

MONTEREY COUNTY
RESOURCE MANAGEMENT AGENCY

DEPARTMENT OF PUBLIC WORKS

BOOK ONE

**NOTICE TO BIDDERS
AND
SPECIAL PROVISIONS**

**PROCUREMENT (DELIVERY and APPLICATION)
of ASPHALT EMULSION for the
SEAL COAT 2012 PROJECT
PROJECT NO. 13-551327**



COVER SHEET

BOOK ONE

NOTICE TO BIDDERS AND SPECIAL PROVISIONS

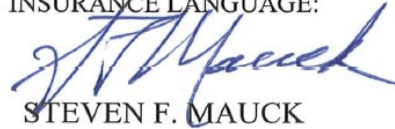
PROCUREMENT (DELIVERY and APPLICATION) of ASPHALT EMULSION for the SEAL COAT 2012 PROJECT PROJECT NO. 13-551327

APPROVED AS TO FORM:



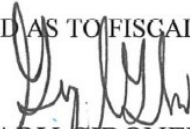
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APPROVED AS TO INDEMNITY/
INSURANCE LANGUAGE:



STEVEN F. MAUCK
Risk Manager

APPROVED AS TO FISCAL TERMS:



GARY GIBONEY
Chief Deputy Auditor Controller

TITLE SHEET

BOARD OF SUPERVISORS
COUNTY OF MONTEREY
STATE OF CALIFORNIA

Dave Potter, Chair
Fernando Armenta
Louis R. Calcagno
Simón Salinas
Jane B. Parker

Lew C. Bauman, P.E., Ph.D., County Administrative Officer
Benny J. Young, P.E. Resource Management Agency Director
Paul H. Greenway, P.E., Acting Director of Public Works
Marvin A. Rose, P.E., Interim Assistant Director of Public Works
Arturo A. Adlawan, P.E., Senior Civil Engineer
Jonathan L. Pascua, P.E., Project Engineer
Balbino C. Lupisan Project Manager

NOTICE TO BIDDERS
AND
SPECIAL PROVISIONS

**PROCUREMENT (DELIVERY and APPLICATION)
of ASPHALT EMULSION for the
SEAL COAT 2012 PROJECT
PROJECT NO. 13-551327**

IN

MONTEREY COUNTY

FOR USE IN CONNECTION WITH STANDARD SPECIFICATIONS, DATED MAY 2006, THE STANDARD PLANS, DATED MAY 2006, INCLUDING ISSUED AMENDMENTS THROUGH NOVEMBER 30, 2010; THE CURRENT LABOR SURCHARGE EQUIPMENT RENTAL RATES, OF THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, BUSINESS AND TRANSPORTATION AGENCY; THE CURRENT GENERAL PREVAILING WAGE DETERMINED BY THE DIRECTOR OF INDUSTRIAL RELATIONS IS ON FILE WITH THE DEPARTMENT OF PUBLIC WORKS.

168 W. Alisal Street 2nd Floor
Salinas, CA 93901-2438
(831) 755-4800

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SIGNATURE SHEET

BOOK ONE

**NOTICE TO BIDDERS
AND
SPECIAL PROVISIONS**

**PROCUREMENT (DELIVERY and APPLICATION)
of ASPHALT EMULSION for the
SEAL COAT 2012 PROJECT
PROJECT NO. 13-551327**

The Special Provisions contained herein have been prepared by or under the direction of the following registered person.

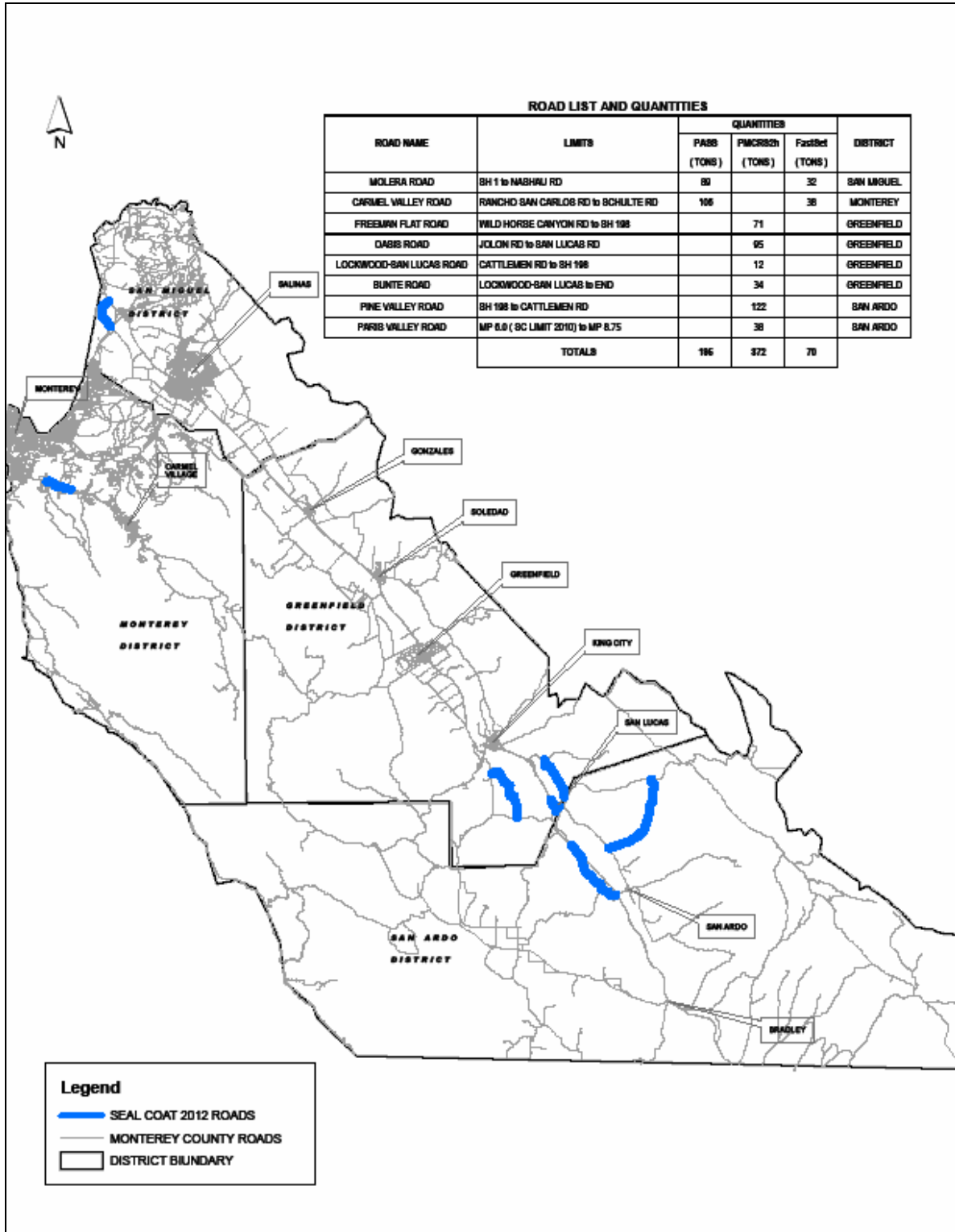


Jonathan L. Pascua, P.E. 3/27/12
Date



LOCATION MAP

PROCUREMENT (DELIVERY and APPLICATION) of ASPHALT EMULSION for the SEAL COAT 2012 PROJECT PROJECT NO. 13-551327



ROAD LIST AND QUANTITIES

**PROCUREMENT (DELIVERY and APPLICATION) of ASPHALT EMULSION
for the SEAL COAT 2012 PROJECT
PROJECT NO. 13-551327**

ROAD NAME	LIMITS	QUANTITIES			DISTRICT
		PASS (TONS)	PMCRS2h (TONS)	FastSet (TONS)	
MOLERA ROAD	SH 1 to NASHAU RD	89		32	SAN MIGUEL
CARMEL VALLEY ROAD	RANCHO SAN CARLOS RD to SCHULTE RD	106		38	MONTEREY
FREEMAN FLAT ROAD	WILD HORSE CANYON RD to SH 198		71		GREENFIELD
OASIS ROAD	JOLON RD to SAN LUCAS RD		95		GREENFIELD
LOCKWOOD-SAN LUCAS ROAD	CATTLEMEN RD to SH 198		12		GREENFIELD
BUNTE ROAD	LOCKWOOD-SAN LUCAS to END		34		GREENFIELD
PINE VALLEY ROAD	SH 198 to CATTLEMEN RD		122		SAN ARDO
PARIS VALLEY ROAD	MP 6.0 (SC LIMIT 2010) to MP 8.75		38		SAN ARDO
	TOTALS	195	372	70	

COUNTY OF MONTEREY
DEPARTMENT OF PUBLIC WORKS

NOTICE TO BIDDERS

Sealed bids will be received at the OFFICE OF THE COUNTY CLERK OF THE COUNTY OF MONTEREY, 168 W. ALISAL STREET 1ST FLOOR, SALINAS, CALIFORNIA 93901 (MAILING ADDRESS: P O BOX 1728, SALINAS CA 93902-1728), until 2:00 p.m., on May 29, 2012, for the

PROCUREMENT (DELIVERY and APPLICATION)
of ASPHALT EMULSION for the
SEAL COAT 2012 PROJECT
PROJECT NO. 13-551327

as shown on the plans, at which time they will be publicly opened and read in the Board of Supervisors' Conference Room 1032.

