



CITY OF LAGUNA NIGUEL CITY COUNCIL AGENDA ITEM

TO: Honorable Mayor and Council Members

FROM: Jacki Scott, Public Works Director/City Engineer

DATE: February 20, 2024

SUBJECT: Award of Construction Contract to Palp, Inc. dba Excel Paving Company for the La Paz Road Long-Term Phase II Project, Cash Contract No. 23-17

RECOMMENDATION

Staff recommends that the City Council:

1. Reject the low bid submitted by Aster Construction Services for the La Paz Road Long-Term Phase II Project, Cash Contract No. 23-17 as non-responsive;
2. Award the Construction Contract for the La Paz Road Long-Term Phase II Project, Cash Contract No. 23-17 to Palp, Inc. dba Excel Paving Company, in the amount of \$2,079,810;
3. Authorize the Public Works Director/City Engineer to process change orders in an amount not to exceed 15% of the contract for \$311,972, for a total not-to-exceed amount of \$2,391,782, if needed;
4. Authorize the City Manager to execute the Construction Contract for the La Paz Road Long-Term Phase II Project, Cash Contract No. 23-17 with Palp, Inc. dba Excel Paving Company, subject to the City Attorney making non-substantive changes; and,
5. Authorize the Public Works Director/City Engineer to execute the Notice of Completion at the conclusion of construction.

BACKGROUND

La Paz Road was constructed in the late 1960's with one lane in each direction, then subsequently widened to two lanes in each direction in the 1990's. Throughout the years, earth movement was noticed with distortions of the pavement, sidewalk, and parkway areas along the Laguna Niguel Regional Park interface near Rancho Niguel Road. To address the earth movement and minimize roadway distortion, nearly seventy 24-inch diameter caissons were installed within the travel lanes of La Paz Road in the 1990's and early 2000's, along with a crib wall at Laguna Niguel Regional Park.

Over time, the earth movement has caused substantial damage to the roadbed and sidewalk on the southbound side of La Paz Road between Rancho Niguel Road and Kings Road. Several attempts were made by the City to repair the damaged road, however, roadway movement continued.

In May 2023, the City received a report on the conditions of the slope from its geotechnical consultant, GMU, who has overseen the on-going monitoring. The report indicated that the site showed increasing signs of vertical displacement and that new tension cracks were visible in the soil adjacent to the southbound sidewalk. Out of an abundance of caution, the City Council adopted Resolution No. 2023-1427 declaring a local emergency. The City then implemented a new interim traffic control pattern called the Short-Term Phase I Plan on La Paz Road that closed the two southbound travel lanes at Rancho Niguel Road and detoured southbound La Paz Road traffic onto eastbound Rancho Niguel Road. The closure and detour were implemented as a temporary and precautionary measure to ensure public safety.

On August 15, 2023, the City Council approved a contract with Mark Thomas & Company, Inc. to provide engineering design services for the restoration of interim two-way traffic along La Paz Road (Long-Term Phase II). A copy of the plans and specifications is available at the City Clerk's Office for examination and review.

The proposed La Paz Road Long-Term Phase II project ("Project") includes the following features:

- Removes the center median island along La Paz Road from Rancho Niguel Road to Kings Road and replaces it with new pavement.
- Converts the two northbound lanes of La Paz Road to one northbound lane and one southbound lane to allow two-way traffic circulation.
- Adds K-rail separation between the northbound and southbound travel lanes.
- Preserves the northbound bike lane and adds a southbound bike lane.
- Adds green paint to bike lanes and vertical delineation for protected bike lanes.
- Preserves the sidewalk on the easterly side of La Paz Road only.
- Preserves southbound La Paz Road left-turn access at the intersection of Rancho Niguel Road and La Paz Road and preserves northbound La Paz Road left-turn access at the SOCWA plant driveway and La Paz Road.
- Provides adequate roadway width to meet emergency access standards.
- Provides/restores street lighting to match the existing condition.
- Eliminates the current detour onto Rancho Niguel Road.

A map showing the vicinity and location of the Project area along La Paz Road is provided as Attachment "A". This Project supports City Council Goal 1 (Public Safety) and Goal 4 (Infrastructure and Technology) of the City's adopted Strategic Plan.

ANALYSIS

In response to the advertisement for bids, the City received five bids on January 11, 2024. A summary of the bids is provided in the table below.

