** Yes. A supplemental appropriation in the amount of \$87,000 to Account Number 052-463-43890 is recommended from the Water Operating Fund to complete paving repairs to Calle Real. There is available fund balance within the Water Operating Fund for this expenditure. A claim has been filed with the City's CJPIA insurance carrier for the repair expenses and reimbursement is anticipated.

**Summary:** Staff recommends that the City Council approve a construction contract contingency increase with All American Asphalt in an amount not to exceed \$87,000 for paving improvements on Calle Real due to a water main failure.

**Background:** This project includes pavement removal, grinding, base reconstruction, paving and overlay.

**Discussion:** On September 26, 2020 there was an eight inch waterline failure on Calle Real. Due to the high pressure in the water main and steep slope of the street at the failure location, there was significant damage to the street paving. In an effort to expedite the repair to the damaged paving and subgrade, Engineering Division staff obtained three estimates from paving contractors with current paving contracts with the City. Staff received proposed cost estimates in the amount of \$68,981 from All American Asphalt, \$95,534 from Excel Paving Co. and \$157,000 from Hardy and Harper, Inc.

Based on the lowest priced quote, staff is recommending approval of a change order through a contingency increase in the amount of \$87,000 to the All American Asphalt Construction Contract. The \$87,000 includes a 25% contingency since the condition of the subgrade is unknown. With the approved contingency increase, the Utilities Director is authorized to approve change orders up to the contingency limit, per City Purchasing Policy 201-2-2 "Purchasing Policies & Procedures for Public Works Projects."

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council:

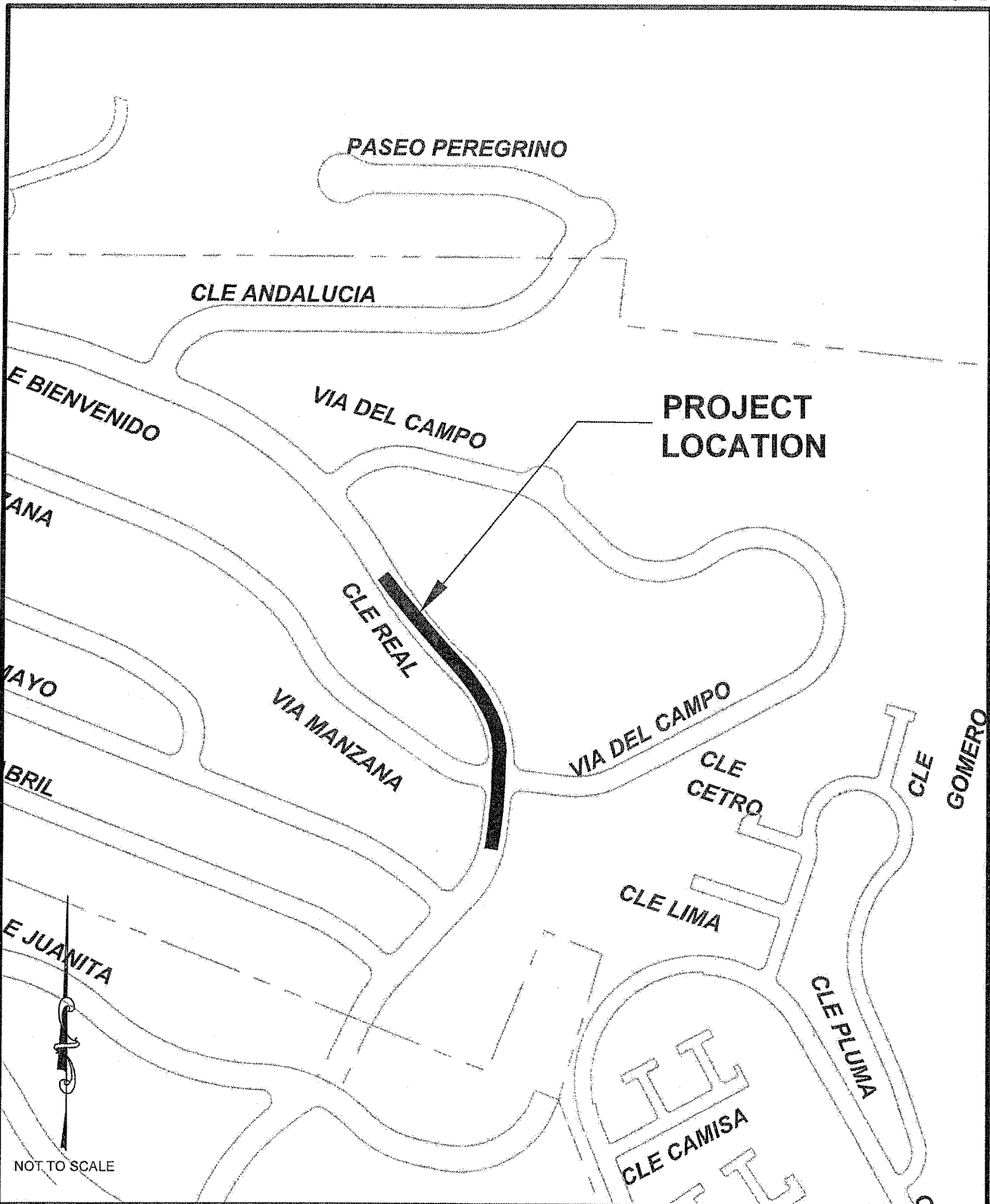
1. Approve a supplemental appropriation in the amount of \$87,000 from the Water Operating Fund to Account Number 052-463-43890; and,
2. Approve an \$87,000 increase in construction contingency for Via Pico Plaza, Project No. 13315; Calle De Industrias and Avenida Navarro Project No. 16352; Calle De Los Molinos, Project No. 16353; and Avenida Pico, Project 17329.

