

# Attachment B

## GRANT AGREEMENT

This GRANT AGREEMENT (“*Agreement*”), by and between Jensen Road Group and the County of Monterey, a political subdivision of the State of California (“*County*”) is entered into and effective as of the last date opposite the respective signatures below to reflect a grant from a donor Jensen Road Group made in honor to rehabilitate the pavement for a section of Jensen Road. Jensen Road Group and County are sometimes collectively referred to as the “Parties,” with each being a “Party.”

### RECITALS

WHEREAS, Jensen Road has numerous defects, including potholes, patches and several types of cracking (longitudinal, block and edge cracking), making the road surface extremely uneven;

WHEREAS, the County’s pavement condition index (PCI) survey of Jensen Road rates the pavement condition as “POOR”;

WHEREAS, Jensen Road is the sole access road for several residents and businesses;

WHEREAS, the County Road Fund is limited and the rehabilitation of all currently failed pavements within the County road network is not financially feasible;

WHEREAS Jensen Road Group wishes to contribute One Hundred Thirty Thousand Dollars (\$130,000) to the funding for rehabilitating the pavement for Jensen Road (hereafter “*Project*”)

WHEREAS, funding from the Jensen Road Group would prioritize County funds and allow for rehabilitating the pavement for Jensen Road to be scheduled for rehabilitation this fiscal year;

WHEREAS, the Project is more particularly described in Exhibit A (attached and incorporated into to this Agreement); and

WHEREAS, the Project has a cost estimate of \$265,000.

### AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

**1.0 Jensen Road Group’s Responsibilities.** Jensen Road Group agrees to contribute up to a maximum not-to-exceed amount of One Hundred Thirty Thousand Dollars (\$130,000) to County for Project costs (the “*Grant*”), and payable as follows:

**1.1 Initial payment.** The Grant of One Hundred Thirty Thousand Dollars (\$130,000) shall be deposited and made payable to the “County of Monterey” within 30 days of Board of Supervisors approval of this Agreement and/or the effective date of this Agreement whichever date occurs first.

**1.2 Indemnification.** Jensen Road Group agrees to hold harmless, defend and indemnify County and its officers, members, employees, agents, and representatives of each, for any losses, costs, damages or expenses from liabilities for damages arising from the negligent or intentional acts, errors, or omissions of Jensen Road Group except to the extent such damages or expenses from liabilities for damages are the result of the sole negligence of County, its officers, employee or agents. Jensen Road Group accepts no liability for any consequences, whether direct or indirect, that may come about from County's use of the Grant or the Project that is funded by the Grant. Jensen Road Group's entire liability under this Agreement is limited to the amount of the Grant.

**2.0 County's Responsibilities.** County shall be responsible for the following:

2.1. To use the Grant exclusively for carrying out the Project and for no other purpose.

County agrees that if it were to use the Grant for purposes other than the Project, such act shall constitute a material breach of this Agreement and the County shall repay to Jensen Road Group any portion of the Grant funds not used for the Project. Notwithstanding the foregoing, Jensen Road Group and County recognize that in order to accomplish its responsibilities, County must make investments which in many instances require binding contracts. Jensen Road Group agrees that any demand for repayment will be limited to unspent, uncommitted funds. Where there has been a material breach of this Agreement by County or County fails to comply with the terms of this Agreement, the Parties will work together cooperatively to ensure that County is able to uphold its financial commitments and wind down in an expeditious and orderly manner, if necessary. If Jensen Road Group demands repayment of Grant funds not used exclusively for the Project, County agrees to use all reasonable efforts to terminate any contracts which have not used Grant funds exclusively for the Project, and if not possible to terminate said contracts, to minimize its existing financial commitments as necessary.

2.2. Carry out, manage and complete the Project, including, but not limited to:

2.2.1. Pay all costs of the Project other than Jensen Road Group's maximum not-to-exceed Grant of \$130,000;

2.2.2. Solicit bids and award contracts for the Project pursuant to the public contracting laws of the State of California; and

2.2.3. Manage and inspect the construction of the Project, disburse payments for the Project, and perform all future maintenance of the improved road segment.

