

**ACTION SHEET
CITY COUNCIL MEETING OF 08/26/09
ITEM FROM FINANCE COMMITTEE MEETING OF 08/17/09**

ISSUE:

10. BID OPENINGS:

- A. BID NO. 09/42/B – SANTA FE RIVER TRAIL CONSTRUCTION FROM RICARDO ROAD TO CAMINO ALIRE AGREEMENT BETWEEN OWNER AND CONTRACTOR: ADVANTAGE ASPHALT AND SEAL COATING, LLC (BRIAN DRYPOLCHER)

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

Request for approval of Bid No. 09/42/B for Santa Fe River Trail Construction from Ricardo Road to Camino Alire agreement between owner and contractor with Advantage Asphalt and Seal Coating, LLC, in the amount of \$1,008,022. Budget is available in project fund.

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR WURZBURGER	X		
COUNCILOR CALVERT	X		
COUNCILOR CHAVEZ	not present		
COUNCILOR DOMINGUEZ	X		
CHAIRPERSON ORTIZ	excused		

DISK fc1/fcissue

City of Santa Fe, New Mexico

memo

DATE: August 10, 2009

TO: Finance Committee

FROM: Robert Rodarte, Purchasing Officer
Purchasing Office 

VIA: David Millican, Director 
Finance Department

ISSUE: Award of Bid # '09/42/B
Santa Fe River Trail Construction, Ricardo Road to Camino Alire

SUMMARY:

On July 15, 2009, six bids were received for the procurement of the above referenced project as follows:

	<u>Bid Amount</u>	<u>Local Preference</u>
Advantage Asphalt & Seal Coating, Santa Fe		
Base Bid Subtotal	\$1,008,021.59	\$ 907,219.43
NMGRT	<u>\$ 81,271.74</u>	
Total Bid Including NMGRT	<u>\$1,089,293.33</u>	
A.S. Horner, Inc., Albuquerque		
Base Bid Subtotal	\$1,040,290.00	
NMGRT	<u>\$ 83,873.38</u>	
Total Bid Including NMGRT	<u>\$1,124,163.38</u>	
Star Paving Company, Albuquerque		
Base Bid Subtotal	\$1,200,366.40	\$1,080,329.76
NMGRT	<u>\$ 96,779.54</u>	
Total Bid Including NMGRT	<u>\$1,297,145.94</u>	
R.L. Leeder Company, Santa Fe		
Base Bid Subtotal	\$1,389,077.50	\$1,250,169.75
NMGRT	<u>\$ 111,994.32</u>	
Base Bid Total	<u>\$1,501,071.80</u>	
Hasse Contracting Co., Inc., Albuquerque		
Base Bid Subtotal	\$1,393,941.75	
NMGRT	<u>\$ 112,386.55</u>	
Base Bid Subtotal	<u>\$1,506,328.30</u>	

Moore & Cowart Contractors, Inc., Albuquerque

Base Bid Subtotal	\$1,576,930.10
NMGRT	<u>\$ 127,139.99</u>
Base Bid	<u>\$1,704,070.09</u>

The using department has reviewed the bid and recommends award of base bid only to Advantage Asphalt & Seal Coating, Santa Fe in the amount of \$1,089,293.33 inclusive of GRT. Star Paving Company, Inc., Albuquerque submitted and qualified for the local preference the company has an office located in Santa Fe County at 1205 North Riverside, Espanola, New Mexico.

Budget is available in account number 32803.572970 (Exp – Trails – WIP Construction) in the amount of \$1,509,640.30.

ACTION:

It is requested that this recommendation of award to Advantage Asphalt & Seal Coating, Santa Fe in the total amount of \$1,089,293.33, be reviewed, approved and submitted to the City Council for its consideration.

Attachment(s):

1. Memo of recommendation from the using division.
2. Bid tabulation sheet.
3. Copy of the agreement between the owner and contractor.