**Attachments:**

1. Location Map
2. Proposed Cost Estimates
3. March 17, 2020 Agenda Report

**Notification:** None.

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S:\public\CMMS\GIS\Users Files\Jake Ohana\CAD\Location Plan (Admin Report).dwg Monday, September 21, 2020 7:33:19 AM



*City of San Clemente*  
 910 Calle Negocio, Suite 100  
 San Clemente, CA 92673  
 Tel (949) 361-6100  
 Fax (949) 361-8316

**LOCATION MAP**  
 Street Rehabilitation for Via Pico Plaza, Calle  
 de Industrias, Avenida Navarro, Calle de los  
 Molinos, Avenida Pico  
 PN 13315, 16352, 16353, 17329



**ALL AMERICAN ASPHALT  
ALL AMERICAN AGGREGATES**  
ENGINEERING - CONTRACTORS - ASPHALT PAVING  
P.O. BOX 2229, CORONA, CA 92878-2229  
STATE CONTRACTORS LICENSE #267073-A DIR #1000001051

<b>To:</b> CITY OF San CLEMENTE	<b>Contact:</b> Ziad Mazboudi, P.E.
<b>Address:</b> 910 Calle Negocio San Clemente, CA 92673	<b>Phone:</b> (949) 361-6127
<b>Project Name:</b> Calle Real Pavement Repairs for Water Division	<b>Bid Number:</b>
<b>Project Location:</b>	<b>Bid Date:</b> 9/30/2020

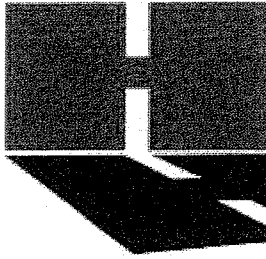
Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1	Mobilization	1.00	LS	\$3,150.00	\$3,150.00
2	Street Sweep & Dust Control	1.00	LS	\$4,044.00	\$4,044.00
3	Traffic Control & Temp Stripe	1.00	LS	\$3,215.00	\$3,215.00
4	Post Streets for Temp No Parking	1.00	LS	\$870.00	\$870.00
5	Sawcut for Street Removals	500.00	LF	\$4.41	\$2,205.00
6	Remove Street Section (7" Minimum)	75.00	CY	\$96.00	\$7,200.00
7	Place and Compact CMB Variable Thickness	50.00	TON	\$54.00	\$2,700.00
8	Construct HMA Base Course AC III B2-PG 70-10	125.00	TON	\$138.00	\$17,250.00
9	Coldmill Existing AC 0.34' - 0.38' to 0.17'	1,442.00	SF	\$4.15	\$5,984.30
10	Coldmill Existing AC 0.17'	3,712.00	SF	\$1.60	\$5,939.20
11	Construct HMA At Cold Milled Areas (III C3 (PG64-10)	75.00	TON	\$190.02	\$14,251.50
12	Lower and Adjust Water Valve Can	6.00	EACH	\$362.00	\$2,172.00
<b>Total Bid Price:</b>					<b>\$68,981.00</b>

<p><b>ACCEPTED:</b> The above prices, specifications and conditions are satisfactory and hereby accepted.</p> <p><b>Buyer:</b> _____</p> <p><b>Signature:</b> _____</p> <p><b>Date of Acceptance:</b> _____</p>	<p><b>CONFIRMED:</b> <b>All American Asphalt</b></p> <p><b>Authorized Signature:</b> _____</p> <p><b>Estimator:</b> Bird, Kim 951-736-7600 kbird@allamericanasphalt.com</p>
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# Excel Paving Co.

## Calle Real Pavement Repairs for the Water Division

Item	Description	Quantity	Unit	Unit Price	Total
1	Mobilization	1	L.S.	12,000	12,000
2	Street Sweeping and Dust Control	1	LS	2,500	2,500
3	Traffic control and temporary striping	1	LS	10,500	10,500
4	Post streets for Temp. No Parking	1	LS	2,500	2,500
5	Sawcutting for Exhibits E street removals	500	LF	4	2,000
6	Remove street section per Exhibit B (7"minimum)	75	CY	125	9,375
7	Place and compact CMB variable thickness	50	Ton	95	4,750
8	Construct HMA base course a.c. III B2-PG 70-10	125	Ton	150	18,750
9	Cold mill existing a.c. 0.34' - 0.38' to 0.17'	1442	SF	5	7,210
10	Cold mill existing a.c. 0.17'	3712	SF	2	7,424
11	Construct HMA at cold milled areas III-C3 PG64-10	75	Ton	203	15,225
12	Lower and adjust water valve can	6	Each	550	3,300
<b>Grand Total</b>					<b>\$95,534.00</b>



# Hardy & Harper, Inc.

*asphalt paving contractor*

32 RANCHO CIRCLE  
 LAKE FOREST, CA 92630  
 (714) 444-1851 FAX (714) 444-2801  
 STATE LIC. NO. 215952  
 DIR NO. 1000000075

<b>To:</b> CITY OF SAN CLEMENTE	<b>Contact:</b>
<b>Address:</b> 100 AVENIDA PRESIDIO SAN CLEMENTE, CA 92672	<b>Phone:</b> (949) 361-6104
<b>Project Name:</b> CALLE REAL PAVEMENT REPAIRS FOR THE WATER DIVISION	<b>Fax:</b>
<b>Project Location:</b>	<b>Bid Number:</b>
	<b>Bid Date:</b> 9/30/2020

