

**DEPARTMENT:** Public Works

**BY:** Allen Toschi

**PHONE:** 966-5356

**RECOMMENDED ACTION AND JUSTIFICATION:**

Approve the First Amendment to extend the term of the Contract for Services with Lee's Paving Inc. for the Cole Road Reconstruction Project # 06-21 (109) funded by SAFETEA-LU to August 01, 2011 and authorize the Director of Public Works to execute said Amendment.

The original agreement expired on December 31, 2010.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**

Per Resolution No. 10-289 dated June 15, 2010 the Board of Supervisors approved the Plans & Specs, and authorized the Director of Public Works to sign/execute the Contract.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

BOS approval is necessary to extend the term and release any outstanding payments including retention.

Financial Impact? ( ) Yes ( ) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		1. First Amendment
Source:		2. Contract for Services
Internal Transfer		
Unanticipated Revenue	_____ 4/5's vote	
Transfer Between Funds	_____ 4/5's vote	
Contingency	_____ 4/5's vote	
( ) General ( ) Other		

**CLERK'S USE ONLY:**

Res. No.: 11-0260 Ord. No. \_\_\_\_\_  
 Vote - Ayes: 5 Noes: \_\_\_\_\_  
 Absent: \_\_\_\_\_  
 Approved \_\_\_\_\_  
 ( ) Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: \_\_\_\_\_  
Attest: MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California

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

**COUNTY ADMINISTRATIVE OFFICER:**

Requested Action Recommended  
 No Opinion  
 Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

CAO: RB  
me

THIS FIRST AMENDMENT TO CONTRACT FOR SERVICES is made and entered into this day of June, 2011, by and between the County of Mariposa, a political subdivision of the State of California, hereinafter referred to as "County," and Lee's Paving Inc. hereinafter referred to as "Contractor".

WHEREAS, the County and Contractor have heretofore entered into a Contract dated August 27, 2010, wherein Contractor agreed to provide an aggregate base and asphalt concrete pavement to create a structural section to Cole Road in Mariposa County; and,

WHEREAS, County and Contractor desire to amend said Contract to extend the contract term to August 01, 2011.

NOW THEREFORE, the parties hereto in consideration of the mutual covenants herein recited, hereby agree as follows:

1. Paragraph 1.01 "CONTRACT TERM" is hereby amended extending the contract term to August 01, 2011.

2. Except as herein amended, the Contract dated August 27, 2010, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the date first above written.

COUNTY OF MARIPOSA:

CONTRACTOR:  
Lee's Paving Inc.

  
Allen Toschi  
Public Works Director


  
(Signature)

Taxpayer I.D. No.: 94-2199614

ADDRESS: 1212 North Plaza Drive  
Visalia, CA 93291

TELEPHONE: (559) 651 1337

APPROVED AS TO FORM

  
Steven W. Dahlem  
County Counsel

## CONTRACT FOR SERVICES

This Contract made this 27<sup>th</sup> day of August, 2010 between:

COUNTY: Department of Public Works  
4639 Ben Hur Road  
Mariposa, CA 95338

and

CONTRACTOR: Lee's Paving  
1212 North Plaza Drive  
Visalia, CA 93291  
(559) 651-1337

## ARTICLE I. TERM OF CONTRACT

- 1.01 Contract Term: This Contract shall become effective on August 20, 2010, and shall terminate on December 31, 2010 unless terminated in accordance with the provisions of Article 7 of this Contract.

## ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

- 2.01 Independent Contractor: It is the expressed intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Contract.
- 2.02 Contractor Qualifications: Contractor warrants that Contractor has the necessary experience and technical skills to provide services under this Contract.
- 2.03 Contract Management: Contractor shall report to the Public Works Director who will review the activities and performance of the Contractor and administer this Contract.

## ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

- 3.01 Scope of Services: Contractor agrees to furnish the following services:

Contractor shall provide the services described in Exhibit "A" attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with County and the results of the work shall be monitored by the Public Works Director or his/her designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

**3.02** Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services including measures to protect the safety of the traveling public and Contractor's employees. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.

**3.03** Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Contract. County may not control, direct, or supervise Contractor's assistants or employees in the performance of those services.

Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

#### ARTICLE 4. COMPENSATION

**4.01** Compensation: In consideration for the services to be performed by Contractor, County agrees to pay Contractor in proportion to the services satisfactorily performed in the not to exceed amount of \$536,089.90. The total sum to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:

Total sum to be paid upon completion of services.

or

Incremental payments based on the following schedule:  
Submitted invoices

**4.02** Invoices: Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County.

- 4.03 Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.
- 4.04 Expenses: Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of materials, equipment, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

## ARTICLE 5. OBLIGATIONS OF CONTRACTOR

- 5.01 Tools and Instrumentalities: Contractor will supply all tools and instrumentalities required to perform the services under this Contract. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.
- 5.02 Indemnification: Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from any act or failure of Contractor or Contractor's assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars (\$1,000,000) to cover such claims or in an amount determined appropriate by the County Risk Manager. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Contract, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.03 General Liability and Automobile Insurance: During the term of this Contract Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least \$1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by County or other named insureds will be called on to cover a loss covered

thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.

- 5.04** Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Contract, certificates of insurance evidencing coverage as set forth in paragraphs 5.03 and 5.05 which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Contract, without thirty (30) days written notice to County prior to the effective date of such cancellation.
- 5.05** Workers' Compensation: During the term of this Contract Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.
- 5.06** Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.
- 5.07** State and Federal Taxes: As Contractor is not County's employee; Contractor is responsible for paying all required state and federal taxes. In particular:
- a. County will not withhold FICA (Social Security) from Contractor's payments;
  - b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
  - c. County will not withhold state or federal income tax from payment to Contractor;
  - d. County will not make disability insurance contributions on behalf of Contractor;
  - e. County will not obtain workers' compensation insurance on behalf of Contractor.
- 5.08** Records: It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Contract shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents

and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Contract are prepared specifically for the County and are not necessarily suitable for any future or other use.

5.09 Contractor's Books and Records: Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

5.10 Assignability of Contract: It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

#### ARTICLE 6. OBLIGATIONS OF COUNTY

6.01 Cooperation of County: County agrees to comply with all reasonable requests of Contractor and to provide access to all documents as permitted by law necessary to the performance of Contractor's duties under this Contract.

6.02 Assignment: Neither this Contract nor any duties or obligations under this Contract may be assigned by County without the prior written consent of Contractor.

#### ARTICLE 7. TERMINATION OF CONTRACT

7.01 Termination on Occurrence of Stated Events: This Contract shall terminate automatically on the occurrence of any of the following events:

1. Bankruptcy or insolvency of Contractor;
2. Death of Contractor.

7.02 Termination by County for Default of Contractor: Should Contractor default in the performance of this Contract or materially breach any of its provisions, County, at County's option, may terminate this Contract by giving written notification to Contractor.

7.03 Termination for Convenience of County: County may terminate this Contract at any time by providing a notice in writing to Contractor that the Contract is terminated. Said Contract shall then be deemed terminated and no further work shall be performed by

Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

- 7.04 Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable and that the rights and obligations set forth in this Contract are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Contract and all obligations of County arising from this Contract shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

## ARTICLE 8. GENERAL PROVISIONS

- 8.01 Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Contract, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.
- 8.02 Entire Agreement of the Parties: This Contract supersedes any and all contracts, either oral or written, between the Parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and contracts between the Parties with respect to the rendering of such services in any manner whatsoever. Each Party to this Contract acknowledges that no representatives, inducements, promises, or contracts, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other contract, statement, or promise not contained in this Contract shall be valid or binding. Any modification of this Contract will be effective only if it is in writing signed by the Party to be charged and approved by the County as provided herein or as otherwise required by law.
- 8.03 Partial Invalidity: If any provision in this Contract is held by a court or competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 8.04 Attorney's Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Contract, the prevailing Party will be entitled to reasonable attorney's fees, which may be set by the court in



the same action or in a separate action brought for that purpose, in addition to any other relief to which that Party may be entitled.

8.05 Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

8.06 Waiver: In the event that either County or Contractor shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition or obligation.

8.07 Governing Law: This Contract and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Contract shall be held exclusively in a state court in the County of Mariposa.


Executed in Mariposa, California, on the date and year first above written.


CONTRACTOR:

Lee's Paving, Inc.