The work to be done consists, in general, of delivery and application of asphalt emulsion to various locations around Monterey County (approximately 515,000 total square yards of scrub seal, chip seal and fog seal). The Engineer's Estimate for this project is \$450,000 including delivery, accessorial charges, and sales tax of 8.25% for asphalt materials.

The Bidder shall possess either a valid Class A license or a combination of Class C-12 and C-32 licenses at the time this contract is awarded.

A bidder's bond, issued by an admitted corporate surety company in an amount equal to at least ten percent of the amount bid, must accompany the bid.

The successful bidder shall furnish a payment bond and a performance bond each in the amount of 100 percent of the Contract.

The Contract Documents are available ELECTRONICALLY and can be downloaded for free at the following Monterey County website: <http://www.co.monterey.ca.us/publicworks/bids.htm>. Plan holders must register before they can view or download the documents. A copy of the electronic files on compact-disc (CD) is also available at MONTEREY COUNTY DEPARTMENT OF PUBLIC WORKS, 168 W. ALISAL STREET, 2ND FLOOR, SALINAS, CALIFORNIA 93901 for a nonrefundable fee of \$5.00. The electronic files can be used to print the project plans (full or half size), project specifications, and other such documents at various printing companies.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and are available at the Department of Public Works, 168 W. Alisal Street, 2nd Floor, Salinas, CA 93901, and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/DLSR/PWD>.

Pursuant to Public Contract Code section 22300, the Contractor may substitute securities for any moneys withheld by the County to ensure performance under the contract.

The County reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding.

Date: May 1, 2012

PAUL H. GREENWAY, P.E.
ACTING DIRECTOR OF PUBLIC WORKS
COUNTY OF MONTEREY

RESOURCE MANAGEMENT AGENCY
DEPARTMENT OF PUBLIC WORKS
COUNTY OF MONTEREY
STATE OF CALIFORNIA

SPECIAL PROVISIONS

**PROCUREMENT (DELIVERY and APPLICATION)
of ASPHALT EMULSION for the
SEAL COAT 2012 PROJECT
PROJECT NO. 13-551327**

SECTION 1 – DEFINITION AND TERMS

1-1.01 SPECIFICATIONS AND PLANS:

The work embraced herein shall be done in accordance with the Standard Specifications and Standard Plans, dated May 2006, of the State of California, Department of Transportation, as amended, insofar as the same may apply and in accordance with the following Special Provisions:

In case of conflict between the Standard Specifications and these Special Provisions, the Special Provisions shall take precedence over and be used in lieu of such conflicting portions. The listing of certain salient sections from the Standard Specifications and these Special Provisions shall not in any way relieve the Contractor of complying with each and every section of the Standard Specifications.

Amendments to the Standard Specifications set forth in these special provisions shall be considered as part of the Standard Specifications for the purposes set forth in Section 5-1.04, "Contract Components" of the Standard Specifications. Whenever either the term "Standard Specifications is amended" or the term "Standard Specifications are amended" is used in the special provisions, the indented text or table following the term shall be considered an amendment to the Standard Specifications. In case of conflict between such amendments and the Standard Specifications, the amendments shall take precedence over and be used in lieu of the conflicting portions.

1-1.02 INTERPRETATION OF STANDARD SPECIFICATIONS:

For the purpose of this Contract, certain terms or pronouns in place of them used throughout the Standard Specifications, shall be interpreted as follows: Attention is directed to Section 1, "Definition and Terms," of the Standard Specifications and these Special Provisions:

1-1.03 DEFINITIONS:

The following terms defined in Section 1, "Definitions and Terms," of the Standard Specifications shall be interpreted to have the following meaning and intent:

State:	County of Monterey
Department:	The Monterey County Department of Public Works
Director:	Chair of the Board of Supervisors

Engineer: Director of Public Works of Monterey County, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

Laboratory: Any established laboratory designated by the Engineer to test materials and work involved in the Contract.

Attorney General: County Counsel of Monterey County

1-1.04 DEFINITIONS IN SPECIAL PROVISIONS:

Whenever in the Special Provisions and other contract documents, the following terms, or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

Clerk of the Board: The Clerk of the Monterey County Board of Supervisors

Director of Public Works: The Director of Public Works of Monterey County.

SECTION 2 - BIDDING

2-1.01 GENERAL:

The bidder's attention is directed to the provisions in Section 2, "Bidding," of the Standard Specifications and these Special Provisions for the requirements and conditions which he must observe in the preparation and the submission of the bid.

The Bidder's Bond form mentioned in the last paragraph in Section 2-1.13, "Bidder's Security," of the Standard Specifications will be found in the Bid Form, Book Two. Bidder's security in the form of cashier's check or certified check shall be made payable to the County of Monterey.

In conformance with Public Contract Code Section 7106, a Non-collusion Declaration is included in the Bid Form, Book Two. Signing the Bid shall also constitute signature of the Non-collusion Declaration.

This Contract will require a Class "A" contractor's license or a combination of Class C-12, and C-32 licenses.

2-1.02 SUBCONTRACTORS LIST:

Each bid shall have listed therein the name and address of each Subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of his total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code.

The bidder's attention is directed to other provisions of said Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized Subcontractors or by making unauthorized substitutions.

A sheet for listing the Subcontractors, as required herein by law, is included in the Bid.

2-1.03 JOB SITE AND DOCUMENT EXAMINATION:

The bidder shall examine carefully the site of the work contemplated, the specifications, and the proposal and contract forms therefor. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the general and local conditions to be encountered, as to the character, quality and scope of work to be performed, the quantities of materials to be furnished and as to the requirements of the proposal, plans, specifications and the contract.

The submission of a bid shall also be conclusive evidence that the bidder is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information was reasonably ascertainable from an inspection of the site as well as from the specifications made a part of the contract.

All bidder inquiries about the meaning or intent of the Contract Documents submitted to the Engineer shall be in writing. Replies to the inquiries will be in the form of addenda and will be mailed, faxed, or delivered to all parties recorded by the Engineer as having received the bidding documents. Issued addenda shall be considered as part of the Contract Documents. Bidder inquiries received less than ten (10) days prior to the date of bid opening will not be answered. Oral and other interpretations or clarifications will be without legal effect.

The County assumes no responsibility for conclusions or interpretations made by a bidder or contractor based on the information or data made available by the County. The County does not assume responsibility for representation made by its officers or agents before the execution of the contract concerning surface or subsurface conditions, unless that representation is expressly stated in the contract.

No conclusions or interpretations made by a bidder or contractor from the information and data made available by the County will relieve a bidder or contractor from properly fulfilling the terms of the contract.

2-1.04 GOOD-FAITH EFFORT TO HIRE RESIDENTS OF MONTEREY BAY AREA:

In accordance with Section 5.08.120 of the Monterey County Code, unless such requirement would conflict with a state or federal law or regulation applicable to a particular contract for a public work of improvement, all contractors and subcontractors providing work, laborers, or materialmen on the project must promise to make a good-faith effort to hire qualified individuals who are, and have been for one (1) year prior to the opening of bids residents of the Monterey Bay Area in sufficient numbers so that no less than fifty percent (50%) of the contractor's total construction work force on the project including any subcontractor work force, measured in labor work hours is comprised of Monterey Bay Area residents. A certification form relating to compliance with Section 5.08.120 is furnished with the bid documents. Each contractor must complete the certification form and submit the certification form with the sealed bid. The Monterey County Board of Supervisors may deem a bid non-responsive for failure to abide by the good-faith local hiring provisions of Section 5.08.120.

The Monterey County Purchasing Agent has prescribed rules, regulations, and procedures relating to the application, administration, and interpretation of the provisions of Section 5.08.120, which include the following:

"Monterey Bay Area resident" means a person who resides within the boundaries of Monterey County, Santa Cruz County, or San Benito County.

A "good-faith effort to hire qualified individuals" means that the contractor will take the following or similar steps.

- Contact local recruitment sources to identify qualified individuals who are Monterey Bay Area residents.
- Advertise for qualified Monterey Bay Area residents in trade papers and a newspaper of general circulation in at least Monterey County, unless time limits imposed by the County do not permit that advertising.
- If portions of the work are to be performed by subcontractors, identify subcontractors whose work force includes Monterey Bay Area residents.
- Take residency into account as a factor when determining composition of construction work force and potential subcontractors for the project.
- Require the same good-faith efforts by its subcontractors.