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1	Mobilization	1.00	LS	\$10,000.00	\$10,000.00
2	Street Sweeping And Dust Control	1.00	LS	\$2,000.00	\$2,000.00
3	Traffic Control And Temporary Striping	1.00	LS	\$12,249.00	\$12,249.00
4	Post Streets For Temp. No Parking	1.00	LS	\$2,000.00	\$2,000.00
5	Sawcutting For Exhibits E Street Removals	500.00	LF	\$12.00	\$6,000.00
6	Remove Street Section Per Exhibit B (7"minimum)	75.00	CY	\$450.00	\$33,750.00
7	Place And Compact CMB Variable Thickness	50.00	TON	\$150.00	\$7,500.00
8	Construct HMA Base Course A.c. III B2-PG 70-10	125.00	TON	\$235.00	\$29,375.00
9	Cold Mill Existing A.c. 0.34' - 0.40' To Zero Per Ex. A	1,708.00	SF	\$7.00	\$11,956.00
10	Cold Mill Existing A.c. 0.17'	3,654.00	SF	\$5.00	\$18,270.00
11	Construct HMA At Cold Milled Areas III-C3 PG64-10	80.00	TON	\$235.00	\$18,800.00
12	Lower and adjust water valve can	6.00	EACH	\$850.00	\$5,100.00

**Total Bid Price: \$157,000.00**

**Notes:**

- Bonds, Engineering, Testing, Permits & Inspection Fees, Surveying & Staking, Potholing, Posting by Others.
- Quantities used are approximate and are subject to physical measurement. Corrections, if necessary, will be made with unit prices applying.
- Construction water accessible to our equipment and immediately adjacent to our work area to be supplied by others.
- Lowering and/or Raising of Utilities by others (Unless otherwise noted above.)
- Excludes: Crackfill, Water Test, Weedkill, Aggregate Base (Unless otherwise noted above), Fogseal, Striping, Electrical.
- Hardy & Harper will not be responsible for site drainage when the designed fall for asphalt or concrete finished surfaces have less than 1% fall.
- Bid based on ONE (1) move-in. Cost of additional moves will be billed at \$6,500.00 per move.
- Quote based on information provided during the job walk conducted on Tuesday, September 29th.

<p><b>ACCEPTED:</b>          The above prices, specifications and conditions are satisfactory and are hereby accepted.</p> <p><b>Buyer:</b> _____</p> <p><b>Signature:</b> _____</p> <p><b>Date of Acceptance:</b> _____</p>	<p><b>CONFIRMED:</b>  <b>Hardy &amp; Harper, Inc.</b></p> <p><b>Authorized Signature:</b> _____</p> <p><b>Estimator:</b> Cody Gawryluk          cgawryluk@hardyandharper.com</p>
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# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: March 17, 2020

**Attachment 3**

Agenda Item 6D

Approvals:

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

**Department:** Public Works / Engineering  
**Prepared By:** Ziad Y. Mazboudi, Deputy Public Works Director

**Subject:** *CONSTRUCTION CONTRACT AWARD TO PALP, INC. DBA EXCEL PAVING. FOR THE ARTERIAL STREET PAVEMENT MAINTENANCE – FY 2020 FOR EL CAMINO REAL (AVE. ESTACION TO AVE. GAVIOTA) AND AVE. PICO (EL CAMINO REAL TO CALLE LOS MOLINOS), PROJECT NO. 10320; AND PAVEMENT REPAIRS FOR THE WATER DIVISION, PROJECT NO. 24400; AND PAVEMENT REPAIRS IN VARIOUS LOCATIONS, PROJECT NO. 27306.*

**Fiscal Impact:** Yes. The estimated total project cost of \$1,621,628 is within the combined approved budget amount of \$1,850,000.

**Summary:** Staff recommends that the City Council approve a construction contract with Palp, Inc. DBA Excel Paving, in an amount not to exceed \$1,158,306 for the purpose of constructing the Arterial Street Pavement Maintenance – FY 2020 for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos), Project No. 10320; and Pavement repairs for the Water Division, Project No. 24400; and Pavement repairs in various locations, Project No. 27306.

**Background:** This project includes grinding and overlaying, asphalt removal and replacement, routing, crack sealing, slurry sealing and striping of streets (refer to location map and lists in Attachment 1, 2, 3 & 4).

**Discussion:** The project was advertised for public bidding on February 6, 2020 and January 13, 2020 using the City’s Planet Bids System. Bids were opened on February 26, 2020 and the results are presented on the attached Bidder’s Listing (Attachment 5). Bids ranged from \$1,158,306 to \$1,418,905. The lowest responsive bidder was Palp, Inc. DBA Excel Paving of Long Beach, CA with a total bid amount of \$1,158,306. Based on the low bid, the total estimated project cost is \$1,621,628 as summarized below:

### Project Budget Summary

Construction	1,158,306
Construction Design, Management & Inspection (approx. 20%)	231,661
<u>Project Contingency (approx. 20%)</u>	<u>231,661</u>
Estimated Total Project Cost	\$1,621,628

The current combined approved project budget is \$1,850,000.

As required by City Policy and State Law, the Contractor will be required to provide performance and payment bonds simultaneously with execution of the construction

contract (see Attachment 6). A warranty bond will also be required prior to City Council acceptance of the project. Project plans and specifications are on file in the City Clerk's office.

As part of this project, staff intends to incorporate a revision to the pavement striping configuration of N. El Camino Real from about Avenida Pico to El Portal. The revised plan will eliminate one vehicle lane in each direction to allow addition of a striped, Class 2 bicycle lane. This resulted from a citizen request and City Council direction during the FY2020 budget process. Staff is finalizing that plan and will present it to the Planning Commission and then the City Council for final review and approval. Staff continues its coordination with the North Beach community on this proposed plan. The recommended actions below include approval of plans which include re-striping the roadway in its existing four-lane configuration. If approved by the City Council as noted above, then staff will update the plans prior to the striping phase of this project.

**Recommended  
Action:**

STAFF RECOMMENDS THAT the City Council:

1. Approve the plans and specifications for the Arterial Street Pavement Maintenance – FY 2020 for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos), Project No. 10320; and Pavement repairs for the Water Division, Project No. 24400; and Pavement repairs in various locations, Project No. 27306.), and
2. Approve and authorize the City Manager to execute, Contract No. \_\_\_\_\_, by and between the City of San Clemente and Palp, Inc. DBA Excel Paving, in the amount of \$1,158,306, for the Arterial Street Pavement Maintenance – FY 2020 for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos), Project No. 10320; and Pavement repairs for the Water Division, Project No. 24400; and Pavement repairs in various locations, Project No. 27306.