COUNTY:

County of Mariposa

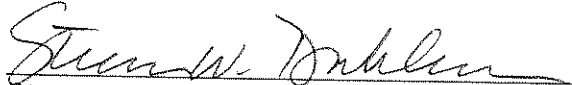
By:  8-23-10  
(signature) (date)

By:  8/23/10  
Allen Toschi (date)  
Public Works Director

L.D. McClatchey, President  
(printed name)

APPROVED AS TO FORM:

Social Security or Taxpayer Identification  
Number: 94-2199614

  
Steven W. Dahlem  
County Counsel



**COUNTY OF MARIPOSA**  
**DEPARTMENT OF PUBLIC WORKS**

COLE ROAD RECONSTRUCTION

PROJECT #: 06 – 21 (109)

**PROJECT DESCRIPTION:**

The work to be executed under this contract consists, in general, in the pulverizing of Cole Road from P.M. 10.00 to P.M. 10.85, and cutting three feet from the height of the roadway at PM 10.54 to 10.63, raising the elevation of the intersection at Darrah and Cole Roads and widening the roadway to a uniform 22 feet. Aggregate base and asphalt concrete paving will be placed to create the structural section. The asphalt concrete shall be laid in two layers, each 2" thick in accordance with the requirements laid out under Section 10-1.19 of the Specifications. The work also includes traffic control/construction area signs, shoulder backing, applying two coats of painted traffic stripes and pavement markings, all as shown on the plans and specifications prepared by the County of Mariposa Public Works Department dated July 2010.

The Bid Schedule/Bid Summary shall be as per your submission referenced as Attachment I in this Contract for Services:

COLE ROAD RECONSTRUCTION


PROJECT #: 06-21 (109)

BID SCHEDULE

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u> <u>(\$)</u>	<u>TOTAL ITEM</u> <u>(\$)</u>
1.	CONSTRUCTION AREA SIGNS	LS	01	3,000.00	3,000.00
2.	TRAFFIC CONTROL	LS	01	30,000.00	30,000.00
3.	PULVERIZE ROADWAY	SQ.YD	10,970	0.85	9,324.50
4.	EARTHWORK (CUT/FILL)	CU.YD	830/805	40.00	33,200.00
5.	AGGREGATE BASE	TON	3800	30.00	114,000.00
6.	ASPHALT CONCRETE	TON	3500	80.00	280,000.00
7.	SHOULDER BACKING	TON	1200	37.90	45,480.00
8.	FINISH ROADWAY	LS	01	5,100.00	5,100.00
9.	CENTERLINE STRIPING (2 COATS)	L.FT	4500	0.73	3,285.00
10.	PAINTED TRAFFIC MARKINGS	SQ.FT	30	7.00	210.00

COLE ROAD PROJECT TOTAL IN FIGURES: \$ 523,599.50

AMOUNT OF BID, WRITTEN OUT: Five Hundred Twenty Three Thousand Five Hundred Ninety Nine Dollars and Fifty cents

SIGNATURE OF BIDDER:   
Lee McClatchey  
President

BID ALTERNATE # 1 (REVISED)

COLE ROAD RECONSTRUCTION

PROJECT #: 06-21 (109)

BID SCHEDULE

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u> <u>(\$)</u>	<u>TOTAL ITEM</u> <u>(\$)</u>
1.	TRAFFIC CONTROL	LS	01	nil	nil
3.	FOG SEAL	SQ.YD	10,970	0.82	8,995.40
3.	CENTERLINE STRIPING (2 COATS)	L.FT	4500	0.73	3,285.00
4.	PAINTED TRAFFIC MARKINGS	SQ.FT	30	7.00	210.00

COLE ROAD BID ALTERNATE #1 IN FIGURES: \$ 12,490.40

AMOUNT OF BID, WRITTEN OUT: Twelve Thousand Four Hundred Ninety Dollars and Forty cents

SIGNATURE OF BIDDER:

  
Lee McClatchey  
President

COLE ROAD RECONSTRUCTION

PROJECT #: 06-21 (109)

BID SUMMARY

COLE ROAD RECONSTRUCTION (BASE BID)	=	\$ <u>523,599.50</u>
BID ALTERNATE #1 (REVISED)	=	\$ <u>12,490.40</u>
TOTAL BID AMOUNT (BASE BID + ALTERNATE #1)	=	\$ 536,089.90 =====

AMOUNT OF BID, WRITTEN OUT: Five Hundred Thirty Six Thousand Eighty Nine Dollars and Ninety cents

SIGNATURE OF BIDDER:

  
Lee McClatchey  
President