

CASTROVILLE BOULEVARD WARRANTY AGREEMENT

This Castroville Boulevard Warranty Agreement (hereafter "**Agreement**") is effective and entered into by and between the County of Monterey (hereafter "**County**") and The Don Chapin Company, Inc. (hereafter "**Contractor**") as of the last date opposite the respective signatures below. Chapin and County may be collectively referred to as "**Parties**" and individually as "**Party**". This Agreement is entered into subject to the following:

RECITALS

A. Whereas Contractor was awarded the County Castroville Boulevard Overlay Project, Near Community of Castroville from Route 156 to San Miguel Canyon Road, Project Number 14-157165 (hereafter "**Project**") on June 3, 2014. On or about June 16, 2014, Chapin received from the County the fully executed Contract for the Project, as well as the Notice to Proceed with the Project.

B. Whereas Contractor entered into an agreement to purchase Hot Mix Asphalt (hereafter "**HMA**") for the Project from Granite Construction Company's Salinas Asphalt Plant in Salinas, California. The terms and conditions of such purchase and sale of HMA for the Project are set forth in the Material Quote between Granite Construction Company (hereafter "**Granite**") and Contractor dated, March 28, 2014 ("**MQ**").

C. Whereas certain HMA supplied by Granite and placed by Contractor on Lot 1 of the Project was sampled on July 30, 2014 and July 31, 2014 and failed to meet the specification for HMA Stabilometer Values (California Test 366) set forth in Standard Specifications, Section 39-1.03B ("**Stability Specifications**") as reflected on the table attached as Exhibit A and incorporated herein by reference. (The foregoing HMA supplied by Granite and placed by Contractor on the Project from Station 282+00 near Archer Road east to Station 388+00 west of San Miguel Canyon Road that failed to meet the Stability Specifications is hereinafter referred to as the "**Subject HMA.**")

D. Whereas the Project specifications (as Standard Specifications Section 6-3.06) and MQ (at MQ Section 12) provide for a one (1) year warranty with respect to materials (hereinafter "**Standard Warranty**"). Subject to the terms and conditions of this Agreement, the Parties have agreed to modify such Standard Warranty as it applies to the Subject HMA for the following sections of pavement: Castroville Boulevard from Station 282+00 near Archer Road east to Station 388+00 west of San Miguel Canyon Road, where the HMA failed to meet the Stability Specifications.

E. The Parties, by and through this Agreement, intend to define Contractor's responsibility for providing an eight (8) year pro-rated warranty against rutting related to the failure of the Subject HMA to meet the Stability Specifications in the Subject Section (defined below).

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1.0 RECITALS. The foregoing preamble and recitals shall form an integral part of this Agreement and are incorporated herein.

2.0 PRO-RATED WARRANTY; TERM; PRO-RATED WARRANTY PERIOD.

2.1 Subject to the terms and conditions of this Agreement, the Parties agree to the following modification to the Standard Warranty as it applies to the Subject HMA: Contractor will provide the County with an eight (8) year pro-rated warranty against surface rutting related to the failure of the Subject HMA to meet the Stability Specifications (subject to the terms and conditions of this Agreement) (“**Pro-Rated Warranty**”) for the following section of pavement (hereinafter referred to as the “**Subject Section**”): the section of pavement within the Project boundaries located on Castroville Boulevard from Station 282+00 near Archer Road east to Station 388+00 west of San Miguel Canyon Road, where the HMA failed to meet the Stability Specifications.

2.2 The commencement date of the Pro-Rated Warranty described in and subject to the terms and conditions of this Agreement is July 30, 2014 (“**Commencement Date**”) and extends for a period of eight (8) years from the Commencement Date (collectively referred to hereinafter as the “**Pro-Rated Warranty Period**”). This Agreement shall be conterminous with the Pro-Rated Warranty Period. The term of this Agreement shall commence as of the Commencement Date and shall continue until the expiration or earlier termination of the Pro-Rated Warranty Period (“**Term**”), at which time this Agreement shall automatically terminate without any notice or action by any Party.