2.3. County shall be the exclusive contracting party with respect to the Project. Jensen Road Group shall not be a party to any agreements with general contractors or subcontractors for work on the Project and shall not be directly liable to any contractor or subcontractor for the costs of the Project.

2.4 The County shall deliver to Jensen Road Group written acknowledgment of the Grant of \$130,000 within sixty (60) days of receipt of such contribution which shall include the amount of cash received and the date of receipt.

2.5. Construction Contracts. County shall incorporate language into all construction contracts related to the Project to require Contractor(s) to defend, indemnify and hold harmless the County and Jensen Road Group, their members, officers, employees agents and representatives from and against any and all claims or actions arising out of or related to Contractor(s) performance of the work on the Project, except to the extent such claims or actions are the result of the sole negligence of the County or Jensen Road Group.

2.6. Additional Insureds. County shall require all contractors and subcontractors related to the Project to name the County and Jensen Road Group as additional insureds on all contractor(s) liability policies.

2.7. Indemnification. County, on behalf of itself agrees to hold harmless, defend and indemnify Jensen Road Group and its officers, members, employees, agents, and representatives of each, for any losses, costs, damages or expenses from liabilities for damages arising from the negligent or intentional acts, errors, or omissions of County and/or County's failure to pay any supplier of materials, services or labor, except to the extent such damages are the result of the sole negligence of Jensen Road Group, its officers, employees or agents.

**3.0. County's Failure to Meet Project Start Date**. In the event that actual construction of the Project fails to commence by the Project Start Date, Jensen Road Group shall have the option to either terminate this Agreement and pay only the Initial Payment or, at its sole discretion, agree to change the Project Start Date, such date to be mutually agreed upon by the Parties.

**4.0. Termination**. This Agreement may be terminated by either Party by giving the other Party sixty (60) days written notice. In the event County has committed funds toward its performance and/or performed any portion of its Responsibilities pursuant to Section 2 of this Agreement, Jensen Road Group shall be responsible for the payment of County's actual costs up to the maximum not-to-exceed amount specified in Section 1 above. In the event of Termination of this Agreement by Jensen Road Group, if County has committed funds toward its performance and/or performed any portion of its responsibilities pursuant to Section 2 of this Agreement prior to Jensen Road Group's contribution of the initial maximum not-to-exceed amount specified in Section 1 above, said payment to County of any and all County costs incurred shall be due and payable from Jensen Road Group to County upon receipt of certified invoices from County and no later than 30 days from the date said invoices are sent by County to Jensen Road Group.

**5.0. Notice**. Any notices required pursuant to this Agreement shall be made as follows (the Parties may change this information by written notice). If notice is provided through United States Postal Service (USPS), notice shall be presumed received within three (3) days from the date of mailing. If notice is provided via email or facsimile, notice shall be presumed received as of the date of transmittal by the sender with the delivery confirmed through the outgoing system. Notice of intent to terminate this Agreement, written demand for mediation or intent to initiate an action in a court of law shall be sent through USPS Certified Mail with return receipt requested. All other notices pursuant to this Agreement may be sent via facsimile or email with email or facsimile delivery confirmed through the outgoing email or facsimile system to the recipients indicated below:

*TO COUNTY OF MONTEREY:*  
Randy Ishii, Director  
Public Works, Facilities, and Parks  
1441 Schilling Place, Second Floor  
Salinas, California 93901  
Email: [ishii@co.monterey.ca.us](mailto:ishii@co.monterey.ca.us)  
Phone: 831.784.5647

*TO: Jensen Road Group*  
Attn: Robert Rodoni  
225 Jensen Road  
Moss Landing, CA 95039  
Email: [bsprout5@aol.com](mailto:bsprout5@aol.com)  
Phone: 831.594.2191  
Facsimile: 831.763.2854

*WITH A COPY TO:*  
Office of the County Counsel  
Susan K. Blich, Acting County Counsel  
Attention: Mary Grace Perry, Deputy  
168 W. Alisal Street, 3<sup>rd</sup> Floor  
Salinas, California 93901  
Email : [perrym@co.monterey.ca.us](mailto:perrym@co.monterey.ca.us)  
Phone : 831.755.5045  
Facsimile : 831.755.5283

**6.0. Entire Agreement.** This Agreement contains all agreements and understandings of the Parties and supersedes and cancels any and all prior or contemporaneous written or oral agreements, instruments, understandings, and communications of the Parties with respect to the subject matter herein.