The County department administering the contract, in conjunction with the County's Equal Opportunity Officer, may periodically request evidence from each contractor that the contractor is complying with the requirements of Section 5.08.120. To this end, the contractor shall maintain accurate records documenting the following: contractor's good-faith efforts to hire Monterey Bay Area residents; the total number of labor hours contractor's construction work force has expended to date on the project; the number of such labor hours performed by Monterey Bay Area residents; and evidence of residency of contractor construction workforce. The contractor shall require any and all subcontractors on the project to maintain records of the same information for subcontractor's work force on the project and shall require subcontractor to provide a copy of those records to contractor upon contractor's request. The contractor shall make contractor's and subcontractors' records available to County for review and inspection within five business days of the County's request.

Contractors and subcontractors are referred to the provisions of Section 5.08.120 of the Monterey County Code and the rules, regulations, and procedures adopted to implement Section 5.08.120, a copy of which are on file with the County department administering the contract, with the County's Purchasing Agent, and with the County's Equal Opportunity Officer.

SECTION 3. CONTRACT AWARD AND EXECUTION

3-1.01 GENERAL:

The bidder's attention is directed to the provisions in Section 3, "Contract Award and Execution," of the Standard Specifications and these special provisions for the requirements and conditions concerning award and execution of contract.

Bidders who wish to lodge a protest as to the award of the bid must do so before 5 p.m. of the 5th business day following the notice of intent to award the contract. Failure to timely file a written protest shall constitute a waiver of right to protest. Untimely protests will not be accepted or considered. Bid protests must be submitted, in writing, to: MONTEREY COUNTY DEPARTMENT OF PUBLIC WORKS TO THE ATTENTION OF THE PROJECT MANAGER/168 W ALISAL STREET FL2/SALINAS CA 93901-2438. Protests may be hand-delivered or sent via facsimile [(831)755-

4958], certified postal mail, or E-mail to the attention of the project manager [The Project Manager's E-mail address may be obtained by calling (831) 755-4800]. Bid protests must include the project name and project number, a complete statement describing the basis for the bid protest, including a detailed statement of all legal and factual grounds for the protest, any documentation supporting the protestor's grounds for the protest, and the form of relief requested and the legal basis for such relief. The party lodging the protest must also include their contact information including mailing address, telephone number, and E-mail address.

If a valid protest is timely filed, the Department shall investigate the bid protest. The protested bidder shall have three (3) business days to respond to any Department of Public Works requests to provide additional information. The Department shall respond to the protesting party, stating its finding. The Department Director shall make a recommendation to the Board regarding the bid protest.

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose bid complies with all the requirements prescribed.

In determining the lowest "responsible" Bidder, consideration shall be given to the general competency of Bidder in regards to the work covered by the bid.

The contract shall be executed by the successful bidder and shall be returned, together with the contract bonds and insurance certificates, to the MONTEREY COUNTY PUBLIC WORKS DEPARTMENT so that it is received within 10 days, not including Saturdays, Sundays and legal holidays, after the bidder has received the contract for execution. Failure to do so shall be just cause for forfeiture of the bid guaranty. The executed contract documents shall be delivered to the following address: MONTEREY COUNTY DEPARTMENT OF PUBLIC WORKS, 168 W. ALISAL ST, 2ND FL, SALINAS, CA, 93901-2438.

3-1.02 CONTRACT BONDS (PUB. CONT. CODE 10221 AND 10222):

In lieu of the second paragraph in Section 3-1.03 of the Standard Specifications, the following shall be inserted:

2. Performance bond to guarantee the faithful performance of the contract. This bond must be equal to at least 100 percent of the total bid.

The two bonds shall be written by an admitted corporate surety.

SECTION 4 - PROSECUTION AND PROGRESS

4-1 BEGINNING OF WORK, TIME OF COMPLETION, AND LIQUIDATED DAMAGES:

Attention is directed to the provisions in Section 8-1.03, "Beginning of Work;" in Section 8-1.06 "Time of Completion;" and in Section 8-1.07, "Liquidated Damages;" of the Standard Specifications.

The Contractor shall begin work within 15 calendar days of the issuance of the Notice to Proceed by the County of Monterey. This work shall be diligently prosecuted to completion before the expiration of **30 WORKING DAYS**.

The Contractor shall pay to the County of Monterey the sum of \$1,900 per day, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

4-2 PRE-CONSTRUCTION CONFERENCE:

After the issuance of the Notice to Proceed, a pre-construction conference shall be held at the office of the MONTEREY COUNTY DEPARTMENT OF PUBLIC WORKS, 855 E. LAUREL DRIVE, BUILDING D, SALINAS, CA, for the purpose of discussing with the Contractor the scope of work, Specifications, existing conditions, materials to be ordered, equipment to be used, and all essential matters pertaining to the prosecution of and the satisfactory completion of the project as required. The Contractor's representatives at this conference shall include all major superintendents for the work and may include major subcontractors.

4-3 ARCHAEOLOGICAL DISCOVERIES:

All articles of archaeological interest that may be uncovered by the Contractor during the progress of the work shall be reported immediately to the Engineer. The further operations of the Contractor with respect to the find shall be decided under the direction of the Engineer.

SECTION 5 - GENERAL

SECTION 5-1 - MISCELLANEOUS

5-1.01 LABOR NON DISCRIMINATION:

Attention is directed to the following Notice that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM
(GOV. CODE, SECTION 12990)

Your attention is called to the "Nondiscrimination Clause", set forth in Section 7-1.01A(4), "Labor Nondiscrimination," of the Standard Specifications, which is applicable to all nonexempt state contracts and subcontracts, and to the "Standard California Nondiscrimination Construction Contract Specifications" set forth therein. The Specifications are applicable to all nonexempt state construction contracts and subcontracts of \$5,000 or more.

5-1.02 LABOR CODE REQUIREMENT:

Attention is directed to Section 7-1.01A(1), "Hours of Labor," of the Standard Specifications.

5-1.03 GENERAL PREVAILING WAGE RATES:

Attention is directed to Section 7-1.01A(2), "Prevailing Wage," of the Standard Specifications.

The general prevailing wage rates determined by the Director of Industrial Relations, for the county or counties in which the work is to be done, are available on the Internet at: <http://www.dir.ca.gov/dlsr/pwd/>. These wage rates are not included in the Bid book for the project. Changes, if any, to the general prevailing wage rates will be available at the same location.

The general prevailing rates of per diem, holiday, and overtime wages for each craft, classification,

or type of worker needed to execute the contract are determined in accordance with Section 1770, et. seq., of the Labor Code; and the contractor shall comply with all applicable sections thereof.

The general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work are on file in the office of the Monterey County Department of Public Works or on the Internet at: <http://www.dir.ca.gov/dlsr/pwd/>.

The Contractor shall post the prevailing wage rates at the job site.

5-1.04 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

Attention is directed to Section 7-1.12B(3), "Workers' Compensation and Employer's Liability Insurance," of the Standard Specifications.

5-1.05 PUBLIC SAFETY:

The Contractor shall provide for the safety of traffic and the public in conformance with the provisions in Section 7-1.09, "Public Safety," of the Standard Specifications and these special provisions.

5-1.06 REMOVAL OF ASBESTOS AND HAZARDOUS SUBSTANCE:

When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and the Contractor encounters materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe. The Contractor shall immediately cease work in the affected area and report the condition to the Engineer in writing.

In conformance with Section 25914.1 of the Health and Safety Code, removal of asbestos or hazardous substances including exploratory work to identify and determine the extent of the asbestos or hazardous substance will be performed by separate contract.

If delay of work in the area, due to the presence of asbestos or hazardous substances, delays the current controlling operation, the delay will be considered as right of way delay and the Contractor will be compensated for the delay in conformance with the provisions in Section 8-1.09, "Delays," of the Standard Specifications.

The Department reserves the right to use other forces for exploratory work to identify and determine the extent of such material and for removing hazardous material from such area.

5-1.07 CONTRACTOR'S LICENSING LAWS:

Attention is directed to Section 7-1.01C, "Contractor's Licensing Laws," of the Standard Specifications.

5-1.08 SUBCONTRACTING:

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the County of Monterey may exercise

the remedies provided under Pub Cont Code § 4110. The County of Monterey may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

Submit copies of subcontracts upon request by the Engineer.

Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations' Web site.

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

5-1.09 PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS:

Attention is directed to the provisions in Sections 10262 and 10262.5 of the Public Contract Code and Section 7108.5 of the Business and Professions Code concerning prompt payment to subcontractors.

A prime contractor or subcontractor shall pay any subcontractor not later than 7 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 7 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

5-1.10 PAYMENTS:

Attention is directed to Section 9-1.07, "Progress Payments," and 9-1.08, "Payment After Contract Acceptance," of the Standard Specifications and these special provisions.