Contractor	Base Bid Amount
Aster Construction Services (Non-Responsive)	\$1,742,590
Palp, Inc. dba Excel Paving Company (Recommended)	\$2,079,810
Flatiron West, Inc.	\$2,266,888
All American Asphalt	\$2,387,387
Gentry General Engineering, Inc.	\$3,511,760

In accordance with Public Contract Code section 22038(b), this Project must be awarded to the lowest responsible bidder submitting a responsive bid. Staff reviewed the bid proposal from Aster Construction Services (Aster), the apparent low bidder, and found that while Aster meets the licensing requirements, they failed to properly complete the City's required Bid Proposal forms. Aster did not complete any of the Unit Prices or Extended Amounts on the City's required Bid Proposal Sheet forms for the Base Bid, which constitutes a material deviation that cannot be waived. In addition, the Total Bid Amount listed on the required City form is inconsistent with the bid amount in the City's online bid submission portal (Planet Bids). Accordingly, staff and the City Attorney's office recommend that the bid submitted by Aster be rejected as non-responsive.

Staff recommends the construction contract for this Project be awarded to the next lowest responsible bidder submitting a responsive bid, which is Palp, Inc. dba Excel Paving Company (Excel). Excel has been a licensed contractor since 1994 and currently holds active Class A, C12 and C31 licensure. Excel holds all bonding and insurance requirements, maintains a current public works contractor registration with the Department of Industrial Relations, and meets all contract requirements. The contractor also referenced multiple construction projects directly related to the Cash Contract No. 23-17 Project in their bid submittal, including prior projects with the City of Fullerton, City of Anaheim, City of Santa Ana, and the City of Laguna Beach. References from these cities identified this contractor has met and exceeded expectations.

Staff is recommending that a construction contract be awarded to Palp, Inc. dba Excel Paving Company in the amount of \$2,079,810 for the La Paz Road Long-Term Phase II Project, Cash Contract No. 23-17 (Attachment "B"). Staff is also recommending that the City Council authorize the Public Works Director/City Engineer to process change orders in an amount not to exceed 15% of the contract for \$311,972, for a total not-to-exceed amount of \$2,391,782.

Project expenditures also include Construction Management and Inspection services to oversee all construction activity totaling \$202,466 and Geotechnical testing and observation during construction totaling \$52,800. Project construction is expected to begin in Spring 2024 with an estimated completion by Fall 2024. Traffic control plans will be professionally prepared by a licensed engineer to permit the minimum lane closures necessary to complete the work. The City website and social media platforms will be updated regularly to inform the public of the Project's status.

This Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines – California Code of Regulations, Chapter 3 (Guidelines for Implementation of CEQA), Article 19 (Categorical Exemptions), Section 15301 (Existing Facilities), subsection (c).

ALTERNATIVES CONSIDERED

The City Council may decide to reject all bids and readvertise the Project. Staff does not recommend this alternative as it would delay construction of the improvements.

FISCAL REVIEW

Pending approval of the mid-year budget adjustment, the total project budget for the Long-Term Phase II project is \$3,000,000, and the total construction contract cost, including contingency, will be \$2,391,782.

The total construction cost is estimated to be \$2,647,048, as summarized in the table below. The costs associated with other project improvements, and engineering design and monitoring services in the amount of \$352,952 are also included in the overall \$3,000,000 project budget.

Long-Term Phase II Project Funding Sources		Construction Expenditures	
Infrastructure Reserves	\$1,500,000	Excel Paving Company	\$2,079,810
General Fund Surplus (FY 22/23) Midyear Budget Adjustment	\$1,500,000	15% Contingency for Change Orders	\$311,972
		Construction Management & Inspection	\$202,466
		Geotechnical Testing & Observation	\$52,800
Total Project Funding	\$3,000,000	Total Estimated Construction Expenditures	\$2,647,048

LEGAL REVIEW

The City Attorney's Office has reviewed this report and the Construction Contract and has approved them as to form.

CONCLUSION

Staff recommends that the City Council:

1. Reject the low bid submitted by Aster Construction Services for the La Paz Road Long-Term Phase II Project, Cash Contract No. 23-17 as non-responsive;

2. Award the Construction Contract for the La Paz Road Long-Term Phase II Project, Cash Contract No. 23-17 to Palp, Inc. dba Excel Paving Company, in the amount of \$2,079,810;
3. Authorize the Public Works Director/City Engineer to process change orders in an amount not to exceed 15% of the contract for \$311,972, for a total not-to-exceed amount of \$2,391,782, if needed;
4. Authorize the City Manager to execute the Construction Contract with Palp, Inc. dba Excel Paving Company for the La Paz Road Long-Term Phase II Project, Cash Contract No. 23-17 with Excel Paving Company, subject to the City Attorney making non-substantive changes; and,
5. Authorize the Public Works Director/City Engineer to execute the Notice of Completion at the conclusion of construction.