**7.0. Authority.** Each Party executing this Agreement represents and warrants that (i) it has the authority to enter into this Agreement, (ii) the execution and delivery of this Agreement has been duly authorized by the Party pursuant to its formation documents, and (iii) upon such execution and delivery this Agreement shall be binding upon and enforceable against each Party.

**8.0 Voluntary Agreement.** The Parties each represent that they have read this Agreement in full and understand and voluntarily agree to all provisions herein. The Parties further declare that prior to signing this Agreement they each had the opportunity to apprise themselves of relevant information, through sources of their own selection, including consultation with counsel of their choosing if desired, in deciding whether to execute this Agreement. The signatories to this Agreement represent that they have the proper authority to execute this Agreement on behalf of the respective Party.

**9.0. Amendment.** This Agreement shall not be amended, revised, modified or revoked at any time without the written agreement of both Parties.

**10.0. Binding Effect.** This Agreement shall inure to and be binding upon the Parties, their representatives, successors, and assigns.

**11.0. No Partnership or Joint Venture.** The Parties agree that Jensen Road Group and the County are neither partners nor parties to any joint venture. Nothing in this Agreement creates a partnership or joint venture between Jensen Road Group and the County or imposes upon either party any liabilities as such.

**12.0. No Other Representations or Warranties.** No representations or warranties whatsoever are made by Jensen Road Group or the County, except as specifically set forth in this Agreement.

Such representations and warranties made by Jensen Road Group or the County pursuant to this Agreement shall be deemed to be continuing. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE.

**13.0. Limitation of Liability.** Each party shall be liable to the other parties for its own performance under this agreement.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY IN CONNECTION WITH THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR RELIANCE DAMAGES (OR ANY LOSS OF REVENUE OR PROFITS), HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE OR UNDER ANY OTHER LEGAL THEORY, WHETHER FORESEEABLE OR NOT AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**14.0. Severability.** In the event any provision or any part of any provision of this Agreement shall be held to be invalid and unenforceable, the remaining enforceable provisions and remaining enforceable parts of any provision shall be valid and binding upon the parties to the maximum extent permitted by law. One or more waivers by either Party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other Party.

**15.0. Governing Law.** This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of California.

**16.0. Dispute Resolution.** The Parties first shall attempt to resolve any dispute through direct discussions. If the Parties cannot resolve the dispute through direct discussions, then the dispute shall be resolved through mediation conducted pursuant to applicable rules of JAMS. Mediation may be commenced by a written demand to mediate sent by one Party to the other and filed with JAMS. Within 30 days after a Party's demand for mediation, the Parties shall, in good faith, make their best efforts to agree on and select a mediator. If the Parties are unable or fail to agree upon a mediator within the allotted time, the mediator shall be appointed by JAMS in accordance with its rules. The mediator shall serve as a neutral, independent, and impartial mediator. The Parties shall share equally the up-front costs of mediation. The foregoing provisions of this Section shall not prevent or preclude either Party from seeking from a court of law temporary restraining orders or temporary injunctive relief as an interim remedy for breach of this Agreement while the Parties are attempting to resolve the dispute through the foregoing provisions of this Section. Any mediation demands, proceedings, and/or agreements or awards resulting from such proceedings shall be strictly confidential and shall not be disclosed to any third parties except as required by law or as necessary to attorneys, accountants, or similar professionals.

