

Attachment C

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EXHIBIT A

Agreement No _____

PAVEMENT MAINTENANCE AGREEMENT

This Pavement Maintenance Agreement (hereafter, "Agreement") is deemed effective as of the 1st day of June, 2006 (hereafter "Effective Date"), and is entered into by and between the County of Monterey (hereafter, "County") and San Benito Supply (hereafter, "SBS"). San Benito Supply and County may be collectively referred to as "Parties" and individually as "Party". This Agreement is entered into subject to the following:

RECITALS

A. SBS conducts a surface mining operation on Metz Road approximately three (3) miles east of Greenfield in Monterey County (commonly known as the Hidden Canyon Quarry) under Use Permit No. PLN: 010239, as set forth in Monterey County Planning Commission Resolution No. 05019, dated March 30, 2005, incorporated by this reference as though fully set forth herein, (hereafter, "Permit") issued by the County.

B. As part of its application to for the Permit submitted to the Commission, a Pavement Evaluation Study, Maintenance and Rehabilitation Strategy for Metz Road and Elm Avenue, Monterey California, prepared by Kleinfelder, Inc. (hereafter, "Kleinfelder Study") (The Kleinfelder Study, is attached hereto as Attachment A and incorporated herein by this reference).

C. The Commission, as a condition to authorizing the Permit (Condition No. 71, set out in Attachment B and incorporated herein by this reference), has required that the Parties enter into a Pavement Maintenance Agreement providing for a pavement maintenance and rehabilitation program of certain roadways impacted by the Hidden Canyon mining operations. The Pavement maintenance and rehabilitation program is to conform with the program delineated in Option B, as outlined on page 11 of Attachment A (hereafter "Plan or Program").

D. Kleinfelder, as part of the Kleinfelder Study, surveyed, by visual inspection, portions of Metz Road and Elm Avenue impacted by heavy truck traffic to be generated by SBS operations at the Hidden Canyon facility. The impacted areas of Metz Road (referred to as Metz Section 03 and Elm Avenue (referred to as Elm Section 01) were categorized by observed pavement conditions. (Attachment A, page 7).

E. Metz section 03 is defined as starting at 38755 Metz Road, which is at the Hidden Canyon facility, running to Elm Road (approximately one and a half (1 1/2) miles in length. Elm Section 01 is defined as that portion of Elm Road commencing at the intersection of Metz Road and Elm Road to the Greenfield City Limit (approximately 12,672 feet in length). (Metz Section 03 and Elm Section 01 are collectively referred to

as "Subject Sections".) Expressly excluded from the Subject Sections is any portion of the Metz or Elm Roadways that lie within the one hundred year flood plain.

F. The Parties, by and through this Agreement, intend to define SBS' responsibility for maintaining the Subject Sections in compliance with Condition 71 (Attachment B) required by the Commission through an acceptable pavement maintenance and rehabilitation program.

NOW, THEREFORE, the Parties mutually covenant and agree as follows:

1.a. The Program to be performed by SBS on the Subject Sections shall consist of (i) patchwork or (ii) chip seal work. The performance of the patch work or chip seal work shall correspond to the year identified in Option B outlined on Page 11 of Attachment A.

1.b. The scheduled pavement maintenance and rehabilitation Program shall be performed on an annual basis in accordance with the following procedure:

1.b.(1) Each year during the term of this Agreement prior to the anniversary date of this Agreement, the Parties shall jointly inspect the Subject Sections for pavement deterioration at a mutually acceptable time. The purpose of the joint inspection shall be to determine the current condition of the asphalt and the areas of the Subject Sections in which the pavement maintenance and rehabilitation work is to be performed.

1.b.(2) Kleinfelder, at the expense shared jointly by SBS and Granite Construction, shall participate in the annual joint inspection of the Subject Sections unless the Parties by mutual written agreement waive the requirement. However, any waiver of the requirement for Kleinfelder to participate in a joint annual inspection, shall not be deemed a waiver of this requirement for any succeeding joint annual inspection.

1.b.(3) The Parties, following their joint inspection of the Subject Sections, shall establish a schedule mutually acceptable to the Parties for the implementation and performance of the pavement maintenance and rehabilitation work (consisting of either patch and/or seal work as required under Option B, page 11 of Attachment A to be performed during the succeeding twelve (12) month period commencing on the anniversary date of this Agreement. SBS shall conform to the mutually agreed upon schedule in performing the pavement maintenance and rehabilitation work of the Subject Sections and shall notify the County no less than two (2) working days in advance of the actual start date of the pavement maintenance and rehabilitation work it performs.