Tamara S. Letourneau
City Manager



Scott C. Smith
City Attorney



Jacki Scott
Public Works Director/City Engineer



Trevor Agrelus
Finance Director

Attachments:

- A. Vicinity Map
- B. Construction Contract, Cash Contract No. 23-17

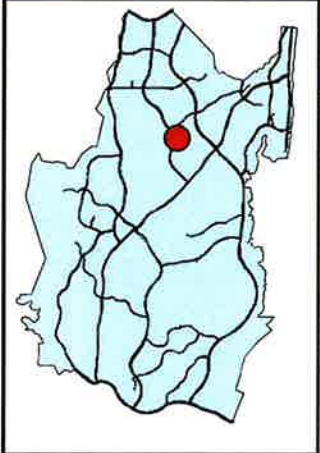
ATTACHMENT A

Vicinity Map

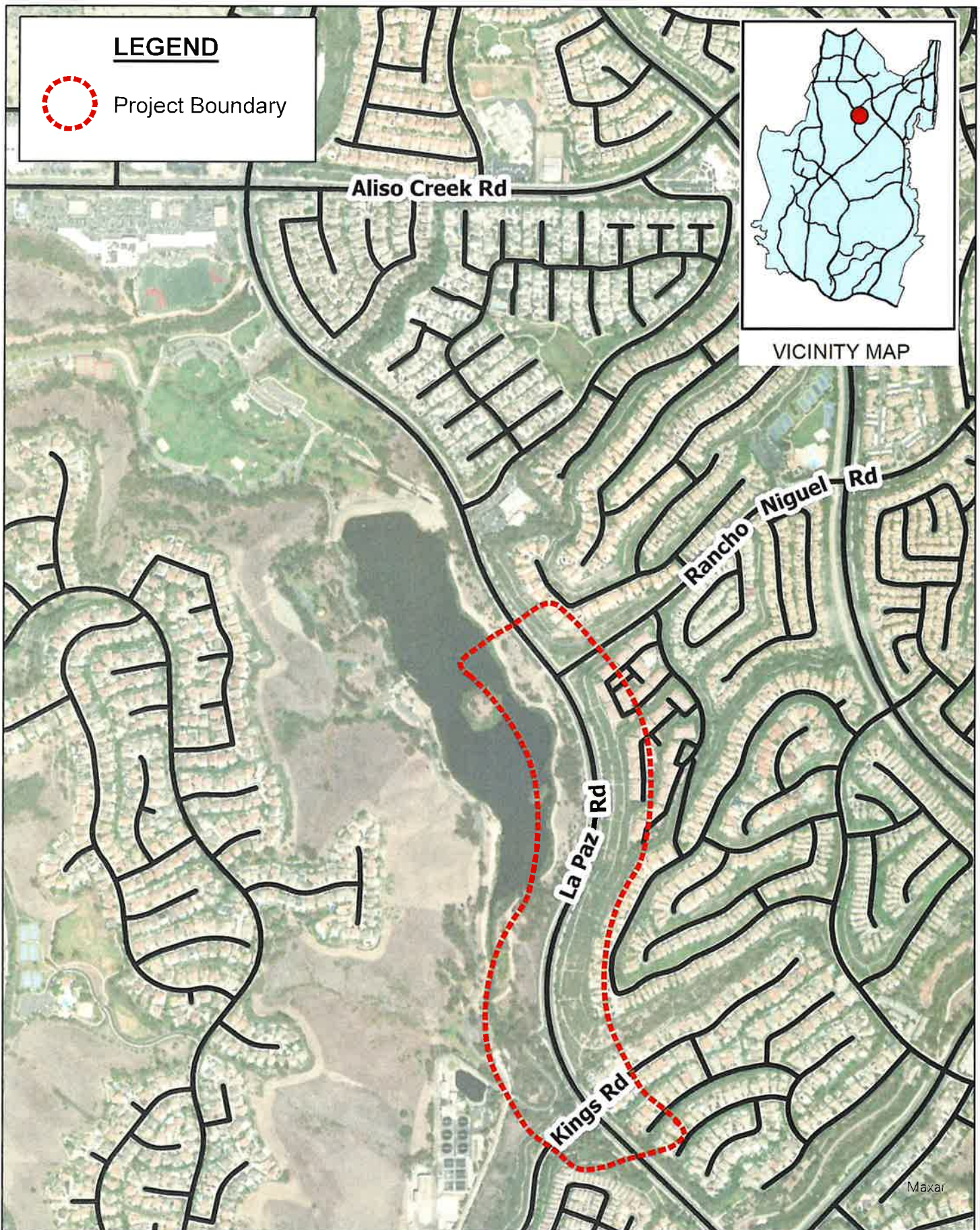
LEGEND



Project Boundary



VICINITY MAP



Vicinity and Location Map

La Paz Road Long-Term Phase II Project



ATTACHMENT B

Construction Contract, Cash Contract No. 23-17

**AGREEMENT FOR CONSTRUCTION SERVICES
LA PAZ ROAD LONG-TERM PHASE II PROJECT, CASH CONTRACT 23-17**

FORMAL BID PROJECTS

This Agreement for Construction Services ("Agreement") is made and entered into as of _____, by and between the City of Laguna Niguel, a California municipal corporation (hereinafter the "City"), and Palp, Inc., DBA Excel Paving Company, a California corporation (hereinafter the "Contractor"). Contractor has been qualified by the California Secretary of State to conduct business in the state of California.

R E C I T A L S:

1. The City Council of the City of Laguna Niguel has decided to construct the project, La Paz Road Long-Term Phase II Project, Cash Contract 23-17.
2. The City has invited the submission of bids for the construction of the Project.
3. The Contractor has submitted a bid for the contract for the construction of the Project. The Contractor is the lowest responsible bidder for the Project.
4. The City proposes to award a contract to the Contractor for the construction of the Project.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. Scope of Work. Contractor shall furnish all labor, materials, equipment, tools, utility and transportation services, and perform complete all work required in connection with the Project. It is the duty of the Contractor to complete the Work in strict accordance with the contract document. The documents and specifications set forth below, together with this Agreement between the City and the Contractor, are the "Contract Documents" and are made a part of this Contract as though fully set forth herein:

- A. Notice of Inviting Bids
- B. Scope of Work, if any