In lieu of Section 9-1.07F, "Retentions," of the Standard Specifications, the following shall be inserted:

Progress payments shall not be made in excess of 95 percent of the actual work completed. County shall withhold five (5) percent from progress payments until final

completion and acceptance of the project by the Board of Supervisors.

In lieu of Section 9-1.07C, "Materials On Hand," of the Standard Specifications, the following shall be inserted:

No progress payment will be made for any materials on hand which are furnished but not incorporated in the work.

5-1.11 ARBITRATION:

Section 9-1.10, "Arbitration," as defined in the Standard Specifications, is deleted from this contract. In lieu of arbitration, the following shall apply (from the Public Contract Code):

- A. Application of article; inclusion of article in plans and specifications (Public Contracts Codes 20104):
 - 1a. This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a Contractor and the County of Monterey.
 - 1b. This article shall not apply to any claims resulting from a contract between the Contractor and the County of Monterey when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, of the Public Contract Code).
 - 2a. "Public Works" has the same meaning as in Sections 3100 and 3106 of the Civil Code.
 - 2b. "Claim" means a separate demand by the Contractor for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.
 - 3. The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work, which may give, rise to a claim under this article.
 - 4. This article applies only to contracts entered into on or after January 1, 1991.
- B. Claims; requirements (Public Contracts Codes 20104.2):

For any claim subject to this article, the following requirements apply:

- 1. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

- 2a. For Claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the local agency may have against the claimant.
- 2b. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
- 2c. The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- 3a. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the local agency may have against the claimant.
- 3b. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
- 3c. The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
4. If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet-and-confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet-and-confer conference within 30 days for settlement of the dispute.
5. If following the meet-and-confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

C. Procedures for civil actions filed to resolve claims (Public Contracts Codes 20104.4): The following procedures are established for all civil actions filed to resolve claims subject to this article:

1. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

2a. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

2b. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

D. Payment by local agency of undisputed portion of claim; interest on arbitration award or judgment (Public Contracts Codes 2104.6):

1. The County of Monterey shall not fail to pay money as to any portion of a claim that is undisputed except as otherwise provided in the contract.

2. In any suit filed under Section 20104.4, Monterey County shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue the date the suit is filed in a court of law.

5-1.12 PARTNERING:

The County of Monterey will promote the formation of a "Partnering" relationship with the Contractor in order to effectively complete the contract to the benefit of both parties. The purpose of this relationship will be to maintain cooperative communication and mutually resolve conflicts at the lowest possible management level.

The Contractor may request the formation of such a "Partnering" relationship by submitting a request in writing to the Engineer after approval of the contract. If the Contractor's request for "Partnering" is approved by the Engineer, scheduling of a "Partnering" workshop, selecting the "Partnering" facilitator and workshop site, and other administrative details shall be as agreed to by both parties.

The costs involved in providing a facilitator and a workshop site will be borne equally by the County of Monterey and the Contractor. The Contractor shall pay all compensation for the wages and

expenses of the facilitator, and of the expenses for obtaining the workshop site. The County's share of such costs will be reimbursed to the Contractor in a change order written by the Engineer. Markups will not be added. All other costs associated with the "Partnering" relationship will be borne separately by the party incurring the costs.

The establishment of a "Partnering" relationship will not change or modify the terms and conditions of the contract and will not relieve either party of the legal requirements of the contract.

5-1.13 INDEMNIFICATION AND INSURANCE:

Attention is directed to Section 7-1.12, "Indemnification and Insurance," of the Standard Specifications and these Special Provisions.

In addition to all the requirements in Section 7-1.12B (4)(b) of the Standard Specifications, the following additional requirements shall be met. An Additional Insured Endorsement to the Contractor's Liability insurance policy naming the County of Monterey, their officers, agents, and employees as additional insured's in the form approved by the County of Monterey shall also be furnished. A copy of the approved endorsement form may be obtained from the County of Monterey at the address to obtain bid packages as shown in the Notice to Bidders. The insurance afforded to the additional insured's is primary insurance and if the additional insured's have other insurance that might be applicable to any loss, the amount of this insurance shall not be reduced or prorated due to the existence of such other insurance.

The contractor's insurer agrees to waive subrogation claims against the County of Monterey, their officers, agents, and employees.

Evidence of insurance (Contractual Liability insurance and Additional Insured Endorsement) in compliance with the requirements herein shall be furnished to the County of Monterey by the Contractor with the Certificate of Insurance in the form as approved by the County of Monterey. A copy of the approved certificate form may be obtained from the County of Monterey at the address to obtain bid packages as shown in the Notice to Bidders. Certificates of insurance shall, without any qualification thereto, contain the following statement:

Should any of the described policies be canceled, modified, or reduced in limits before the expiration date thereof, the issuing company will mail 30 days' advance written notice to the named certificate holders.

The insurance shall be issued by a company or companies authorized to transact business in the State of California and shall have a rating of at least A- VII in accordance with the current Best's rating.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the State of California or County of Monterey from taking such other actions as is available to them under any other provision of this contract (except retainage of money due to the Contractor) or otherwise in law.

Nothing in the contract is intended to create the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the contract intended to establish a standard of care owed to the public or any member thereof.

Prior to the execution of this Agreement by the County, Contractor shall file certificates of insurance with the County Contracts/Purchasing Department and with the County Director of Public Works, showing that the Contractor has in effect the insurance required by this Agreement. The Contractor shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy that would alter the information of the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

5-1.14 AREAS FOR CONTRACTOR'S USE:

Attention is directed to the requirements specified in Section 7-1.19, "Rights in Land and Improvements," of the Standard Specifications and these Special Provisions.

The County right-of-way shall be used only for purposes that are necessary to perform the required work. The Contractor shall not occupy the right-of-way, or allow others to occupy the right-of-way, for purposes that are not necessary to perform the required work.

There are no County-owned parcels adjacent to the right-of-way for the exclusive use of the Contractor within the contract limits. The Contractor shall secure at his own expense any area required for plant sites, storage of equipment or materials, or for other purposes.

Use of the Contractor's work areas and other County-owned property shall be at the Contractor's own risk, and the County shall not be held liable for any damage to or loss of materials or equipment located within such areas.

The Contractor shall obtain encroachment permits prior to occupying County-owned parcels outside the contract limits. The required encroachment permits may be obtained from the MONTEREY COUNTY DEPARTMENT OF PUBLIC WORKS, 168 W ALISAL STREET 2ND FLOOR, SALINAS, CA 93901-2438.

Residence trailers will not be allowed within the county right-of-way.

The Contractor shall remove all equipment, materials, and rubbish from the work areas and other County-owned property, which he occupies and shall leave the areas in a presentable condition, in accordance with the provisions in Section 4-1.02, "Final Cleaning Up," of the Standard Specifications.

The Contractor shall secure at his own expense any area required for plant sites, storage of equipment or materials, or for other purposes if sufficient area is not available to him within the contract limits.

5-1.15 PAYROLL RECORDS:

The Contractor's attention is directed to Section 7- 1.01A(3), "Payroll Records," of the Standard Specifications, and to the provisions of Labor Code, Section 1776 (Stats. 1978, Chapter 1249).

The Contractor shall be responsible for the compliance with these provisions by his/her Subcontractors. The Contractor shall furnish the Engineer with certified payrolls and statement of benefits.

5-1.16 SURFACE MINING AND RECLAMATION ACT:

Attention is directed to the Surface Mining and Reclamation Act of 1975, commencing in Public Resources Code, Mining and Geology, Section 2710, which establishes regulations pertinent to surface mining operations.

Material from mining operations furnished for this project shall only come from permitted sites in compliance with the Surface Mining and Reclamation Act of 1975.

The requirements of this section shall apply to all materials furnished for the project, except for acquisition of materials in conformance with Section 4-1.05, "Use of Materials Found on the Work," of the Standard Specifications.

5-1.17 PAYMENT ADJUSTMENTS FOR PRICE INDEX FLUCTUATIONS:

GENERAL

Summary

This section applies to asphalt contained in materials for pavement structural sections and pavement surface treatments such as hot mix asphalt (HMA), tack coat, asphaltic emulsions, bituminous seals, asphalt binders, and modified asphalt binders placed in the work. This section does not apply if you opted out of payment adjustment for price index fluctuations at the time of bid.

The Engineer adjusts payment if the California Statewide Crude Oil Price Index for the month the material is placed is more than 5 percent higher or lower than the price index at the time of bid.

The California Statewide Crude Oil Price Index is determined each month on or about the 1st business day of the month by the Department using the average of the posted prices in effect for the previous month as posted by Chevron, ExxonMobil, and ConocoPhillips for the Buena Vista, Huntington Beach, and Midway Sunset fields.

If a company discontinues posting its prices for a field, the Department determines the index from the remaining posted prices. The Department may include additional fields to determine the index.

For the California Statewide Crude Oil Price Index, go to:

<http://www.dot.ca.gov/hq/construc/crudeoilindex/>

If the adjustment is a decrease in payment, the Department deducts the amount from the monthly progress payment.