2.3 To determine whether the Pro-Rated Warranty applies to any surface rutting of the Subject Section, the Parties will compare any rutting that occurs on the Subject Section during the Pro-Rated Warranty Period with the following comparison pavement sections of the Project (hereinafter collectively referred to as “**Control Section**”), which is of similar age, traffic loading and subject to similar environmental conditions as the Subject Section: the section of pavement within the Project boundaries located on Castroville Boulevard from Station 99+65 near Collins Road east to Station 217+68 near Dolan Road. The Pro-Rated Warranty shall only apply to surface rutting on the Subject Section that exceeds any rutting on the Control Section. If any surface rutting on the Subject Section is the same or less than the Control Section, the Pro-Rated Warranty shall not apply.

2.4 The Pro-Rated Warranty shall not apply:

a. to any material underlying the HMA, nor any other materials incorporated into the Project. Such “non-applicable” materials would be covered by the Standard Warranty provided for in Project Standard Specifications Section 6-3.06.

b. to any defects or pavement failures caused by existing conditions prior to placement of the HMA. Such existing conditions may include, but not be limited to, rutting, and/or pavement failures caused by road base, sub-base and/or in-situ subgrade. Such failures are not covered by this Pro-Rated Warranty.

c. to failures in the pavement caused by reasons beyond those for which the Pro-Rated Warranty is specifically being supplied.

3.0 PAVEMENT MAINTENANCE AND REHABILITATION

3.1 During the Pro-Rated Warranty Period, the County shall monitor annually the Subject Section for surface rutting. The County will submit invoices to Contractor within thirty (30) days of a monitoring event, not to exceed two (2) per calendar year, for the costs incurred to monitor the Subject Section throughout the Pro-Rated Warranty Period (on a time and materials basis) in accordance with this Agreement. Each invoice shall

include a detailed description of the costs incurred for such monitoring. The County shall provide such additional information and documentation establishing the accuracy and correctness of the invoice as Contractor may reasonably request. Contractor will make payment within forty-five (45) days of Contractor's receipt of an approved invoice from the County (together with documentation supporting the monitoring costs), provided however, the total aggregate amount of monitoring costs to be paid by Contractor and reimbursed to the County pursuant to this Agreement shall not to exceed Five Thousand and 00/100 Dollars (\$5,000.00) ("**Maximum Monitoring Costs**"). If Contractor objects to all or any portion, of any invoice, Contractor shall notify the County of the objection within twenty (20) days from the date of Contractor's receipt of the invoice. Undisputed invoice amounts shall be timely paid to the County.

3.2 If, during the Pro-Rated Warranty Period, surface rutting consisting of longitudinal surface depression in the wheel path greater than three eighths of one inch (0.375 inch) that of the Control Section or total surface depression of three quarters of one inch (0.75 inch), measured with a 12 foot straightedge per Federal Highway Administration document FHWA-RD-03-031, JUNE 2003 (hereinafter "**Rutting**") on the Subject Section becomes evident, the County shall notify Contractor's Owner at Contractor's office located at 560 Crazy Horse Canyon Road, Salinas, CA 93907 via telephone at (831) 449-4273 and Granite's Regional Manager at Granite's office located at 580 W. Beach Street, Watsonville, CA 95076 via telephone at (831) 763-6100 and request a site visit with a team consisting of representatives from the County, Contractor and Granite, collectively referred to as the "**Warranty Team.**"

3.2.1 The Warranty Team shall meet on site, review the rutted area of the Subject Section and compare it to the Control Section.

3.2.2 If, based on inspection and testing, the Warranty Team mutually agrees that Rutting (as defined in Section 3.2 above) has occurred on the Subject Section and such Rutting is due to failure of the Subject HMA to meet the Stability Specifications ("**Rutting Subject to Pro-Rated Warranty**"), Contractor shall propose a plan to mitigate the Rutting of the Subject Section at issue. Any costs for additional testing or analysis required to complete the comparison between the Subject Section and the Control Section shall be borne by Contractor.