- C. Plans for the Project, if any.
- D. General Specifications for the Project, if any.
- E. Special Provisions for the Project, if any.
- F. Standard Specifications, if any.
- G. Addendum as issued
- H. Contractor's Signed Bid Proposal

- I. Designated Subcontractors List, if any
- J. Bid Bond, Performance Bond, and Labor & Materials Payment Bond
- K. Worker's Compensation Certificate Form
- L. Insurance Certificates and Written Endorsements
- M. Notice to Proceed (issued by the City)
- N. Notice of Completion (issued by the City at final completion of the project)
- O. Guaranty Form

2. Standard Specifications. Standard Specifications for City projects are those contained in the most recent edition of the "Standard Specifications for Public Works Construction" (the "Greenbook"). Except as otherwise expressly provided herein, the Standard Specifications shall control the general provisions, construction materials, and construction methods for this Contract (except as amended by the Plans for the Project), the General Specifications for the Project, the Special Provisions for the Project, any technical specifications for the Project, and any other contract documents.

3. Compensation. City shall pay Contractor up to the total, all-inclusive, NOT-TO-EXCEED amount of Two Million Seventy-Nine Thousand Eight Hundred Ten Dollars (\$2,079,810.00) for the construction of the Project. This amount shall cover all expenses for labor, materials, and any and all other costs incurred by Contractor to satisfactorily construct the Project. Unless otherwise provided in the bid documents or agreed upon by the parties, Contractor shall submit detailed, monthly invoices for work actually performed.

A fifteen percent (15%) contingency (allowance) of the total contract value Three Hundred Eleven Thousand Nine Hundred Seventy-Two Dollars (\$311,972.00) shall be added to the contractor's total bid proposal for unforeseen conditions or additional work related to this project. The allowance shall be used solely by the City to address any unforeseen repairs or additional work related to the project. The Contractor shall obtain written approval from the City for the use of the allowance.