The Department includes payment adjustments for price index fluctuations when making adjustments under Section 4-1.03B, "Increased or Decreased Quantities," of the Standard Specifications.

If you do not complete the work within the contract time, payment adjustments during the overrun period are determined using the California Statewide Crude Oil Price Index in effect for the month in which the overrun period began.

If the price index at the time of placement increases:

1. 50 percent or more over the price index at bid opening, notify the Engineer.
2. 100 percent or more over the price index at bid opening, do not furnish material containing asphalt until the Engineer authorizes you to proceed with that work. The Department may decrease Bid item quantities, eliminate Bid items, or terminate the contract.

Submittals

Before placing material containing asphalt, submit the current sales and use tax rate in effect in the tax jurisdiction where the material is to be placed.

Submit certified weight slips for HMA, tack coat, asphaltic emulsions, and modified asphalt binders, including those materials not paid for by weight, as specified in Section 9-1.01, "Measurement of Quantities," of the Standard Specifications. For slurry seals, submit certified weight slips separately for the asphaltic emulsion.

Asphaltic Emulsion

The Engineer calculates the quantity of asphalt in asphaltic emulsions, including fog seals and tack coat, using the following formula:

$$Q_e = AETT \times (X_e / 100)$$

where:

- Q_e = quantity in tons of asphalt used in asphaltic emulsions
- AETT = undiluted asphaltic emulsions total tons placed
- X_e = minimum percent residue specified in Section 94, "Asphaltic Emulsions," of the Standard Specifications based on the type of emulsion used

You may, as an option, determine "X_e" by submitting actual daily test results for asphalt residue for the asphaltic emulsion used. If you choose this option, you must:

1. Take 1 sample every 200 tons but not less than 1 sample per day in the presence of the Engineer from the delivery truck, at midload from a sampling tap or thief, and in the following order:
 - 1.1. Draw and discard the 1st gallon
 - 1.2. Take two separate 1/2-gallon samples

2. Submit 1st sample at the time of sampling
3. Provide 2nd sample within 3 business days of sampling to an independent testing laboratory that participates in the AASHTO Proficiency Sample Program
4. Submit test results from independent testing laboratory within 10 business days of sample date

Modified Asphalt Binder

The Engineer calculates the quantity of asphalt in modified asphalt binder using the following formula:

$$Q_{mab} = MABTT \times [(100 - X_{am}) / 100]$$

where:

Q_{mab} = quantity in tons of asphalt used in modified asphalt binder
 $MABTT$ = modified asphalt binder total tons placed
 X_{am} = specified percentage of asphalt modifier

Other Materials

For other materials containing asphalt not covered above, the Engineer determines the quantity of asphalt (Q_o).

PAYMENT ADJUSTMENTS

The Engineer includes payment adjustments for price index fluctuations in progress pay estimates. If material containing asphalt is placed within 2 months during 1 estimate period, the Engineer calculates 2 separate adjustments. Each adjustment is calculated using the price index for the month in which the quantity of material containing asphalt subject to adjustment is placed in the work. The sum of the 2 adjustments is used for increasing or decreasing payment in the progress pay estimate.

The Engineer calculates each payment adjustment as follows:

$$PA = Q_t \times A$$

where:

PA = Payment adjustment in dollars for asphalt contained in materials placed in the work for a given month.

Q_t = Sum of all quantities of asphalt-contained materials in pavement structural sections and pavement surface treatments placed ($Q_h + Q_{rh} + Q_{mh} + Q_{rap} + Q_{tc} + Q_e + Q_{ss} + Q_{mab} + Q_o$).

A = Adjustment in dollars per ton of asphalt used to produce materials placed in the work rounded to the nearest \$0.01.

For US Customary projects, use:

$A = [(I_u / I_b) - 1.05] \times I_b \times [1 + (T / 100)]$ for an increase in the crude oil price index exceeding 5 percent

$A = [(I_u / I_b) - 0.95] \times I_b \times [1 + (T / 100)]$ for a decrease in the crude oil price index exceeding 5 percent

For metric projects, use:

$A = 1.1023 \times [(I_u / I_b) - 1.05] \times I_b \times [1 + (T / 100)]$ for an increase in the crude oil price index exceeding 5 percent

$A = 1.1023 \times [(I_u / I_b) - 0.95] \times I_b \times [1 + (T / 100)]$ for a decrease in the crude oil price index exceeding 5 percent

I_u = California Statewide Crude Oil Price Index for the month in which the quantity of asphalt subject to adjustment was placed in the work.

I_b = California Statewide Crude Oil Price Index for the month in which the bid opening for the project occurred

T = Sales and use tax rate, expressed as a percent, currently in effect in the tax jurisdiction where the material is placed. If the tax rate information is not submitted timely, the statewide sales and use tax rate is used in the payment adjustment calculations until the tax rate information is submitted.

SECTION 6 - (BLANK)

SECTION 7 - (BLANK)

SECTION 8 - MATERIALS

SECTION 8-1 - MISCELLANEOUS

8-1.01 GENERAL:

Attention is directed to Section 6, "Control of Materials," of the Standard Specifications and these Special Provisions.

All materials required to complete the work under this contract shall be furnished by the Contractor.

SECTION 9 - DESCRIPTION OF WORK

In general, the work shall consist of delivery and application of PASS or equal, PMCRS2h, and FASTSET or equal, asphalt emulsions to all locations identified in the "ROAD LIST AND QUANTITIES" of these Special Provisions. Contractor shall have the ability to furnish all necessary products and services to complete the project, including spreading and other accessorial services for scrub seal, chip seal, and fog seal operations. All other project incidentals shall be the responsibility of the County.

Such other items or details, not mentioned above, that are required by the Standard Specifications, Standard Plans, or these Special Provisions, shall be performed, placed, constructed, or installed.

9-1.01 INCREASED AND DECREASED QUANTITIES:

The County reserves the right to increase, decrease or delete any of the quantities of items 1 to 8.

The adjustment provision in Section 4-1.03 “Changes” of the Standard Specifications shall not apply to the above items.

Such other items or details, not mentioned above, that are required by the Standard Specifications or these Special Provisions, shall be performed, placed, constructed, or installed.

SECTION 10 - CONSTRUCTION DETAILS

10-1.01 ORDER OF WORK:

Order of work shall conform to the provisions in Section 5-1.05, "Order of Work," of the Standard Specifications and these special provisions.

10-1.02 OBSTRUCTIONS:

Attention is directed to the provision in Section 8-1.10, “Utility and Non-Highway Facilities,” of the Standard Specifications and these Special Provisions.

10-1.03 MAINTAINING TRAFFIC:

The Department of Public Works shall provide traffic control systems and shall be responsible for maintaining traffic for the entire project. However, nothing in these Special Provisions shall be construed as relieving the Contractor from his responsibility as provided in Section 7-1.08, “Public Convenience”, and 7-1.09, “Public Safety,” of the Standard Specifications.

10-1.04 SERVICE AND PRODUCT SPECIFICATIONS:

The work is for the delivery and application of asphalt emulsion to locations specified by Monterey County for scrub seal, chip seal, and fog seal.

A polymer modified rejuvenating asphalt emulsion equivalent in character and specifications to PASS shall be used for scrub sealing and PMCRS2h polymer modified asphalt emulsion shall be required for chip sealing. “FastSet” a proprietary product of Western Emulsions or approved equal shall be used for fog sealing.

A current lab test for PASS or equivalent product and PMCRS2h shall be submitted with the bid; PMCRS2h shall conform to the requirements of Section 94, “Asphaltic Emulsions” of the Standard Specifications. PASS or equivalent product shall conform to the specifications of Section 10-1.10, “Asphalt Emulsion Specification for Scrub Seal” of these Special Provisions.

References to the Standard Specifications are made for descriptive purposes to guide the contractor in interpreting the requirements of the County. Quotations will be considered for any brand, which meets or exceeds the quality of the specifications listed for the item. Sufficient detailed information must be submitted with the bid to allow a determination to be made that the product proposed is equivalent to that named.

10-1.05 PRICING:

The unit of measure for the emulsion quantities listed is U.S. standard measure of ton, consisting of 2,000 pounds avoirdupois.

The County is subject to State and Local Sales Tax; unit prices for contract items 1 to 6 shall be the price per ton of the material delivered including sales tax. Unit prices should also include any early discounts and/or incentives offered. An applicable sales tax for the emulsion product currently at 8.25% shall be included to the total price (emulsion quantity multiplied by the unit price) for each contract items 1 to 6.

A complete rate list (transportation and accessorial charges plus the effective date for the charges) shall accompany the bid. The rate list shall include, but not limited to the following information:

Demurrage:	Unloading, free time (If Applicable), excess time in ¼ hour increments (If Applicable)
Spreading:	Rate per ¼ hour increments and the amount of free time (If Applicable)
Return Shipment Charges:	Rate – minimum and maximum- Please quote your return shipment policy
Drayage Charges:	Quote prices(s) / policy (to be used only when and if Monterey County orders less than a minimum load of 24 tons).
Layover Charges:	Quote price(s) / policy (to be used only upon mutual consent of Monterey County and CONTRACTOR.)