3.2.3 The Parties shall mutually agree upon the plan to mitigate the Rutting Subject to Pro-Rated Warranty ("**Mitigation Plan**") before remedial measures are performed. Upon approval by the County and Contractor of the Mitigation Plan, the Mitigation Plan shall be implemented. Costs to implement the approved Mitigation Plan shall be borne by Contractor as follows:

a. July 30, 2014 through July 29, 2019 - If the Rutting Subject to Pro-Rated Warranty occurs within the first five (5) years of the Pro-Rated Warranty Period (beginning on the Commencement Date), Contractor shall pay for 100% of the total cost of the pavement repairs set forth in the approved Mitigation Plan.

b. July 30, 2019 through July 29, 2020 - If Rutting Subject to Pro-Rated Warranty occurs during the sixth (6th) year of the Pro-Rated Warranty Period (i.e. during the period between July 30, 2019 and July 29, 2020), Contractor shall pay 75% of the total cost of the pavement repairs set forth in the approved Mitigation Plan.

c. July 30, 2020 through July 29, 2021 - If Rutting Subject to Pro-Rated Warranty occurs during the seventh (7th) year of the Pro-Rated Warranty Period (i.e. during

the period between July 30, 2020 and July 29, 2021), Contractor shall pay 50% of the total cost of the pavement repairs set forth in the approved Mitigation Plan.

d. July 30, 2021 through July 29, 2022 - If Rutting Subject to Pro-Rated Warranty occurs during the eighth (8th) year of the Pro-Rated Warranty Period (i.e. during the period between July 30, 2021 and July 29, 2022), Contractor shall pay 25% of the total cost of the pavement repairs set forth in the approved Mitigation Plan.

4.0 MISCELLANEOUS

4.1 Governing Law. The validity, interpretation, effect, legal requirements and legal consequences of this Agreement, or arising out of or in connection with the subject matter hereof shall be determined in accordance with and governed by the laws of the State of California.

4.2 Waivers; Modification. No waiver, amendment or modification of any term, provision, condition, covenant or agreement herein contained shall be effective unless set forth in writing, signed by all of the Parties hereto, which specifically sets forth such waiver, amendment or modification and such waiver, amendment or modification shall be effective only to the extent set forth in such writing.

4.3 Non-Waiver. Inaction or acquiescence by a non-breaching Party in connection with any breach of any term, provision, condition, covenant or agreement herein contained, or in connection with any default or event of default hereunder shall not constitute a waiver of such breach, default or event of default and such non-breaching Party may, at any time thereafter, exercise all rights herein or at law conferred on account thereof.

4.4 Severability. If any provision of this Agreement is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

4.5 Number and Gender. Words in the singular shall include the plural, and words in a particular gender shall include either or both genders, when the context in which such words are used indicates that such is the intent.

4.6 Successors and Assigns. Subject to Section 4.11, the terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective Parties.

4.7 Headings. The Article and Section headings used in this Agreement are for convenience only, and the Parties hereto agree that such headings are not to be construed to define, limit, or extend the scope, intent or meaning of any part of this Agreement.

4.8 Venue. In case an action is brought to enforce or interpret any provision hereof, venue for such action shall be the Superior Court of the State of California, Monterey County and nowhere else.

4.9 Warranty Bond. Contractor shall at times during the term of this Agreement, guarantee the Contractor's performance of the requirements of this Agreement by maintaining a Warranty Bond or security reasonably acceptable to County in the amount of \$250,000 to guarantee the performance of any work indentified in the Mitigation Plan.

4.10 Notice.

4.10.1 Whenever, under the terms of this Agreement, it becomes necessary,

appropriate, or desirable for a Party to give notice to the other Party, said notice shall be in writing and shall be personally delivered or given or mailed by commercial overnight courier service or by registered or certified United States mail return receipt requested, with first-class postage prepaid, addressed as follows:

To Granite:	Granite Construction Company Regional Manager Post Office Box 720 Watsonville, CA 95077-0720 Telephone No. (831) 763-6100 Facsimile No. (831) 763-6125
With copies to:	Granite Construction Incorporated 585 W. Beach Street Watsonville, CA 95076 Attn: Group Counsel
To County:	Public Works Director Monterey County Resource Management Agency - Public Works 168 W. Alisal Street, 2 nd Floor Salinas, CA 93901-4371 Telephone No. 831-755-4800 Facsimile No. 831-755-4958
With copies to:	Office of the County Counsel Att: Land Use Division 168 W. Alisal Street, 3 rd Floor Salinas, CA 93901
To Chapin:	Don Chapin The Don Chapin Company, Inc. 560 Crazy Horse Canyon Road Salinas, CA 93907 Telephone No. 831-449-4273 Facsimile No. 831-449-0700

4.10.2 At any time, any Party may designate a new or different address to which notices are to be sent, which notice of a new or different address shall be given as herein above immediately provided.