4. Completion Date. The Contractor shall commence the Project work on the date indicated in the Notice to Proceed issued by or on behalf of the City and shall complete the Work within 100 working days. This shall be called Contract Time. It is expressly understood that time is of the essence.

5. Liquidated Damages. It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the Contractor will pay the City the sum of \$1000 per calendar day for each and every day of delay beyond the Contract Time (inclusive of Milestones that are critical on the Critical Path or noted as critical to the City) as liquidated damages and not as a penalty or forfeiture. In the event Liquidated Damages are not paid, the Contractor further agrees that the City may deduct such amount thereof from any money due or that may become due the Contractor. This shall not be construed as preventing the City from the recovery of other damages under the Contract Documents.

6. Payment and Performance Bonds; Guaranty. Unless otherwise expressly provided in the bid documents, prior to commencing work, Contractor shall provide a payment bond and performance bond, each in an amount equal to 100% of the Contract price. The bond forms required to be executed are attached hereto and incorporated by reference herein. Pursuant to the bid documents for this Project, the Contractor is required to provide a written guaranty of Contractor's work. In furtherance thereof, Contractor shall execute the written form of Guaranty attached hereto and incorporated by reference herein.

7. Licenses. At all times during the term of this Contract, Contractor shall possess a valid and current Class A General Engineering License to perform the required work ("Work"). Contractor hereby certifies that it holds the required license(s). Contractor's license number is 688659.

8. Contractor Department Industrial Relation Registration No. In accordance with Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5. Contractor's DIR registration number is 1000003331.

9. Subcontracting. Contractor may subcontract any portion of the work required by this Agreement to other persons or firms provided the bid documents do not prohibit subcontracting, and Contractor submitted with its bid a list of all subcontractors who will perform work in an amount in excess of one-half of one percent (1%) of the Contractor's total bid, in compliance with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code § 4100, et seq. Only such listed subcontractors may perform on this Project.

10. Non-Assignability. Neither this Contract nor any rights, title, interest, duties or obligations under this Contract may be assigned, transferred, conveyed or otherwise disposed of by Contractor without the prior written consent of City.

11. Administration. This Contract will be administered by the Public Works Department. The Director of Public Works/City Engineer or his or her designee shall be considered the Project Manager and shall have the authority to act for the City under this Agreement

12. Indemnification.

(a) Contractor agrees, to the full extent permitted by law, to immediately indemnify, defend and hold harmless City and its elected and appointed officers, employees, agents, designated volunteers, attorneys, successors and assigns (each an "Indemnitee" and collectively, "Indemnitees") against, and will hold and save them and each of them harmless from, whether actual or threatened, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages or injuries to persons or property, demands, expenses, losses, costs, penalties, obligations, errors, omissions or

liabilities of any kind that may be asserted or claimed by any person, firm or entity arising out of, pertaining to, incident to or in connection with any alleged acts, errors or omissions of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable (each an "Indemnitor" and collectively, "Indemnitors") in connection with the performance of Contractor's Services, or arising from Indemnitors' reckless or willful misconduct, or arising from Indemnitors' negligent performance of or failure to perform the work, operations or activities provided herein, or any term, provision, covenant or condition of this Agreement, with such negligence or failure to perform to be determined by the City (herein "Claims or Liabilities"), and in connection therewith: 1) Contractor will defend any action or actions filed or threatened in connection with any such Claims or Liabilities, or at option of Indemnitees will reimburse and pay for all costs and expenses, including legal costs and attorneys' fees, incurred by Indemnitees in connection therewith; and, 2) Contractor will promptly pay and satisfy any judgment, award or decree rendered against Indemnitees, and reimburse Indemnitees for the cost of any settlement paid by Indemnitees, for any such Claims or Liabilities, and will save and hold Indemnitees harmless therefrom.