The base bid shall be the sum of all the bid items. Random occurrences of other accessorial charges (**Bid Item 9**) not estimated in bid items 7 and 8 shall be one percent of the sum of bid items 1 to 6.

The Contractor shall submit invoices for work completed reflecting the bid unit price per ton of asphalt product involved. Any and all applicable accessorial charges including spreading and unloading hours estimated in bid items 7, 8, and 9 must be shown separately. Invoices must also show delivery date, corresponding oil tag, and truck tag numbers. Invoices shall be separated for each workday. All invoices are subject to the approval of the Engineer.

For orders less than the minimum load, the County shall pay the bid unit price (price per ton delivered) plus all accessorial charges specified by the contractor. The County shall pay only the actual freight and accessorial charges specified by the contractor.

Payments for all invoices shall be in accordance to Section 5-1.10, “Payments” of these Special Provisions.

10-1.06 DELIVERY OF MATERIALS:

Contractor agrees to furnish the asphalt emulsions to locations designated by the County on the day and time requested, provided the contractor receives a call prior to 4:00 p.m. on the day before delivery. Materials ordered for Monday shall be placed with the contractor by 4:00 p.m. on the preceding Friday. The applicable Road District Superintendent or designee will make all requests.

Deliveries may be canceled by contacting the contractor's dispatcher at any time prior to loading at the contractor's plant; thereby, releasing the County from all asphalt product charges. If delivery is canceled after loading the asphalt emulsion product, the County will only pay for the applicable loading and unloading charges.

The County shall not be liable for payment for any material hauled or transported on or over any public highway, bridge, or other structure(s) in excess of the total gross weight allowed by the Vehicle Code of the State of California. Payment for any delivery made in excess of 80,000 pounds shall be adjusted by deducting the cost of the material and transportation for the weight of the overload.

10-1.07 REQUIREMENTS FOR EMULSION DISTRIBUTION TRUCKS:

The utilization of spreader vehicles not distributing materials to the satisfaction of the Monterey County Public Works Director may be cause for cancellation of the contract.

Equipment used to transport asphalt emulsion products must be capable of carrying a load of 25 tons or more without exceeding a gross weight of 80,000 pounds.

Distribution trucks shall have a tank capacity of 3,300 gallons or more, and shall be capable of emptying and spreading a 25-ton booster load in two "pumpovers" (original and one), no exception.

Distribution trucks shall have in-cab controls controlling a 14-foot hydraulic swing boot setup, and the boot shall have on-off valves in one-foot increments. The asphalt distributor shall also have asphalt temperature gauges, and a metered method of determining spread rate and amount of asphalt used.

The distribution of asphalt emulsion product shall not vary by more than 15% transversely from the average, nor more than 10% longitudinally from the specified rate of application as determined by California Test 339 (D.O.T. Division of Construction, Office of Transportation Laboratory, dated January 2000, Method of Field Test for the Determination of Distributor Spread Rate).

At the discretion of the Engineer, asphalt emulsion materials to be spread may or may not be accepted after 3:00 p.m.

10-1.08 ASPHALT EMULSION SAMPLING AND TESTING:

In addition to the requirements in Section 37-1.05, "Applying Asphaltic Emulsion" of the Standard Specifications, the County may test any asphalt emulsion product for conformity to these Special Provisions and Standard Specifications by sampling at the delivery site. If the sample appears, by visual inspection, to lack the necessary properties, the entire load will be returned. A County designated laboratory or the State Materials and Research Laboratory in Sacramento, California will test the respective sample(s). Samples that are taken and found not to conform to these Special Provisions and Standard Specifications will result in the rejection of the entire load, and no payment will be allowed for the asphalt emulsion product or for the applicable transportation costs to the job. Samples that are taken where the product appears unacceptable and the load is returned, but upon lab inspection, does in fact meet all of the Special

Provisions and Standard Specifications requirements, will result in the County making payment to the contractor for the applicable loading, unloading, and transportation costs, but not for the asphalt emulsion product involved.

Each load shall be accompanied with a Certificate of Compliance as specified in Section 94-1.05 of the Standard Specifications.

10-1.09 ASPHALT EMULSION FOR SCRUB SEAL – PASS OR EQUAL (BID ITEMS 1):

The polymer modified rejuvenating asphalt emulsion with latex polymer and rejuvenating agent equivalent in character and specifications to PASS for scrub sealing shall be as specified in Section 10-1.10, “Asphalt Emulsion Specification for Scrub Seal” of these special provisions. The emulsion shall be applied when ambient temperature is above forty (40) degrees Fahrenheit and rising. The emulsion shall not be placed if ambient temperatures during the twenty four (24) hours curing period are expected to drop below twenty five (25) degrees Fahrenheit. The emulsion temperature at the time of application shall not be below 110 degrees Fahrenheit. The application rate of asphalt emulsion for scrub seal shall be within the range of 0.25 to 0.40 gallons per square yard. The Engineer shall determine the exact rate.

A scrub broom shall be attached to and pulled by the distributor truck during the application of asphalt emulsion for scrub seal operations. The Contractor shall supply the scrub broom and shall be as specified in Section 10-1.11, “Scrub Broom Specification for Scrub Seal” of these special provisions.

Asphalt emulsion for scrub seal shall be paid for in accordance to Section 10-1.05, “PRICING” of these special provisions and other applicable sections.

10-1.10 ASPHALT EMULSION SPECIFICATION FOR SCRUB SEAL:

The emulsion product use for scrub sealing shall be a polymer modified rejuvenating emulsion with a latex polymer, rejuvenating agent and asphalt and shall meet the following specifications. The polymer shall be PA-AS- 1 a product of Polymer Science of America or approved equal.

Certifications and test results from the manufacturers of the latex and the recycling agent used on the asphalt emulsion shall be submitted with the bid.

<u>Test on Emulsion</u>	Method	Specification
Viscosity @ 122° F (SFS)	ASTM D244	120 - 400
Residue, w%, minimum.	ASTM D244	65
pH	ASTM E70	2.0-5.0
Sieve, w%, max.	ASTM D244	0.1
Oil distillate, w%, max.	ASTM D244	0.5
Specific Gravity of residue of recovered latex min.	WE-EM – 100-2 ⁽⁵⁾	1.15
<u>Test on Residue⁽¹⁾</u>		
Viscosity @ 140°F, (P), maximum.	ASTM D2171	5000
Penetration @ 39.2°F, minimum.	ASTM D5	40

Elastic Recovery on residue by distillation, %, minimum.	AASHTO T59, T301 (1,2)	40
Test on Latex:		
Specific Gravity (minimum)	ASTM 1475	1.08
Tensile strength, die C dumbbell, psi, minimum	ASTM D412 ⁽³⁾	500
Swelling in rejuvenating agent, % maximum; 48 hours exposure @ 104°F	ASTM D471 ⁽⁴⁾ Modified	40% intact film
Test on rejuvenating agent:		
Flash point, COC , °F	ASTM D92	> 380
Hot Mix Recycling Agent Classification	ASTM D4552	See Section II

(1) Exception to AASHTO T59: Bring the temperature on the lower thermometer slowly to 350° F plus or minus 10° F. Maintain at this temperature for 20 minutes. Complete total distillation in 60 plus or minus 5 minutes from first application of heat.

(2) Elastic Recovery @ 10° C (50° F): Hour glass sides, pull 20 cm, hold 5 minutes then cut, let sit 1 hour.

(3) Tensile Strength Determination: Samples for testing for tensile strength in accordance with ASTM D412 shall be cut using a die dumbbell at a crosshead speed of 20 in/min.

(4) Latex Testing: Suitable substrate for film formation shall be polyethylene boards, silicone rubber sheeting, glass, or any substrate which produces a cured film of uniform cross-section. Polymer film shall be prepared from latex as follows:

Resistance to Swelling: Polymer films shall be formed by using a 50 mil drawdown bar and drawing down 50 mils of the latex on polyethylene boards. Films shall be cured for 14 days at 75°F and 50% humidity. Samples for resistance to swelling in rejuvenating agent shall be 1" by 2" rectangles cut from the cured film. Cut at least 3 specimens for each sample to be tested for swelling. Fill 3- 8 oz ointment tins with at least a ½" deep of rejuvenating agent. Swelling samples shall be weighed and then placed in the ointment tins on top of the rejuvenating agent. Then, add at least another ½" deep of rejuvenating agent over each of the latex samples. The ointment tins shall be covered and placed in an oven at 104°F for the specified 48 hours +/- 15 minutes. The ointment tins are allowed to cool to 75°F and then the latex films are removed from the tins. Unabsorbed rejuvenating agent is removed from the intact latex film by scraping with a rubber policeman and blotting with paper towels. If the latex film does not remain intact during removal from the tins or while removing the unabsorbed rejuvenating agent the sample shall be rejected. After the rejuvenating agent is removed from the samples they are then weighed. Percent swelling is reported as weight increase of the polymer film; report mass increase as a percent by weight of the original latex film mass upon exposure of films to the recycling agent.