1.b.(4) If, during the term of the Agreement, the County discovers pavement conditions in the Subject Sections that require emergency repairs (i.e. pavement with high severity potholes and/or high severity edge distress in which the effective roadway width is reduced by 12 inches or more-either side), Then SBS and Granite shall effect the repairs necessary to correct the condition within 10 (ten) working days maximum

following SBS' or Granite's receipt of written notification from the County of the existence of the condition. Provided, however, SBS or Granite shall not be responsible for correcting conditions attributable to factors other than traffic due to SBS' or Granite's operations at the Hidden Canyon Quarry or Metz Rd Quarry (including, but not limited to Acts of God as outlined on page 13, paragraph 1, of Attachment A).

1.b.(5) All pavement maintenance and rehabilitation work to be performed as part of the Program shall be the joint responsibility of SBS and Granite and shall be performed at their sole cost and expense.

1.b.(6). The patch work and chip seal work shall be performed in accordance with the requirements outlined on page 12 and 13 of Attachment A. In the years that chip seal work is performed on a Subject Section, no patch work shall be required on that Subject Section except for emergency repairs as outlined in Section 1.b.(4) above.

1.b.(7) Granite Construction Company and San Benito Supply and Monterey County shall confer on an annual basis on the maintenance activities to be performed each year. Repair and maintenance may be performed by either SBS or Granite, or by a qualified Third Party Provider. When all repair is performed by Granite Construction, Upon request from Granite, San Benito Supply shall reimburse Granite Construction for SBS' share of maintenance cost incurred during that calendar year. Granite Construction Company shall provide San Benito Supply and the County an itemized summary of the costs and reimbursements within thirty (30) days of the request.

ADDENDUM

2. FIVE YEAR REVIEW

2.a. On or about the fifth anniversary of the Effective Date of the Agreement (and every five (5) years thereafter during the term of this Agreement), the Parties shall jointly review the effectiveness of the Program as outlined in this Agreement and Attachment A. If the Parties, by mutual agreement, determine that the Program requires modification, the Program shall be modified as the Parties shall mutually agree. If the Parties are unable to agree as to the effectiveness of the Program and/or the manner, if any, in which it should be modified, then Kleinfelder shall be retained by the Parties to assist the Parties in achieving mutually agreeable changes to the Plan. Where Kleinfelder is employed in this capacity, the Parties shall share equally the cost of Kleinfelder. If there remains any differences between the Parties notwithstanding the efforts of Kleinfelder, then SBS shall continue with the implementation of the Program as then in effect. ~~and the matter shall be resolved pursuant to the dispute resolution provisions of Article 8.~~

2.b. If Kleinfelder is unable or unwilling to fulfill the responsibilities required under Section 2.a., then the Parties shall mutually agree upon a replacement for Kleinfelder. If the Parties are unable to mutually agree upon a replacement of

Kleinfelder, then each Party shall nominate up to three (3) disinterested replacement entities having experience in analyzing pavement conditions. Each Party may disqualify One (1) nominee made by the other Party prior to the selection of that Parties' nominee. The nominees shall be placed together in a container and a representative from the County shall select a nominee on a "blind draw" basis. The entity drawn shall be the replacement for Kleinfelder.

3 LIMITATION ON RESPONSIBILITY FOR THE PROGRAM

The patchwork quantities listed in the first column (captioned "Description") of Option B page 11, of Attachment A, represent the maximum quantity of pavement maintenance and rehabilitation work to be performed by SBS on an annual basis. Thus, the amount of patchwork to be performed by SBS on an annual basis shall consist of the combined total of full depth patch work performed as part of the scheduled pavement maintenance and rehabilitation (Attachment A, page 9, paragraph 2) and shall not be required to exceed the quantities identified in Option B

4 INDEMNITY

SBS shall indemnify, defend and hold harmless the County, its officers, agents and employees from and against all claims, suits, liabilities or actions of every nature, kind, and description brought forth, or on account of, injuries to or death of any person including but not limited to workers and the public, or damage to property directly resulting from SBS' performance or non-performance of this Agreement.