(b) Further Provisions. The indemnity obligation herein shall be binding on successors, assigns and heirs of Contractor and shall survive termination of this Agreement. Contractor shall incorporate similar indemnity agreements as provided herein with its subcontractors, and if Contractor fails to do so Contractor shall be fully responsible to indemnify City hereunder therefor. Failure of City and/or City Parties (collectively "City" for solely this Section 12(b)) to monitor compliance with any of the indemnification provisions herein shall not be a waiver hereof. The indemnification provisions herein do not apply to claims or liabilities occurring as a result of City's sole negligence, active negligence or willful misconduct, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence. The indemnification provided herein includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Indemnitors in the performance of professional services hereunder. Payment of invoices by City is not a condition precedent to enforcement of the indemnity obligation herein. In the event of any dispute between Contractor and City, as to whether liability arises from the sole negligence, active negligence or willful misconduct of City, Contractor will be obligated to pay for City's defense until either such time as a final judgment has been entered adjudicating, or agreement between the Parties is reached determining, City as solely negligent, actively negligent or responsible for willful misconduct. Contractor will not be entitled in the absence of such a determination or agreement to any reimbursement of defense costs including but not limited to attorneys' fees, expert fees and costs of litigation. In instances where City is shown to have been actively negligent and/or engaged in willful misconduct, and where City's active negligence and/or willful misconduct accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence and/or willful misconduct of City. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Agreement. Such offset, if any, does not satisfy any amount, greater than the offset, due

to City from Contractor.

13. Liability Insurance. Without limiting Contractor's indemnification of City, as described in paragraph 10, and unless modified by City's Risk Manager, Contractor shall obtain, provide and maintain, at its own expense, during the term of this Agreement, a policy or policies of insurance, satisfactory to the City, from insurance carriers admitted to do business in the State of California, which contain the coverage described below.

A. Named Additional Insured. The City of Laguna Niguel and its Council members, officers, officials, employees, agents, and volunteers shall be named as additional insureds under the policies required by subparagraphs General and Automobile for all liability arising from Contractor's performance of services pursuant to this Agreement. This insurance shall be primary to any insurance maintained by the City. City insurance shall not contribute to any judgment rendered against the City.

B. Such policies shall be signed by a person authorized by that insurer to bind coverage on its behalf and must be filed with the City prior to exercising any right or performing any work pursuant to this Agreement.

C. Insurance Coverage. Prior to the commencement of any services hereunder, Contractor shall provide to City certificates of insurance with original endorsements, and copies of policies, if requested by City, of the following insurance coverage:

1) **General Liability Insurance.** Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

2) **Automobile Liability Insurance.** Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

3) **Workers' compensation insurance.** Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

4) **Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall

specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subcontractors.

D. Duration of coverage. Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Contractor, his agents, representatives, employees or subcontractors.

E. Primary/noncontributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

F. City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.

G. Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

H. Enforcement of contract provisions (non estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of noncompliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

I. Requirements not limiting. Requirements of specific coverage features, or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in

excess of the specified minimum limits of insurance and coverage shall be available to the City.

J. Notice of cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

K. Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

L. Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

M. Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

N. Pass Through Clause. Contractor agrees to ensure that its subcontractor, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

O. City's right to revise specifications. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

P. Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

Q. Timely notice of claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required

liability policies.

R. Additional insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

14. Workers' Compensation Insurance. Contractor acknowledges the provisions of State Labor Code Section 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and Contractor certifies that it will comply with these provisions before commencing performance of work under this Contract. The Contractor shall sign a Workers' Compensation Insurance Certificate, using the form attached hereto and incorporated by reference herein, and submit the signed Certificate to the City prior to commencing work under this Contract.

15. State Labor Code.

A. This Contract calls for work to be performed constituting public works. Contractor and all subcontractors shall pay the general prevailing rate of per diem wages as determined and as published by the State Director of the Department of Industrial Relations pursuant to Article 2 of Chapter 1 of Part 7, of Division 2 of the State Labor Code, including, but not limited to, Sections 1770, 1771, 1773, 1773.2 and 1774.

This is a public work and requires the payment of prevailing wages for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any subcontractor pursuant to Section 1771 of the Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates may be obtained at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

B. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of this Agreement.

C. Contractors and subcontractors who are ineligible to bid for work on, or be awarded, a public works project pursuant to Labor Code Sections 1777.1 and 1777.7 are prohibited from bidding on, being awarded, or performing work as a subcontractor, on this Project pursuant to Public Contract Code Section 6109.

Contractor's attention is directed to the provisions in Sections 1774, 1775, 1776, 1777.5 and 1777.6 of the Labor Code. Contractor shall comply with the provisions in these Sections. The statutory provisions for penalties for failure to comply with the State's wage and hours laws will be enforced. Pursuant to Section 1775 of the Labor Code, the Contractor and any subcontractors, shall, as a penalty to the City forfeit the prescribed amounts per calendar day, or portion thereof, for each worker paid less than the prevailing wage rates.