- Attachments:**
1. Location Map
  2. Location list for pavement repairs
  3. Location list for routing & crack sealing
  4. Location list for pavement repairs for the Water Division
  5. Bidders List
  6. Contract

**Notification:** None.





PAVEMENT REPAIRS  
IN VARIOUS LOCATIONS  
PN 27306

Attachment 2

#s	Address
1	128 E. Canada
2	Ave. Pico at Boca de la Playa
3	across from 120 Ave. Pico near Boca de la Playa
4	129 W. Ave. Marquita
5	135 W. Ave. Marquita
6	141 W. Ave. Marquita
7	142 W. Marquita
8	244 W. Mariposa
9	225 W. Canada
10	227 W. Canada
11	227-229 W. Canada
12	249 W. Canada
13	250 W. Canada
14	E. Palizada at Ave. de la Estrella x-gutter
15	163 Alessandro
16	229 Alessandro
17	132-134 Ave. Cordoba
18	across from 134 Ave. Cordoba
19	134 Ave. Cordoba
20	206 Calle Marina
21	212 Calle Marina
22	217 Calle Marina
23	218 Calle Marina
24	220 Calle Marina
25	222 Calle Marina
26	401 W. Ave. De Los Lobos Marinos
27	W. Ave. De Los Lobos Marinos at 1702 S. Ola Vista
28	244 La Rambla
29	244 La Rambla
30	204 Conchita
31	205 Conchita
32	206 Conchita
33	Via Robina at cul de sac in front of driveway
34	138 El Levante
35	Ave. Pizarro at N. La Esperanza
36	E/B Ave. Caballeros at de la Paz
37	Ave. Valencia at S. El Camino Real
38	206 Los Bautismos Lane
39	E. Ave. Magdalena southbound near 2485 S. El Camino Real
40	across from 227 N. Ola Vista
41	Mendoza at Ave. Presidio cross gutter
42	141 Patero de Oro
43	138 El Levante
44	Ave. Pizarro at N. La Esperanza
45	S/B Camino Vera Cruz across from 901 Ave. Pico
46	E/B Ave. Caballeros at de la Paz
47	152 El Levante

3-17-20 / 6D-4  
10-6-20 / 6N-10

ROUT AND CRACK SEAL LOCATION LIST  
PN 27306

Attachment 3

#s	Street Name	From	To
1	Via San Jacinto	Via San Gorgonio	Vista Torito
2	Via Corbina	Calle Vista Torito	end of cul de sac
3	Calle Vista Torito	Ave. Vaquero	Via Montego
4	Via Montego	Via Cascadita	Calle Vista Torito
5	Via Alegre	Via Montego	end of cul de sac
6	Via Montezuma	Via Montego	Via Alegre
7	Via Arboleda	Via Montego	Via Alegre
8	Via Casa Loma	Via Montego	Via Alegre
9	Via Santo Tomas	Via Montego	Via Alegre
10	Via Montecito	Ave. Vaquero	Via Alegre
11	Via Verbena	Via Montego	Via Alegre
12	Via Vistosa	Via Montego	Via Alegre
13	Via Bandita	Via Montego	Via Alegre
14	Via Lado	Via Montego	Via Alegre
15	Via Senda	Via Cascadita	end of cul de sac
16	Calle Tinaja	Via Cascadita	end of cul de sac
17	Via Ballena	Via Cascadita	Via Socorro
18	Via San Andreas	Via Cascadita	Via Ballena
19	Via Socorro	Camino San Clemente	Via Ballena
20	Cam. San Clemente	N. El Camino Real	end of cul de sac

PAVEMENT REPAIRS  
FOR THE WATER DIVISION  
LOCATION LIST  
PN 24400

Attachment 4

Patch	Address	Location
1	694	Los Mares @ alley next to 694
2	2951	Bonanza
3	319	Ave. Cabrillo
4	107	Ave. Del Mar
5	1201	Ganado ( cul-de-sac ) old patch
6	1217	Ganado
7	2922	Cercado
8	627	Vista Valinda
9	2841	Campo Raso
10	101	Monte Vista
11	224	W. Mariposa
12	106	Via Toluca
13	111	East Ramona
14	118	East Ramona
15	1102	Las Posas
16		Colina at Sacramento
17	305	W. Gaviota
18	120	San Diego
19	918	S. El Camino Real ( Taco Bell )
20	409	Ave. Arlena
21	604	E. Ave. San Juan
22	606	E. Ave San Juan
23	1319	Calle Emilia
24	700	Bahia
25	2855	Riachuelo
26	3736	Calle Casino
27	3638	Calle Casino
28	2912	Calle Grande Vista
29	701	Ave. Presidio
30	by restroom	Vista Hermosa Sports Park
31	2	Via Floritas
32	1302	Afloramiento
33	303	Ave. Victoria
34	315	W. Ave. Palizada
35	204	Ave. Granada ( corner )
36	221	Ave. Granada

PAVEMENT REPAIRS  
FOR THE WATER DIVISION  
LOCATION LIST

Attachment 4

PN 24400

Patch	Address	Location
37	2805	La Ventana
38		Ole Hanson Beach Club parking lot
39	721	Los Olivos
40	305	Via Chueca
41	112	E. Ave. San Antonio
42	2833	Campo Raso
43	2919	Arroyo
44	106	E. El Portal
45	132	Patero De Oro
46	28	Vista Del Ponto
47	920	Rio Lindo
48	518	Baranda
49	108	Loma Lane
50	259	Ave. Montalvo ( on Lobiero )
51	36	Encanta
52	2219	Ave. Platanar
53	2227	Ave. Oliva
54	154	Ave. Miramar
55	2108	Via Teca
56	2219	Ave. Platanar
57	105	Ave. Pico / Deshecha
58	380	Ave. Pico Bldg. N
59	1703	Salvador
60		Calle Verano at Los Olivos
61	121	Ave. Pizarro
62	227	Ave. Barcelona
63	2929	Arreos
64	2974	Calle Gaucho
65		Del Cerro EB above Venezia
66		Camino San Clemente
67	1018	Las Posas
68	3204	Legendario
69	2021	Via Aguila
70	2108	Via Aguila
71	319	Via Presa
72	313	Calle Pueblo
73	107	Boca De La Playa