4.10.3 Any notice shall be deemed given as of the time (i) that the same is personally delivered to the intended recipient; (ii) as of a date two (2) days (excluding weekends and federal and State of California holidays) later than the time that the same is properly deposited in the United States mail, if such notice, deposited in the United States mail, is given as herein above provided; (iii) as of a date one day (excluding weekends and federal and State of California holidays) later than the time that the same is properly given to a commercial overnight courier service, for delivery to the other Party; or (iv) as of the

date of receipt of facsimile if sent by facsimile to the facsimile number listed above during normal business hours for the recipient (or as of the next business day if sent by facsimile outside of normal business hours) and provided sender obtains a confirmation indicating that the facsimile has been transmitted without incident.

4.11 Further Assurance. Each of the Parties hereto, for itself and its respective successors, agrees to execute and deliver any and all instruments and documents and to do any acts or things reasonably necessary, proper, or appropriate for the full performance and the due effectuation of this Agreement.

4.12 Transfer of Interest. Contractor may not assign its rights under this Agreement without the prior written consent of the County. County shall not unreasonably withhold or delay its consent. Any assignment consented to by County shall be evidenced by an instrument in such written form as is reasonably satisfactory to County and executed by Contractor (as applicable) and the assignee. County may impose reasonable conditions on any proposed assignment, which may include without limitation that the proposed assignee assumes Contractor's (as applicable) obligations under this Agreement (without, however, releasing Contractor, therefrom).


4.13 Days. All references to "days" shall mean calendar days unless specifically modified herein to be "business or working" days. All references to "notice" shall mean written notice given in compliance with Section 4.9. All references, if any, to "month" or "months" shall be deemed to include the actual number of days in such actual month or months.

4.14 Interpretation. It is expressly understood and agreed that the Parties have each had the opportunity to read and review this Agreement and that each Party has had the opportunity to have this Agreement reviewed by its attorney. If a Party has declined to do so, it has made an independent determination that such a review is unnecessary. Therefore, this Agreement is not to be construed either for or against either of the Parties and, this Agreement shall be construed fairly, reasonably and impartially as between all Parties.

4.15 Authority. Each of the individuals signing this Agreement warrants that he/she possesses authority to bind the Party for which he/she purports to act.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last date opposite the respective signatures below:

THE DON CHAPIN COMPANY, INC.

BY: 
Chair, President, or Vice-President

Donako D. Chapin Jr. Pres
Type/Print Name/Title

DATE: 5-19-15

BY: David T. Nelson
Secretary, Asst. Secretary, CFO, Treasurer,
or Assistant Treasurer

David T. Nelson Sec.
Type/Print Name/Title

DATE: 5/19/15

COUNTY OF MONTEREY:

APPROVED AS TO FORM

BY: _____
NAME: ROBERT K. MURDOCH, P.E.
TITLE: DIRECTOR OF PUBLIC WORKS
DATE: _____

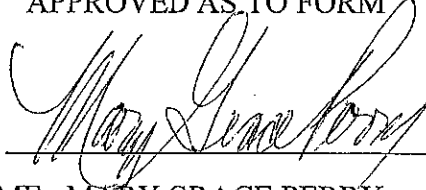
BY: 
NAME: MARY GRACE PERRY
TITLE: DEPUTY COUNTY COUNSEL
DATE: May 27, 2015

EXHIBIT A

Summary of Lot 1 Stability Test Results

Castroville Blvd Overlay Project No. 14-157165

Test Results

Sample Date	Location		KLEINFELDER Test Result	RMA Test Result	Project specifications limits
7/30/2014	Lot 1, Sublot 12	S-Value CT 304/366	36	33	37 min
7/31/2014	Lot 1, Sublot 14	S-Value CT 304/366	33	27	37 min