D. Pursuant to Labor Code Section 1771.4, the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

E. Each Contractor and subcontractor shall furnish the records specified in Labor Code Section 1776 directly to the State Labor Commissioner at least monthly in the format prescribed by the State Labor Commissioner.

F. Sections 1774 and 1775 require the Contractor and all subcontractors to pay not less than the prevailing wage rates to all workmen employed in the execution of the Contract and specify forfeitures and penalties for failure to do so. The minimum wages to be paid are those determined by the State Director of the Department of Industrial Relations. Section 1776 requires the Contractor and all subcontractors to keep accurate payroll records, specifies the contents thereof, their inspection and duplication procedures and certain notices required of the Contractor pertaining to their location.

G. Section 1777.5 of the Labor Code requires Contractor or subcontractor employing workers in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project, which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen to be used in the performance of the Contract. The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade and if other contractors on the public works site are making such contributions. Information relative to apprenticeship standards, contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards. Section 1777.6 of the Labor Code provides that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age.

H. Eight hours labor constitutes a legal day's work, as set forth in Labor Code Section 1810. The statutory provisions for penalties for failure to comply with the State's wage and hour laws will be enforced as set forth in Labor Code Section 1813.

16. Antitrust Claims. In entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California

Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Agreement. This assignment shall be made and become effective at the time the City tenders final payment to Contractor without further acknowledgment by the parties.

17. Trenching and Excavations. Pursuant to Public Contract Code Section 7104, if the project involves trenching more than four (4) feet deep, Contractor shall promptly and before the following conditions are disturbed notify the City in writing of any:

A. Material that Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; and/or

B. Subsurface or latent physical conditions at the site differing from those indicated; and/or

C. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

D. As required by Labor Code Section 6705 and in addition thereto, whenever work under the Contract that involves an estimated expenditure in excess of twenty-five thousand dollars (\$25,000) for the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall submit for acceptance by City in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation, of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by Contractor, and all costs therefor shall be included in the price of the Contract. Nothing in this provision shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this provision shall be construed to impose tort liability on the City or on any City officer, agent, consultant, representative, or employee. All plans, processing and shoring costs are Contractor's responsibility and must be included in Contractor's bid.

18. Location of Existing Elements. Pursuant to Government Code Sections 4216 to 4216.9, the methods used and costs involved to locate existing elements, points of connection and all construction methods are Contractor's sole responsibility. Accuracy of information furnished, as to existing conditions, is not guaranteed. Contractor, at its sole expense, must make all investigations necessary to determine locations of existing elements, which may include, without limitation, contacting U.S.A. alert and other private underground locating firm(s), and/or utilizing potholes, specialized locating equipment and/or hand trenching.

19. Third Party Claims. Pursuant to Public Contract Code Section 9201, the City has full authority to compromise or otherwise settle any claim relating to this Contract at any time. The City shall timely notify Contractor of the receipt of any third-party claim relating to the Contract. The City shall be entitled to recover its reasonable costs incurred in providing the notification required by Public Contract Code Section 9201(b).

20. Non-Collusion. Contractor hereby certifies that this bid is genuine and not a sham or collusive, or made in the interest or on behalf of any person or business not herein named. Contractor further certifies that Contractor has not directly or indirectly induced or solicited any other bidder to furnish a sham bid, or any other person or business to refrain from bidding, and Contractor has not in any manner sought by collusion to secure itself an advantage over any other bidder. Contractor also affirms that it has signed and submitted with its bid to the City a Non-collusion Declaration as required by Public Contract Code Section 7106.

21. Conflicts of Interest. Contractor agrees not to accept any employment or representation during the term of this Contract or within twelve (12) months after completion of the work under this Contract which is or may likely make Contractor "financially interested," as provided in Government Code Section 1090 and 87100, in any decisions made by City on any matter in connection with which Contractor has been retained pursuant to this Contract.

22. Audit. The City or its representative shall have the option of inspecting and/or auditing all records and other written materials used by Contractor in preparing its billings to the City as a condition precedent to any payment to Contractor. Contractor will promptly furnish documents requested by the City. Additionally, pursuant to Government Code Section 8546.7, if this Contract involves the expenditure of public funds in excess of ten thousand dollars (\$10,000), Contractor shall be subject to State Auditor examination and audit at the request of the City or as part of any audit of the City, for a period of three (3) years after final payment under this Contract.