PAVEMENT REPAIRS  
FOR THE WATER DIVISION  
LOCATION LIST

Attachment 4

PN 24400

Patch	Address	Location
74	148	W. Ave. Marquita
75		Costero Risco (public street)
76	171-193	Calle Cuevo
77	200-246	Calle Cuevo
78	120	Ave. Cota
79	122	Ave. Cota
80	119-121	Boca De La Playa
81	128	W. Ave. Santiago
82		Calle Gomez / E. Magdalena int.
83	4070	Calle Isabella
84		Calle Ganadero at cul de sac
85	310	Via Alegre
86	600	Calle Bienvenido
87		Via Sage at Via Solona
88	1631	Via Sage across from Violeta
89	3032	Calle Frontera
90	106	E. El Portal
91	800	Calle Pluma at Calle Casino
92	2133	Ave. Espada
93	2165	Ave. Espada
94	2245	Ave. Oliva
95	2903	Via Corbina
96	506	Via Juarez
97	254	Calle Campensino
98	3804	Diamante
99	2912	Calle Grande Vista
100	115	Paseo de Serenata
101		El Portal / El Prado intersection
102		Via Robina
103	409	Ave. Arlena
104	318	Boca Del Canon
105	128	Ave. Del Mar

**BIDDER'S LISTING**

BID OPEN TIME: 2:00 PM

BID OPEN DATE: 2-26-2020

PRESENT: Megan Young  
MH

**Subject:**

Bid Opening: Arterial Street Pavement Maintenance – FY 2020 for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos), Project No. 10320; and Pavement Repairs for the Water Division, Project No. 24400; and Pavement Repairs in Various Locations, Project No. 27306

No. of Bids: 5

Company Information	Bid Bond, Etc.	City Bidder is From	1# Addendums	2# Addendums	Amount
Pal General Engineering, Inc.	✓	San Diego, CA	✓	✓	\$1,418,905. <sup>00</sup>
Hardy and Harper, Inc.	✓	Lake Forest, CA	✓	✓	\$1,203,000. <sup>00</sup>
All American Asphalt	✓	Corona, CA	✓	✓	\$1,339,209. <sup>60</sup>
R.J. Noble Company	✓	Orange, CA	✓	✓	\$1,270,283. <sup>15</sup>
Palp Inc., DBA Excel Paving Company	✓	Long Beach, CA	✓	✓	\$1,158,306. <sup>00</sup>

## AGREEMENT FOR CONSTRUCTION OF PUBLIC WORKS

This Agreement for Construction of Public Works (the Arterial Street Pavement Maintenance – FY 2020 for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos), Project No. 10320; and Pavement repairs for the Water Division, Project No. 24400; and Pavement repairs in various locations, Project No. 27306) (the "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, between the City of San Clemente, a California municipal corporation, (the "City") and Palp, Inc. DBA Excel Paving ("Contractor") (collectively referred to as the "Parties").

### RECITALS

- A. The City of San Clemente has adopted the Uniform Public Construction Cost Accounting Procedures Act (Public Contract Code § 22000 et seq.), (the "Act") and has selected Contractor pursuant to the procedures authorized by the Act.
- B. City desires to have Contractor perform and Contractor desires to provide the public works of improvement described within this Agreement.
- C. The City is entering into this contract for work to be performed, for compensation in the amount of \$1,158,306.

### COVENANTS

Based upon the foregoing Recitals and in consideration for the mutual promises and covenants contained herein, the Parties agree as follows:

#### SECTION 1: SCOPE OF WORK.

Contractor agrees to perform all tasks necessary to construct and/or install or cause to be constructed and/or installed the Work identified in the Plans and Specifications for the Arterial Street Pavement Maintenance – FY 2020 for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos), City Project No. 10320, and Pavement repairs for the Water Division, City Project No. 24400; and Pavement repairs in various locations, City Project No. 27306 in accordance with the terms and conditions contained both herein and in all other Contract Documents.

#### SECTION 2: INTENT OF CONTRACT DOCUMENTS.

The intent of the Contract Documents is to prescribe a complete work of improvement which Contractor shall perform or cause to be performed in a manner acceptable to the Engineer and in full compliance with all codes and the terms of this Agreement. Contractor shall complete a functional or operable improvement or facility, even though the Contract Documents may not specifically call out all items of work required for the Contractor to complete its tasks, incidental



appurtenances, materials, and the like. If any omissions are made of information necessary to carry out the full intent and meaning of the Contract Documents, Contractor shall immediately seek approval of the Engineer for furnishing detailed instructions. Further, prior to commencing performance of any work hereunder, Contractor shall cooperate with and assist the City to identify and make any refinements to the description and scope of the work that may be necessary to achieve City's goals hereunder. In the event of any doubt or question arising regarding the true meaning of any of the Contract Documents or any portion thereof, reference shall be made to the Engineer whose decision thereon shall be final.

### **SECTION 3: TERMS AND CONDITIONS OF PERFORMANCE.**

All work performed under this Agreement shall comply with the current edition of that document entitled "Standard Specifications For Public Works Construction," published by Building, News, Inc. (the "Standard Specifications"), which is incorporated herein by this reference as if set forth in full, except the following provisions of the Standard Specifications are hereby amended as follows:

A. Section 1-2 of the Standard Specifications, entitled "Definitions," is hereby amended as follows:

"Agreement" - This signed Agreement for Construction of Public Works as well as all Contract Documents.

"Board" - The City Council of the City of San Clemente or its designee.