(5) WE-EM – 100-2 – Re: Western Emulsions.

TEST ON RECYCLING AGENT:

Test	Specification
Viscosity, 140F, CST	50-175
Flash Point, F, COC	380 Min.
Saturate, % by wt.	30 Max
Asphaltenes	1.0 Max.
Test on Residue	
Weight Change, %	6.5 Max.
Viscosity Ratio	3 Max

10-1.11 SCRUB BROOM SPECIFICATION FOR SCRUB SEAL:

The emulsion scrub broom shall be as described below:

The scrub broom must be equipped with the means to mechanically raise and lower the scrub broom off and onto the road surface at designated points of completion and start up. It shall be towable in the elevated position to the next area of construction. The weight of the broom assembly shall be such that it does not squeegee the emulsion sealer off the roadway surface.

The main body of the scrub broom shall be a frame minimum 6'-9" wide, 10' (ft) deep. The maximum transverse rigid frame width at any point shall not exceed 6'-9". The nearest and furthest members, paralleling the back of the spreader truck, and diagonal members shall be equipped with street brooms. **The leading member and the trailing member shall have broom heads angled at 15 degrees off the centerline of the supporting member.** The diagonal members shall have broom heads attached in line with the centerline of the supporting member. Each individual street broom attached to the scrub broom assembly shall be 3 1/2" w x 61/2" h x 16" L and have stiff nylon bristles. Bristle height is to be maintained at a minimum of 5". The scrub broom shall be equipped with hinged wing assemblies attached to the main body not to exceed 4'-6" (ft) per side, with diagonals and equipped with street brooms. The purpose of the maximum rigid frame width and the hinged wing extensions is not only for maximum width of 16' (ft) but to maintain the scrubbing process evenly as contours and cross-sections change across the existing road surface .

10-1.12 PMCRS2h ASPHALT EMULSION (BID ITEMS: 2, 3, & 4):

The application of PMCRS2h polymer modified asphalt emulsion for chip seal operations shall be in accordance with Section 37-1.05 of the Standard Specifications. The application rate shall be for Medium Seal Coat (0.25 to 0.40 gallons per square yard). The Engineer shall determine the exact rate.

PMCRS2h application for Carmel Valley Road shall be with a scrub broom attached to and pulled by the distributor truck during the application. The Contractor shall supply the scrub broom and shall be as specified in Section 10-1.11, "Scrub Broom Specification for Scrub Seal"

Asphalt emulsion for chip seal (PMCRS2h) shall be paid for in accordance to Section 10-1.05, "PRICING" of these special provisions and other applicable sections.

10-1.13 FastSet ASPHALT EMULSION or APPROVED EQUAL (BID ITEMS: 5 & 6):

FastSet is a trade mark for a quick setting highly polymerized asphalt emulsion designed specifically for fog seal applications manufactured solely by Western Emulsions. Fog seal operations on Molera Road and Carmel Valley Road shall utilize this product or an approved equal in order to minimize traffic delays during construction. Typical curing time for this product is estimated to be fifteen (15) minutes at temperatures of 75 degrees Fahrenheit or higher. The application of FastSet shall be in accordance with Section 37-1.05 of the Standard Specifications. The application rate shall be within 0.10-0.15 gallons per square yards. The Engineer shall determine the exact rate.

Substitution for FastSet shall be in accordance to Section 6-1.05 of the Standard Specifications.

FastSet shall be paid for in accordance to Section 10-1.05, "PRICING" of these special provisions and other applicable sections.

10-1.14 ACCESSORIAL CHARGES ON SPREADING AND UNLOADING (BID ITEMS 7 & 8):

The estimated quantities for spreading time (Bid Item 7) and unloading time (Bid Item 8) are based on an eight-hour work day with two (2) spreaders at eight (8) hours each and a booster load for two (2) hours. In general, the County estimates spreading 75 tons (three loads) of PASS for scrub seal or PMCRS2h for chip seal on a normal day. Seventy five (75) tons of PASS or PMCRS2h consist of: two spreaders carrying 25 tons each and a booster load with 25 tons that can be unloaded within two hours.

Unit prices for bid item 7 and bid item 8 shall take into account of any free hours offered by the contractor consistent with the provisions above. Charges to other incidences of spreading time and unloading time not included in the "Estimated Quantity" for bid item 7 and bid item 8 shall conform to the unit prices for each bid item 7 and bid item 8 and the prices quoted in the rate list submitted with the bid.

Accessorial charges on spreading and unloading time shall be paid for in accordance to Section 10-1.05, "PRICING" of these special provisions and other applicable sections.

10-1.15 OTHER ACCESSORIAL CHARGES (BID ITEM 9):

Unpredictable accessorial charges including but not limited to drayage, layovers, and return shipments shall be bid as a lump sum item. The cost of these charges for Monterey County most recent chip seal operation is one percent of the total costs of materials used.

The unit price for bid item 9 shall be one percent of the sum of the total amounts for bid items 1 to 6. The total amount (Item Total) for each bid item 1 to 6 shall be the product of the estimated quantity multiplied by the unit price. Unit price for bid item 9 shall be calculated as follows:

$$\text{Unit Price} = 0.01 * (\text{Item Total Bid Item 1} + \text{Item Total Bid Item 2} + \text{Item Total Bid Item 3} + \text{Item Total Bid Item 4} + \text{Item Total Bid Item 5} + \text{Item Total Bid Item 6})$$

Where: Item Total for each bid item = Estimated Quantity * Unit Price

Occurrences of unpredictable accessorial charges shall be paid for in accordance to prices quoted in the rate list submitted with the bid and Section 10-1.05, "PRICING" of these special provisions and other applicable sections.

SECTION 11 – ENVIRONMENTAL STEWARDSHIP

11-1.01 GENERAL:

Attention is directed to Section 14, "Environmental Stewardship," of the Amended Standard Specifications and these Special Provisions.

11-1.02 NOISE AND VIBRATION:

Sound control shall conform to the provisions in Section 14-8, "Noise and Vibration," of the Amended Standard Specifications.

The noise level from the Contractor's operations shall not exceed 85 dBA (max) at a distance of 50 feet from the job site activities from 7 AM to 7 PM, Monday through Friday and from 9 AM to 7 PM, Saturdays and Holidays; where such noise will impact existing development. No noise-generating construction activities shall be allowed on Sundays.

The Contractor shall provide one "Type 1" sound level meter and one acoustic calibrator which will be used by the Department during the life of the contract. The Contractor shall provide training by a person trained in noise monitoring to one Department employee designated by the Engineer. The sound level meter shall be calibrated and certified by the manufacturer or other independent acoustical laboratory prior to delivery to the Department. The Contractor shall provide annual recalibration by the manufacturer or other independent acoustical laboratory. All equipment shall be capable of taking measurements using the A-weighting network and the "slow" response of the sound level meter. The measurement microphone shall be fitted with an appropriate windscreen. All equipment shall be returned to the Contractor at the acceptance of the contract. Equipment damaged by actions of the Department or the public shall be paid for as extra work as provided in Section 4-1.03D of the Amended Standard Specifications.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without the muffler. The contractor shall comply with the California Vehicle Code prohibitions against faulty or modified loud vehicle exhaust systems - Sections 27150 and 27151.

The noise level requirement shall apply to the equipment on the job or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

Full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed therefor.

11-1.03 AIR QUALITY:

Air pollution control shall conform to the provisions in Section 14-9, "Air Quality," of the Standard Specifications and these Special Provisions.

Material to be disposed of shall not be burned unless the Contractor has obtained a permit to burn

combustible material resulting from clearing and grubbing operations from an air pollution control officer of the local or regional authority. A copy of the permit shall be filed with the Engineer before beginning any burning. All such burning shall be conducted in strict conformance with the provisions stipulated in said permit and at such times and in such manner as to prevent the fire from spreading to areas adjoining the right-of-way.

In case the burning precedes construction operations, the piles may be placed in the center of the right-of-way; otherwise, the piles shall be placed in the most convenient location at the side of the right-of-way and beyond slope lines where they may be burned without damage to the surrounding forest cover or adjacent property.

Full compensation for conforming to the provisions in this section shall be considered as included in the prices paid for the various contract items of work and no additional compensation shall be allowed therefor.