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, AUGUST 10, 2009**

ITEM 9

CIP PROJECT #500a – SANTA FE RIVER TRAIL
REQUEST FOR APPROVAL OF A CONSTRUCTION CONTRACT WITH ADVANTAGE ASPHALT AND SEAL COATING, LLC FOR CONSTRUCTION OF THE RIVER TRAIL BETWEEN RICARDO RD. TO CAMINO ALIRE IN THE AMOUNT OF \$1,008,002 PLUS APPLICABLE GROSS RECEIPTS TAX (**BRYAN DRYPOLCHER**)

PUBLIC WORKS COMMITTEE ACTION: APPROVED ON CONSENT

SPECIAL CONDITIONS OR AMENDMENTS:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON BUSHEE			
COUNCILOR ROMERO	X		
COUNCILOR CALVERT	X		
COUNCILOR CHAVEZ	ABSENT		
COUNCILOR TRUJILLO	X		

City of Santa Fe, New Mexico

memo

DATE: July 31, 2009

TO: Public Works/CIP and Land Use Committee of the Governing Body, City of Santa Fe

VIA: Robert Romero, Director, Public Works Department
Chris Ortega, Director, Engineering Division
Leroy Pacheco, River, Watershed and Trails, Section Supervisor

FROM: Brian Drypolcher, Project Administrator, River, Watershed and Trails Section – 
Engineering Division

ITEM / ISSUE:

CIP Project #500A; Bid Package #09/42/B – Construction Santa Fe River Trail, Ricardo Road to Camino Alire (Phase II of River Trail from Camino Alire to Frenchy's Field)

- Requesting approval to award a contract in the amount of one million, eight thousand and twenty-two dollars (\$1,008,022.00), plus applicable gross receipts tax, to Advantage Asphalt + Seal Coating, LLC for construction services, per Bid Package #09/42/B.

Business Unit: 32803

Line Item: 572970

SUMMARY and SCOPE:

This project, Phase II of the River Trail Construction, will connect the existing trail section at Alto Park (Camino Alire), downstream to the existing trail section that spans from Ricardo Road to Camino Don Jose. This new trail section will add approximately three-quarters of a mile over difficult terrain – including one foot-bridge crossing of the Santa Fe River. Subsequently, Phase III will include trail construction downstream to Frenchy's Field, plus extensive work for river restoration, bank and channel stabilization.

BUDGET:

Sufficient funds are available, CIP, Business Unit: 32803, Line Item: 572970

SCHEDULE:

City Council approval: August 24, 2009

Notice to Proceed: August 28, 2009

Project Completion (excluding warranty period): April 2, 2010

RECOMMENDED ACTION:

The Public Works Department recommends the following:

Approval of the award of a contract for construction, to Advantage Asphalt + Seal Coating, LLC in the amount of one million, eight thousand and twenty-two dollars (\$1,008,022.00), plus applicable gross receipts tax, per the terms of the Bid package Project Manual, '09/42/B, and the associated Contract Documents of the Bid.

**Attachments: Summary of Contracts
 Copy of Contract
 Bid tabulations for #09/42/B**

**xc: Shirley Rodriguez, Purchasing
 Project File**



City of Santa Fe Summary of Contracts, Agreements, & Amendments

Section to be completed by department for each contract or contract amendment

- | | | | |
|---------------------------------|-------------------------------------|-----------------------------|--------------------------|
| 1 FOR: ORIGINAL CONTRACT | <input checked="" type="checkbox"/> | CONTRACT AGREEMENT | <input type="checkbox"/> |
| MAINTENANCE AGREEMENT | <input type="checkbox"/> | LICENSE AGREEMENT | <input type="checkbox"/> |
| LEGAL SERVICES AGREEMENT | <input type="checkbox"/> | MEMORANDUM OF UNDERSTANDING | <input type="checkbox"/> |
| MEMORANDUM OF AGREEMENT | <input type="checkbox"/> | JOINT POWERS AGREEMENTS | <input type="checkbox"/> |
| GRANT AGREEMENTS | <input type="checkbox"/> | CHANGE ORDERS | <input type="checkbox"/> |