"Contract Documents" - include but are not limited to: the Contract Addenda (which pertain to the contract documents), notice inviting bids, instruction to bidders; bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award); when attached as an exhibit to the Contract, the Bonds; the general conditions; permits from other agencies; the Project Specifications, the Special Provisions; the Plans; the Standard Plans; Standard Specifications, Reference Specifications; and all modifications issued by City after the execution of the Contract, and all of the exhibits to this Agreement which are incorporated herein by this reference as if set forth in full.

B. Section 2-4 of the Standard Specifications entitled "Security," is hereby amended to read in its entirety as follows:

2.4 Security and Indemnity.

2-4.1 Security to Guarantee Performance and Payment.

At the time Contractor executes this Agreement, Contractor shall furnish to City bonds, letters of credit, or other security acceptable to City in City's sole and absolute discretion (hereinafter "Security Instruments") as follows:

- (i) A Security Instrument securing Contractor's faithful performance of all of the Works of Improvement in the amount of one hundred percent (100%) of the estimated construction costs (the "Faithful Performance Security Instrument").
- (ii) A Security Instrument guaranteeing the payment to subcontractors and other persons furnishing labor, materials, and/or equipment with respect to the Works of Improvement in an amount equal to one hundred percent (100%) of the estimated construction costs (the "Labor and Materials Security Instrument").

This Agreement shall not be operative until such Security Instruments are supplied to and approved by City in accordance herewith.

#### 2-4.2 Security Instrument For Warranty Period.

In addition to the Security Instruments referenced in paragraph 2-4.1 above, prior to the City Council's acceptance of the Work and recordation of a Notice of Completion, Contractor shall deliver a Security Instrument warranting the accepted Work for a period of one (1) year following the date of acceptance (the "Warranty Period"), with the amount of such Security Instrument to be equal to twenty-five percent (25%) of the estimated construction cost or a suitable amount determined by the Engineer (the "Warranty Security Instrument"). In lieu of delivering a Warranty Security Instrument, Contractor may elect to utilize its Faithful Performance Security Instrument to warrant the Work for the Warranty Period, in which case the City shall continue to hold the Faithful Performance Security Instrument for the Warranty Period. Contractor shall be deemed to have elected to utilize its Faithful Performance Security Instrument for the Warranty Period if Contractor has not delivered a Warranty Security Instrument to the City prior to the City Council's acceptance of the Work.

#### 2-4.3 Release of Security Instrument.

City shall release the Faithful Performance Security Instrument upon Contractor's written request after acceptance of the Work and Contractor's delivery of the Warranty Security Instrument. City shall release the Labor and Materials Security Instrument upon Contractor's written request after the Work has been accepted and after passage of the time within which lien claims are required to be made pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part IV of Division 3 of the California Civil Code. If any lien claim or claims have been timely filed, City shall hold the Labor and Materials Security Instrument until such claim or claims have been resolved, Contractor has provided a statutory bond, or otherwise as required by applicable law. City shall release the Warranty Security Instrument upon Contractor's written request after the expiration of the warranty period, provided no claims are outstanding at that time regarding defective work.

#### 2-4.4 Form of Security Instruments.

All Security Instruments shall meet the minimum requirements of Code of Civil Procedure Section 995.660 as specified below, and otherwise shall be in a form acceptable to the City Attorney:

- (i) Any insurance company acting as surety shall be authorized to transact surety insurance in the state of California, shall demonstrate to the satisfaction of the City that its assets exceed its liabilities in an amount equal to or in excess of the amount of the bond, and shall provide to the City the following:
  - (a) The original, or a certified copy of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond to do so;
  - (b) A certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner;
  - (c) A certificate from the clerk of the Orange County Clerk of the Court that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; and
  - (d) Copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance;
- (ii) Payments under the Security Instrument shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the County of Orange, State of California;
- (iii) Each Security Instrument shall have a minimum term of one (1) year after the deadline for Contractor's completing the Work, in accordance with paragraph 2.1 herein;
- (iv) The Security Instrument shall reference Contractor's obligations under this Agreement, shall be irrevocable, and shall include as an additional secured obligation the responsibility to compensate City for all of City's attorney's fees and litigation expenses reasonably incurred in enforcing its rights under the Security Instrument.

#### 2-4.5 Indemnity.

Contractor shall indemnify, defend, and hold harmless City and City's officers, employees, and agents and the Redevelopment Agency of the City of San Clemente and its officers, employees, and agents from and against any and all claims, demands, liabilities, losses, obligations, damages, causes of action, or any proceedings of any kind or nature, including without limitation worker's compensation claims, in any way arising or alleged to arise out of Contractor's performance or failure to perform the Work described herein. Said indemnity obligation shall apply to personal injury, death, property damage, economic loss, and any other monetary damage or penalty to which City may be subjected, whether or not the injury, damage, or loss is covered by insurance.

C. Section 6-8 of the Standard Specifications, entitled "Completion and Acceptance," is hereby amended to read in its entirety as follows:

6-8 Completion and Acceptance. Defective Work.

6-8.1 Completion.

Contractor shall make an initial request for final inspection after initial completion of the Work. After inspection, the Engineer will inform the Contractor, in writing, of all items found by Engineer to be incomplete or not in compliance with this Agreement. After the Contractor has completed these items, the procedure for final inspection shall then be the same as specified above for the Contractor's initial request for final inspection. If after two (2) "final" inspections, items are found by Engineer to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced herein, City may require Contractor, as a condition of City performing further field inspections, to submit to the Engineer a detailed written statement of the work performed subsequent to the date of the previous inspection at which such items were found to be incomplete or not in compliance with this Agreement.

The Parties shall follow the above steps until such time as Engineer determines that the Work has been satisfactorily completed in accordance with all terms and condition of this Agreement. Upon such determination, City shall order recordation of the Notice of Completion.

6-8.2 Acceptance.