**17.0. Counterparts.** This Agreement may be executed in two (2) or more counterparts and transmitted electronically via facsimile transmission or by delivery of a scanned counterpart in

PDF via email transmittal of which each shall be deemed a duplicate original but all of which shall constitute a single document.

**18.0. Electronic signatures.** The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C. Section 7001 et seq.; California Government Code Section 16.5; and, California Civil Code Section 1633.1 et seq. Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and any and all Exhibits to this Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF).

**19.0 Form: Delivery by E-Mail or Facsimile.** Executed counterparts of this Agreement may be delivered by facsimile transmission or by delivery of a scanned counterpart in PDF by e-mail transmittal, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart or counterparts had been delivered to the other party in person.

**IN WITNESS WHEREOF**, County of Monterey and Jensen Road Group execute this Agreement as of the last date opposite the respective signatures below.

**COUNTY OF MONTEREY**

**Jensen Road Group**

By: \_\_\_\_\_  
Randell Ishii, PWFP Director

By: \_\_\_\_\_  
Robert Rodoni

Date: \_\_\_\_\_

Its: \_\_\_\_\_  
*(Type/Print Title)*

Approved as to fiscal provisions:  
Rupa, Shah, County Auditor-Controller

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

Approved as to form:  
Susan K Blich, Acting County Counsel

By: \_\_\_\_\_  
Mary Grace Perry  
Deputy County Counsel

Date: \_\_\_\_\_

Approved as to Indemnification and  
Limitation of Liability Provisions:  
Office of the County Counsel-Risk  
Management

By: \_\_\_\_\_  
David Bolton, Risk Manager

Date: \_\_\_\_\_

**EXHIBIT A**

**Project Description and Budget Estimate**

*[see following pages]*

## **EXHIBIT A**

### **Jensen Road Rehabilitation**

#### Project Description

The project involves rehabilitating Jensen Road, approximately from State Route 1 to Bluff Road, including about 600 feet of Bluff Road, measured from Jensen Road. Both Jensen Road and Bluff Road are two-lane roads (one lane in each direction). The project in general consists of:

- Performing preparatory work for the site
- Placing hot-mix asphalt
- Installing traffic stripes

An Engineer's Estimate and an aerial map of the project location are provided in the following pages.

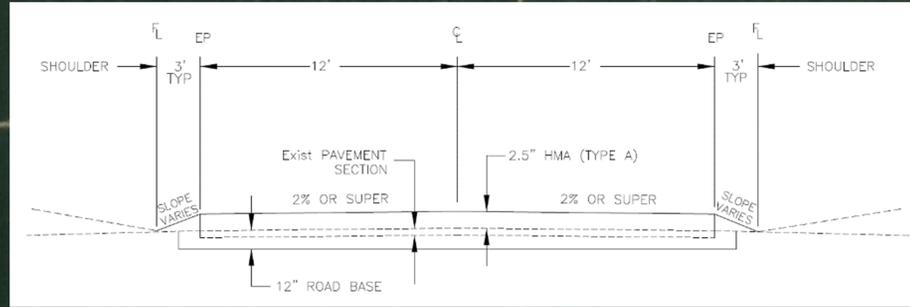
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\*\*\* Bryan Jones

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CO OF MONTEREY JENSEN RD

**BID TOTALS**

<u>Biditem</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
1	DEVELOP WATER SUPPLY	1.000	LS	300.00	300.00
2	TRAFFIC CONTROL SYSTEM	1.000	LS	25,000.00	25,000.00
3	JOB SITE MANAGEMENT	1.000	LS	1,575.00	1,575.00
4	PREPARE WATER POLLUTION CONTROL PROGRAM	1.000	LS	750.00	750.00
5	CLEARING AND GRUBBING	1.000	LS	9,000.00	9,000.00
10	HOT MIX APHALT (TYPE A)	1,130.000	TN	163.50	184,755.00
13	MOBILIZATION	1.000	LS	40,000.00	40,000.00
<hr/>					
		Bid Total	=====>		\$261,380.00
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# Jensen Road



Typical Cross Section