2 Name of Contractor Advantage Asphalt and Seal Coating, LLC

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$1,008,022.00

Termination Date: May 31, 2011

Approved by Council Date: _____

or by City Manager Date: _____

Contract is for: Construction, Santa Fe River Trail, Ricardo Road to Camino Alire (River Trail Phase II);
CIP Project #500A, Bid #09/42/B

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for:

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT
 Inclusive of GRT

Amount \$ _____ of original Contract# _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ _____



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

5 **Procurement Method of Original Contract:** (complete one of the lines)

RFP RFQ Sole Source Other **BID**

6 **Procurement History:** Bid #09/42/B, Bid opening July 15, 2009. First contract for a 21 month contract period.
example: (First year of 4 year contract)

7 **Funding Source:** CIP **BU/Line Item:** 32803 / 572970

8 **Any out-of-the ordinary or unusual issues or concerns:**

(Memo may be attached to explain detail.)

9 **Staff Contact who completed this form:** Brian Drypolcher Phone # 955-6840

Division Contract Administrator: Sarah Yuma, Engineering *Sy*

Division Director: Chris Ortega, Engineering *Co*

Department Director: Robert Romero, Public Works *R*

10 **Certificate of Insurance attached.** (if original Contract) Pending as of 8/3/09

11 **Description of your efforts to reduce the cost of the contract including information on efforts to obtain other quotes for the contracted activity:** Procurement process for lowest bid followed normal, city procurement process. Staff and design consultant explored lower cost materials and methods through the design process.

12 **Prior year's contract amount?:** NA

13 **Describe service impact from an ongoing commitment to the contractor:** Not known

14 **Why staff cannot perform the work?:** Project requires long term engagement of a large work crew with specializ

15 **If extending contract, why?:** NA

16 **Was a Santa Fe company awarded contract? If not, why?:** Yes.

17 **Has the contract has been approved as to form by City Attorney's Office?:** Yes

18 **Is this for City Manager or Council approval?:** Council

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/16/2009

PRODUCER (505)247-0444 FAX (505)243-1505
Berger Briggs Real Estate & Insurance, Inc.
4333 Pan American Fwy NE
Albuquerque, NM 87107-6831

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Advantage Asphalt & Seal Coating LLC
55 Canada Del Rancho, Suite D
Santa Fe, NM 87508

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Cincinnati Insurance Co.	
INSURER B: NM Mutual Casualty	
INSURER C: The Hartford	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY	CPP1059293	06/15/2009	06/15/2010	EACH OCCURRENCE \$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY	CPP1059293	06/15/2009	06/15/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
		<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A		EXCESS/UMBRELLA LIABILITY	CPP1059293	06/15/2009	06/15/2010	EACH OCCURRENCE \$ 1,000,000
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000				AGGREGATE \$ 1,000,000 \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	62060.101	06/15/2009	06/15/2010	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C		OTHER Leased & Rented Equipment	34MSP06829	06/15/2009	06/15/2010	Limit \$600,000 Deductible \$2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate Holder is listed as Additional Insured with respect to General Liability Coverage

CERTIFICATE HOLDER

City of Santa Fe
Wastewater Management Division
PO Box 909
Santa Fe, NM 87504-0909

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL

10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

AUTHORIZED REPRESENTATIVE

Gabriel A. Portillo/WILLE 

CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN
OWNER AND CONTRACTOR

CIP PROJECT #500A
SANTA FE RIVER TRAIL CONSTRUCTION, FROM RICARDO ROAD TO CAMINO ALIRE

This Agreement is entered into this _____ day of _____, 2009, by and between the CITY OF SANTA FE, herein known as the Owner, and Advantage Asphalt and Seal Coating, LLC, herein known as the Contractor.

For the following:

PROJECT: SANTA FE RIVER TRAIL CONSTRUCTION, FROM RICARDO ROAD TO CAMINO ALIRE

PROJECT NO.: CIP# 500A

ENGINEER OF RECORD

(Architect/Engineer):

Elvidio V. Diniz
Resource Technology, Inc.
5501 Jefferson Blvd. NE, Suite 200
Albuquerque, NM 87109
(505) 243-7300

DISTRIBUTION:

OWNER _____
CONTRACTOR _____
ARCHITECT/ENGINEER _____
ENGINEERING DIVISION _____
OTHER _____

Revised July 2009

RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____.