23. Substitute Security. Pursuant to Public Contract Code Section 22300, the substitution of securities for any moneys withheld by the City to ensure performance under a contract is permitted, except where financing will be provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.) or where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in the State of California as the escrow agent, that shall then pay those moneys to Contractor. Upon satisfactory completion of the Agreement, the securities shall be returned to Contractor. Alternatively, Contractor may request, and the City shall make payment of retentions earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities, and Contractor shall receive the interest earned on the investments upon the same terms provided for securities deposited by Contractor. Upon satisfactory completion of the

Agreement, Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the City, pursuant to the terms of this section.

Securities eligible for investment shall include those listed in California Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security to which Contractor and the City agree in writing. Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

If Contractor elects to receive interest on moneys withheld in retention by the City, it shall, at the request of any subcontractor performing more than five percent (5%) of Contractor's total bid, make that option available to the subcontractor regarding any moneys withheld in retention by Contractor from the subcontractor. If Contractor elects to receive interest on any moneys withheld in retention by the City, then the subcontractor shall receive the identical rate of interest received by Contractor on any retention moneys withheld from the subcontractor by Contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If Contractor elects to substitute securities in lieu of retention, then, by mutual consent of Contractor and its subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by Contractor. No Contractor shall require any subcontractor to waive any provision of this paragraph.

The escrow agreement for security deposits in lieu of retention shall be substantially similar to the form provided in Public Contract Code Section 22300(f).

24. Claims Dispute Resolution. In the event of any dispute or controversy with the City over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of Work, but shall proceed with the performance of the Work in dispute. The Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. The Disputed Work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined by mutual agreement or a court of law. The Contractor shall keep accurate, detailed records of all Disputed Work, claims and other disputed matters.

All claims arising out of or related to the Contract documents or this Project, and the consideration and payment of such claims, are subject to the Government Claims Act (Government Code Section 810 et seq.) with regard to filing claims. All such claims are also subject to Public Contract Code Section 9204 and Public Contract Code Section 20104 et seq. (Article 1.5), where applicable. This Contract hereby incorporates those provisions as though fully set forth herein. Thus, the Contractor or any Subcontractor must file a claim in accordance with the Government Claims Act as a prerequisite to filing a construction claim in compliance with Section 9204 and Article 1.5 (if applicable), and must then adhere to Section 9204 and Article 1.5 (as applicable), pursuant to the

definition of "claim" as individually defined therein.

25. Nondiscrimination by Contractor. Contractor represents and agrees that Contractor, its affiliates, subsidiaries, or holding companies do not and will not discriminate against any subcontractor, consultant, employee, or applicant for employment because of race, religion, color, sex, handicap, or national origin. Such nondiscrimination shall include, but not be limited to, the following: employment, upgrading, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

26. Integration. This Contract supersedes any and all agreements, either oral or written, between the parties hereto with respect to the construction of the Project by Contractor for City and contains all of the covenants and agreements between the parties with respect to the construction of the Project. Each party to this Contract acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made with regard to the construction of the Project by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise regarding work not contained in this Contract shall be valid or binding. Any modification or amendment of this Contract will be effective only if it is in writing and signed by the parties to this Contract. Any changes to the work required by this Contract will be by change order signed by the parties.

27. Governing Law. This Contract will be governed by and construed in accordance with the laws of the State of California without reference to change of venue laws. Any legal action in which enforcement of the terms and conditions of this Contract is requested, or in which it is alleged that a breach of this Contract has taken place, shall be filed and prosecuted in the County of Orange, California.

28. Successors and Assigns. The terms and conditions of this Contract shall be binding on the successors and assigns of the parties to this Contract.

29. Exhibits. The exhibits and attachments referenced in this Contract are attached hereto and incorporated herein by this reference as though set forth in full in the Contract.

30. Authority to Sign. The person or persons executing this Contract on behalf of the Contractor warrant and represent that they have the authority to execute this Contract on behalf of the Contractor and have the authority to bind Contractor to the construction of the project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

"CITY"

CITY OF LAGUNA NIGUEL

By: _____
Tamara S. Letourneau
City Manager

ATTEST:

Marissa J. Asistin,
City Clerk

APPROVED AS TO FORM BY THE
CITY ATTORNEY FOR THE
CITY OF LAGUNA NIGUEL,
CALIFORNIA

Scott C. Smith
City Attorney

"CONTRACTOR"

PALP Inc. (DBA Excel Paving Company)

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____