SECTION 12 (Blank)

SECTION 13 (Blank)

SECTION 14 (Blank)

SECTION 15 – SAMPLE CONTRACT

SAMPLE CONTRACT

CONTRACT FOR PUBLIC WORK

COUNTY OF MONTEREY

STATE OF CALIFORNIA

PROJECT NO. 13-551327

THIS AGREEMENT, made in triplicate by and between the COUNTY OF MONTEREY, a political subdivision of the State of California, hereinafter called the "County," and _____, hereinafter called the "Contractor," WITNESSETH:

(1) **THE WORK**

The Contractor shall do all the work and furnish all the materials, except such as are mentioned in any of the contract documents to be furnished by the County, necessary to construct and complete in a good, workmanlike and substantial manner and to the satisfaction of the County, the following public work:

**PROCUREMENT (DELIVERY and APPLICATION)
of ASPHALT EMULSION for the
SEAL COAT 2012 PROJECT
PROJECT NO. 13-551327**

in accordance with this agreement and with all of the following additional contract documents which are incorporated into and made a part of this agreement:

- (a) The Standard Specifications, dated May 2006, and the Standard Plans, dated May 2006, including issued amendments through November 30, 2010, of the State of California, Department of Transportation.
- (b) The Special Provisions for the work
- (c) The Notice to Bidders calling for bids
- (d) The Payment and Performance bonds required
- (e) Certificate of Insurance
- (f) The accepted bid/proposal including the following:
 - (1) List of Subcontractors

- (2) Equal Employment Opportunity Certification
- (3) Public Contract Code
 - Section 10285.1 Statement
 - Section 10162 Questionnaire
 - Section 10232 Statement
- (4) Non-Collusion Declaration
- (5) Debarment and Suspension Certification
- (6) Statement Concerning Employment of Undocumented Aliens
- (7) Contractor's Certificate as to Worker's Compensation
- (8) Contractor's Certification of Good-Faith Effort to Hire Monterey Bay Area Residents
- (9) List of Satisfied Public Agencies
- (10) Bidder's Bond

All contract documents are intended to cooperate, so that any work called for in one and not mentioned in another is to be executed the same as if mentioned in all. However, should there be any conflict between the terms of this instrument and the Contractor's bid or proposal, then this instrument shall control.

2. WORKERS' COMPENSATION

In accordance with the provisions of Section 3700 of the Labor Code, the Contractor and every Subcontractor will be required to secure the payment of compensation to his employees.

3. CONTRACT PRICE

The County shall pay the Contractor the following prices for the performance of this contract:

**PROCUREMENT (DELIVERY and APPLICATION) of ASPHALT EMULSION
for the SEAL COAT 2012 PROJECT
PROJECT NO. 13-551327**

ITEM NO	ITEM CODE	ITEM DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE (In Figures)	ITEM TOTAL (In Figures)
1		PASS or Equivalent for the San Miguel Road Maintenance District	TONS	89		
2		PMCRS2h for the Monterey Road Maintenance District	TONS	106		
3		PMCRS2h for the Greenfield Road Maintenance District	TONS	212		
4		PMCRS2h for the San Ardo Road Maintenance District	TONS	160		

ITEM NO	ITEM CODE	ITEM DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE (In Figures)	ITEM TOTAL (In Figures)
5		FASTSET or Equivalent for the San Miguel Road Maintenance District	TONS	32		
6		FASTSET or Equivalent for the Monterey Road Maintenance District	TONS	38		
7		Accessorial Charges on Spreading	HRS	100		
8		Accessorial Charges on Unloading	HRS	35		
9		Other Accessorial Charges	LS	1		
TOTAL COST						

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates appearing below their respective signatures.

CONTRACTOR:

(Name of Company)

By: _____
Signature of Chair, President, or Vice-President

Printed Name and Title

Date: _____

By: _____
Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer*

Printed Name and Title

Date: _____

COUNTY OF MONTEREY:

APPROVE AS TO FISCAL TERMS

By: _____

Name: Paul H. Greenway, P.E.

Title: Acting Director of Public Works

Dated: _____

By: _____

Name: Gary Giboney

Title: Chief Deputy Auditor-Controller

Date: _____

APPROVE AS TO FORM

APPROVE AS TO INDEMNITY/
INSURANCE LANGUAGE

By: _____

Name: Cynthia L. Hasson

Title: Deputy County Counsel

Date: _____

By: _____

Name: Steven F. Mauck

Title: Risk Manager

Date: _____

***INSTRUCTIONS:** If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this AGREEMENT on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the AGREEMENT.

COUNTY OF MONTEREY

PAYMENT BOND

(Civil Code Section 3249)

WHEREAS, the County of Monterey has awarded to Principal, as Contractor, a contract for the following project:

**PROCUREMENT (DELIVERY and APPLICATION)
of ASPHALT EMULSION for the
SEAL COAT 2012 PROJECT
PROJECT NO. 13-551327**

AND WHEREAS, Principal, as Contractor, is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics, materialmen, and other persons furnishing labor and materials on the project, as provided by law.

NOW, THEREFORE, we _____, as Principal,
and _____
_____ as Surety, are held and firmly
bound unto the County of Monterey, a political subdivision of the State of California (hereinafter
called "County"), and to the persons named in California Civil Code section 3181 in the penal
sum of _____ Dollars (\$ _____)
for the payment of which sum in lawful money of the United States, well and truly to be made,
we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the Principal, or any of Principal's heirs, executors, administrators, successors, assigns, or Subcontractors, (1) fails to pay in full all of the persons named in Civil Code Section 3181 with respect to any labor or materials furnished by said persons on the project described above, or (2) fails to pay in full all amounts due under the California Unemployment Insurance Code with respect to work or labor performed on the project described above, or (3) fails to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and Subcontractors pursuant to Unemployment Insurance Code section 13020 with respect to such work and labor, then the Surety shall pay for the same.

Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract on the call for bids, or to the work to be performed there under, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said contract or the call for bids, or to the work, or to the specifications.

If suit is brought upon this bond by the County and judgment is recovered, the Surety shall pay all litigation expenses incurred by the County in such suit, including attorney's fees,

court costs, expert witness fees and investigation expenses.

This bond inures to the benefit of any of the persons named in Civil Code section 3181, and such persons or their assigns shall have a right of action in any suit brought upon this bond, subject to any limitations set forth in Civil Code sections 3247 et seq. (Civil Code, Division 3, Part 4, Title 15, Chapter 7: Payment Bond for Public Works).

IN WITNESS WHERE OF the above-bounden parties have executed this instrument under their several seals this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

Principal

By _____

Name and Title _____

(Corporate Seal)

Surety

By _____

Name and Title _____

(Attach notary acknowledgment for all signatures and attorney-in-fact certificate for signature by surety's representative)

COUNTY OF MONTEREY

PERFORMANCE BOND

WHEREAS, the County of Monterey has awarded to Principal, _____
as Contractor, a contract for the following project:

**PROCUREMENT (DELIVERY and APPLICATION)
of ASPHALT EMULSION for the
SEAL COAT 2012 PROJECT
PROJECT NO. 13-55132**

WHEREAS, Principal, as Contractor, is required to furnish a bond in connection with said contract, to secure the faithful performance of said contract.

NOW, THEREFORE, we _____, as Principal,
and _____
_____ as Surety, are held and firmly
bound unto the County of Monterey, a political subdivision of the State of California (hereinafter
called "County"), in the penal sum of _____
Dollars (\$ _____), for the payment of which sum in lawful money of the United
States, well and truly to be made, we bind ourselves, our heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the Principal, as Contractor, or Principal's heirs, executors, administrators, successors,
or assigns, (1) shall in all things stand to and abide by and well and truly keep and perform the
covenants, conditions, and agreements in said contract and any alteration thereof made as therein
provided, on Principal's part to be kept and performed, at the time and in the manner therein
specified and in all respects according to their true intent and meaning, and (2) shall defend,
indemnify and save harmless the County, the members of its board of supervisors, and its
officers, agents and employees as therein stipulated, then this obligation shall become null and
void; otherwise, it shall be and remain in full force and virtue.

Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition
to the terms of the contract or the call for bids, or to the work to be performed thereunder, or the
specifications accompanying the same, shall in any way affect its obligation under this bond, and
it does hereby waive notice of any such change, extension of time, alteration or addition to the
terms of said contract or the call for bids, or to the work, or to the specifications.

Whenever the Principal, as Contractor, is in default, and is declared in default, under the
contract by the County of Monterey, the County of Monterey having performed its obligation
under the contract, Surety may promptly remedy the default, or shall promptly:

- (1) Complete the contract in accordance with its terms or conditions, or
- (2) Obtain a bid or bids for submission to County of Monterey for completing the
contract in accordance with its terms or conditions, and upon determination by

County of Monterey and Surety of the lowest responsible and responsive bidder, arrange for a contract between such bidder and County of Monterey, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of contract price.

If suit is brought upon this bond by the County and judgment is recovered, the Surety shall pay all litigation expenses incurred by the County in such suit, including attorney's fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

Principal

By _____

Name and Title _____

(Corporate Seal)

Surety

By _____

Name and Title _____

(Attach notary acknowledgment for all signatures and attorney-in-fact certificate for signature by surety's representative)