Thirty-five (35) days after the Notice of Completion is recorded (or in the event of any lien claims are filed against the Project arising out of Contractor's activities hereunder, on such date Contractor has finally satisfied, discharged, or obtained a release of such claim), City shall accept Contractor's Work.

6-8.3 Defective Work.

Contractor shall repair, reconstruct, replace or otherwise make acceptable any and all Work found by Engineer to be defective or not in accordance with the Agreement. Final acceptance of the Work shall not constitute a waiver by City of any defective work subsequently discovered.

D. Section 7-2.2 of the Standard Specifications, entitled "Labor," is hereby amended to add, to the end of the first paragraph:

The Contractor shall not employ, or permit to be employed, any undocumented aliens (i.e., persons who are not citizens or nationals of the United States) to perform any portion of the Work.

E. Section 7-3. of the Standard Specifications, entitled "Liability Insurance," is hereby amended to read in its entirety as follows:

Contractor shall furnish to City a policy or certificate of liability insurance indicating compliance with the following minimum insurance requirements within ten (10) working days after Contractor's receipt of the Notice of Award and Contractor shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' compensation insurance as required under Section 7-4 of the Standard Specifications.
- B. Comprehensive general liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:
  - (1) Be issued by a good and solvent insurance company reasonably acceptable to the City which company holds a current policyholder's alphabetic and financial size category rating of not less than A VIII, according to the current Best's Key Rating Guide or a company of equal financial stability which is approved in writing by City's Risk Manager;
  - (2) Name and list on the Certificate of Insurance and the Endorsement as additional insureds the City and its officers, employees, and agents and, if the City's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents (an endorsement shall accompany the insurance certificate

naming such additional insureds);

- (3) Specify that it acts as primary insurance and that no insurance held or owned by City (or if applicable, the Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy of insurance may not be cancelled or materially changed except upon thirty (30) days prior written notice to City of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) Cover the operations of Contractor pursuant to the terms of this Agreement; and
- (6) Be written on an occurrence and not a claims made basis.

Except as provided for in Subsection 6-10 of the Standard Specifications, Contractor shall save, keep, and hold harmless City, its officers, and agents from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damages to property, or a personal injury received by reason of or in the course of performing work, which may be caused by any willful or negligent act or omission by Contractor, any of Contractor's employees or agents, or any subcontractor. City will not be liable for any accident, loss or damage to the Work prior to its completion and acceptance except as provided for in Subsection 6-10.

The cost of this insurance shall be included in Contractor's bid.

F. Section 7-8.6 of the Standard Specifications, entitled "Water Pollution Control," is hereby amended to read in its entirety as follows:

7-8.6 Water Pollution Control.

If applicable, Contractor shall be required, at its sole expense, to obtain coverage under the NPDES General Construction Permit and comply with all terms and conditions thereto. Information regarding this permit can be obtained from the State Water Board's website at:

[http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/construction.shtml](http://www.swrcb.ca.gov/water_issues/programs/stormwater/construction.shtml).

In addition, the Contractor shall comply with the City of San Clemente's Municipal Code Section 13.40, entitled Storm Water Runoff Control Ordinance. Contractor is required to employ and maintain Best Management Practices (BMPs) consistent with the Storm Water Runoff Control Ordinance, Sections 7 & 8 of the City's Local Implementation Plan, and the most recent version of the Countywide Construction Guidance Manual. All reference documents are available on the City's website or by calling the Environmental Section at (949)

361-6143.

G. Section 9-3.2 of the Standard Specifications, entitled "Partial and Final Payment," is hereby amended to read in its entirety as follows:

9-3.2 Partial and Final Payment.

As a condition of receiving monthly progress payments, Contractor shall, prior to the tenth of the month, submit to City an invoice specifying the work performed during the previous month and Contractor's allocated dollar value for that work.

Within fifteen (15) days of receipt of the invoice, the Engineer shall make an approximate measurement of the work performed to the closure date and as basis for making monthly payments, estimate its value based on Contract Unit Prices or as provided for in Section 9-2 of the Standard Specifications (the "Progress Estimate"). When the Work has been satisfactorily completed, the Engineer will determine the quantity of work performed and prepare the final estimate.

Within fifteen (15) business days of the City's approval of the Engineer's Progress Estimate, Contractor shall receive partial payments in the amount of the Progress Estimate less five percent (5%) which will be deducted and retained by the City. Notwithstanding the foregoing, the total retention proceeds retained by the City shall not exceed five percent (5%) of the total Contract amount.

Notwithstanding anything herein to the contrary, in the event any of Contractor's insurance as required pursuant to this Agreement or any of the Contract Documents expires during the term of this Agreement, City shall withhold any payment due to Contractor hereunder until such time as Contractor obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to City.

Notwithstanding anything herein to the contrary, (i) the limitations on retention shall not apply to amounts withheld or deducted from payment as liquidated damages pursuant to Section 6-9 of the Standard Specifications; and (ii) no progress payment made to the Contractor or its sureties will constitute a waiver of liquidated damages under Section 6-9 of the Standard Specifications.

Contractor shall not be entitled to any payments over and above the Unit Price or the total Contract Price.

As provided in Sections 10263 and 22300 of the California Public Contract Code, the Contractor may substitute securities for any monies withheld by the Agency to ensure performance under the Contract.

**SECTION 4: MISCELLANEOUS.**

**4.1 No Duty to Third Parties.**

This Agreement is intended to benefit only the Parties hereto. This Agreement is not intended to and does not create any liability or obligation or duty to any person, group, or entity not a Party to this Agreement. Neither City nor Contractor intend to create any third party beneficiary rights in this Agreement in any Contractor, Subcontractor, member of the general public, or any other person, group or entity.