The OWNER and the CONTRACTOR agree:

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of: this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Project Manual, the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2 THE WORK

The Contractor shall perform all the work required by the Contract Documents for CIP Project #500A, SANTA FE RIVER TRAIL CONSTRUCTION, FROM RICARDO ROAD TO CAMINO ALIRE. ('09/42/B)

The work designated as SANTA FE RIVER TRAIL CONSTRUCTION, FROM RICARDO ROAD TO CAMINO ALIRE, consists of, but is not limited to the Santa Fe River Trail construction, as described in the Contract Documents, Specifications and Drawings.

Contractor shall be responsible for verification of all measurements, dimensions and existing conditions for bidding and construction.

Contractor shall be responsible for all permits, fees, and State and City inspections associated with the construction.

ARTICLE 3 TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The work to be performed under this Contract shall be commenced not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved no later than one hundred and eighty (180) calendar days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

ARTICLE 4
CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of one million, eight thousand and twenty-two dollars and no cents (\$1,008,022.00) plus applicable gross receipts tax.

The Contract Sum is determined as follows:

Base Bid	\$1,008,022.00
Gross Receipts Tax (8.0625%)	\$81,271.77
Base Bid plus NMGRT	\$1,089,293.77

ARTICLE 5
PROGRESS PAYMENTS

Based upon Application for Payment submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 6
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the work within the Contract Time or any extension in the Contract thereof, the Contractor agrees to pay to the Owner the amount of Five Hundred Dollars (\$500.00) per consecutive calendar day of delay until the work is completed and accepted or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 7
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract sum, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

ARTICLE 8
SCHEDULE

The Contractor shall, within thirty (30) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a progress schedule covering project operations for the one hundred and nineteen (120) day contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the Contractor to implement the CPM shall be borne by the Contractor, and are part of the Contract (See Article 4.10, Progress Schedules of Section 00710, General Conditions of the Contract).

ARTICLE 9
GENERAL AND SPECIAL PROVISIONS

- 9.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.
- 9.2 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.
- 9.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.
- 9.4 An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.
- 9.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2)

signed by all parties required to sign this Agreement.

9.6 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner's vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.

9.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Owner.

9.8 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive illegal payments.

9.9 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Owner, this Agreement shall terminate upon written notice being given by the Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

9.10 The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

9.11 The Contractor hereby warrants that the Contractor is in compliance with the Americans with Disabilities Act, 29 CFR 1630.

9.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.

9.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

9.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER City of Santa Fe, Public Works Department,
Engineering Division
P.O. Box 909
Santa Fe, New Mexico 87504-0909

CONTRACTOR Advantage Asphalt and Seal Coating, LLC
55 Canada del Rancho, Suite D
Santa Fe, NM 87508
New Mexico License # 83485

9.15 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

9.16 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.

9.17 This document shall be executed in no less than five (5) counterparts, each of which shall be deemed an original.

9.18 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

9.20 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

9.21 Entire Agreement. This Agreement represents the entire Contract between the parties and except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Contract, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior conditions, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

9.22 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

9.23 **Words and Phrases.** Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

9.24 **Relationship of Contract Documents.** The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.

9.25 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

9.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

9.27 Pursuant to Section 13-4-11. NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

ARTICLE 10
NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

This Agreement is entered into as of the day and year first written above.

OWNER:
CITY OF SANTA FE

DAVID COSS, MAYOR

DATE: _____

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:



FRANK D. KATZ, CITY ATTORNEY

APPROVED:

DAVID N. MILLICAN, DIRECTOR
FINANCE DEPARTMENT

BUSINESS UNIT / LINE ITEM: 32803 / 572970

CONTRACTOR:
Advantage Asphalt and Seal Coating, LLC

By: _____
Name of Signer, Title

Date: _____

NM Taxation & Revenue CRS No. 02-432603-00-8
City of Santa Fe Business Reg. No. 09-00039511