**4.2 Notice.**

Every notice, demand, request, or other document or instrument delivered pursuant to this Agreement shall be in writing, and shall be either personally delivered, sent by Federal Express or other reputable overnight courier, sent by facsimile transmission with the original subsequently delivered by other means, or sent by certified United States mail, postage prepaid, return receipt requested, to the addresses set forth below, or to such other address as a Party may designate from time to time:

To City: City of San Clemente  
City Hall  
910 Calle Negocio  
San Clemente, CA 92673  
Attention: City Manager  
cc: City Engineer  
Telephone: (949) 361-8322  
Fax: (949) 361-8285

To Contractor: Excel Paving  
2230 Lemon Avenue  
Long Beach, CA 90806  
Tel: 562-599-5841

**4.3 Rights and Remedies are Cumulative.**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

**4.4 Legal Action.**



Any Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

**4.5 No Partnership.**

The Parties to this Agreement renounce the existence of any form of joint venture or partnership between them and agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making the Parties joint venturers or partners.

**4.6 Entire Agreement.**

This Agreement constitutes the entire understanding and agreement of the Parties and integrates all of the terms and conditions mentioned herein or incidental hereto with respect to the subject matter hereof, and supersedes all negotiations or previous agreements between the Parties with respect to all or part of the subject matter hereof.

**4.7 Amendment.**

This Agreement may be amended in writing at any time by the mutual consent of the Parties. No amendment shall have any force or effect unless executed in writing by the Parties.

**4.8 Objective Construction.**

This Agreement reflects the negotiated agreement of the Parties. Accordingly, this Agreement shall be construed as if all Parties jointly prepared this Agreement and no presumption against one Party or the other shall govern the interpretation or construction of any of the terms of this Agreement by virtue of the preparation or authorship of this Agreement.

**4.9 Waivers.**

All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the Party to be charged. No waiver shall be effective unless it is in writing and signed as required herein.

**4.10 Severability.**

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the Agreement shall continue in full force and effect, unless and to the extent that the rights and obligations of any Party would be materially altered or abridged by such interpretation.

**4.11 Applicable Law.**

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any and all actions filed by any Party to enforce any rights or obligations created by this Agreement shall be filed in a court of competent jurisdiction in the State of California.

**4.12 Attorneys' Fees.**

In the event of any legal action arising out of: (1) disputes concerning whether the Work performed conforms with the Plans and Specifications; (2) disputes concerning whether the Work performed is defective; or (3) disputes concerning enforcement of warranty obligations, the prevailing Party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, and all other necessary costs incurred in the litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to final judgment.

**4.13 Reasonableness.**

Each of the Parties and its agents, employees, attorneys, and consultants shall act reasonably in exercising any rights and taking any actions pursuant to this Agreement.

**4.14 Corporate Authority.**

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that, by so executing this Agreement, the Parties hereto are formally bound to the provisions of this Agreement.

**SECTION 5: LABOR CODE COMPLIANCE.**

**5.1 Registration Requirement.**

Pursuant to Labor Code section 1771.1, no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations. Furthermore, Contractor is hereby notified that no contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations. By signing this Agreement Contractor certifies that Contractor, and all subcontractors, hold current and valid registrations with the Department of Industrial Relations.

**5.2 Compliance Monitoring.**

Pursuant to Labor Code section 1771.4, Contractor is hereby notified that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

End of Text

CITY OF SAN CLEMENTE

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

Approved as to form  
BEST BEST KRIEGER:

\_\_\_\_\_  
City Attorney

APPROVED AS TO AVAILABILITY  
OF FUNDING

By: \_\_\_\_\_  
Finance Authorization

\_\_\_\_\_  
("CONTRACTOR")

License Number: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

WORKER'S COMPENSATION INSURANCE CERTIFICATION

Arterial Street Pavement Maintenance -- FY 2020 for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos), Project No. 10320 and Pavement repairs for the Water Division, Project No. 24400; and Pavement repairs in various locations, City Project No. 27306

Sections 1860 and 1861 of the California Labor Code require every Contractor to whom a Public Works Agreement is awarded to sign and file with the Awarding Body the following statement:

"I am 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 I will comply with such provisions before commencing the performance of the work of this contract."

Dated: \_\_\_\_\_, 20\_\_

Palp, Inc. DBA Excel Paving  
Contracting Firm

By: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_

CERTIFICATE THAT NO WORKERS' COMPENSATION INSURANCE  
IS REQUIRED (ALTERNATE /IF APPLICABLE)

I hereby certify that Contractor has no employees, that no employees will perform services with respect to the Project that it is the subject of this Agreement, and, accordingly, that no workers' compensation insurance need be maintained pursuant to applicable provisions of law. Contractor hereby agrees to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of Contractor's failure to provide such worker's compensation insurance.

Dated: \_\_\_\_\_, 20\_\_\_\_

Palp, Inc. DBA Excel Paving  
Contracting Firm

By: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_

WARRANTY FORM

Arterial Street Pavement Maintenance – FY 2020 for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos), Project No. 10320 and Pavement repairs for the Water Division, Project No. 24400; and Pavement repairs in various locations, City Project No. 27306

We hereby guarantee to the City of San Clemente the work that we have constructed for a period of one (1) year after the date of acceptance.

We agree that if any of the equipment should fail due to any reason other than improper maintenance or improper operation, if any pipe or appurtenances should develop leakage, or if any settlement of fill or backfill occurs, or should any portion of the work fail to fulfill any of the requirements of the Specifications, we will, within five (5) days after written notice of such defects, commence to repair or replace the same together with any other work which may be damaged or displaced in so doing.

In the event of our failure to comply with the above mentioned conditions within a reasonable time after being notified, or should the exigencies of the case require repairs or replacements to be made before we can be notified or respond to notification, we do hereby authorize the City of San Clemente to proceed to have the defect repaired and made good at our expense, and we will pay the cost therefor upon demand.

The warranty provided herein shall not be in lieu of, but shall be in addition to any warranties or other obligations otherwise imposed by the Contract Documents and by law.

Dated: \_\_\_\_\_, 20\_\_\_\_

Palp, Inc. DBA Excel Paving  
Contracting Firm

By: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_