5 INSURANCE

5.a. SBS shall procure, and at all times maintain in full force and effect, insurance as set forth in Section 5.c. below. County, its' officers, agents, and employees shall be named by endorsement, as an additional insured on the liability policies listed in Section 5.c.2. and Section 5.c.3. All such policies shall be, by endorsement, primary and non-contributory with any insurance carried by County, and County shall not be called upon to contribute with the insurance of SBS. Insurance shall be secured from an insurer rated at least A-VII by Best's Key Rating Guide and authorized to do business in California. Insurance coverage shall be at least at the limits specified in Section 5.c. below. The Insurance required to be provided by SBS shall be maintained continuously during the term of this Agreement.

5.b. Within ten (10) days of execution of this Agreement, SBS shall provide County with Certificates of Insurance showing that the coverage required herein is in force, stating policy numbers, dates of expiration and further that there will be no cancellation, modification or reduction of coverage without thirty (30) days prior written notice to County.

5.c. SBS shall maintain the following insurance policies during the term of this Agreement:

5.c.(1). Worker's Compensation, Occupational Disease at statutory limits, and Employers Liability Insurance at \$1,000,000.

5.c.(2) Commercial General Liability Insurance for premises/Operations (including X, C, and U coverage as appropriate) under a Commercial General Liability policy providing insurance written on an occurrence basis including, but not limited to the following coverage; (i) Bodily Injury and Property Damage Liability, (ii) Personal Injury Liability (with Employment Exclusion deleted), and (iii) Broad Form Property Damage. The limit of the liability for such insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate in any given policy year.

5.c.(3). Automobile Bodily Injury and Broad Form Property Damage Liability Insurance including coverage for all owned, hired and non-owned automobiles -- \$1,000,000 per occurrence \$1,000,000 aggregate in any given policy year.

5.d. County and SBS shall waive all right against each other and any of their subcontractors, agents and employees for damages caused by perils (and to the extent of insurance for such perils) covered by policies of insurance identified in Section 5.c. above.

5.e. SBS' Insurance shall apply separately to each additional insured against whom claim is made or suit brought, subject to the limits of the Insurer's liability.

6 TERM

This Agreement shall terminate on the first to occur of (i) a period of twenty (20) years from the Effective Date of this Agreement, or (ii) termination of Permit.

7 BOND

Within ten (10) days following execution of this Agreement by the Parties and annually thereafter no later than the anniversary date for each year during the term of this Agreement, SBS shall provide a performance bond issued by an admitted surety in favor of the County assuring its performance of the work required of it under this Agreement for the upcoming twelve (12) month period following the anniversary date of this Agreement. The performance bond shall be written in standard industry form. The amount of the performance bond shall be in the sum of \$5,000.00 for the years in which SBS is required to perform patchwork only and \$50,000.00 for the years in which SBS is required to perform chip seal work on the Subject Sections as delineated in Option B (Attachment A, page 11).

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

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

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

9.d. Complete Agreement. This agreement to the extent that it is consistent with Permit No. PLN 010239 as set forth in Planning Commission Resolution No.05019 , constitutes the entire Agreement between the Parties and supersedes all agreements, representations, warranties, statements, promises, inducements and understandings, whether oral or written, with respect to the subject matter hereof, and no Party hereto shall be bound by or charged with any representations not specifically set forth in this Agreement or the exhibits hereto. Each Party hereby warrants and agrees that they have not relied upon any representations not specifically set forth herein as an inducement or as a material motivation for entering into this Agreement.

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

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

9.g. **Successors and Assigns.** Subject to Section 9.1, the terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective Parties.

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

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

9.j. **Notice.**

9.j.(1). Whenever, under the terms of this Agreement, it becomes necessary, appropriate, or desirable for a Party to give notice to the other Party, said notice shall be in writing and shall be personally delivered or given or mailed by commercial overnight courier service or by registered or certified United States mail return receipt requested, with first-class postage prepaid, or by facsimile and confirmation of transmittal thereof, addressed as follows:

To San Benito Supply: Mark Schipper
San Benito Supply
1060 Nash Road
Hollister, California 95023
Telephone Number (831) 637-6872
Facsimile Number (831) 637-6125

To County: Ronald J. Lundquist
Public Works Director
168 W. Alisal Street, 2nd Floor
Salinas, California 93901

With Copies to: Mary Grace Perry
Deputy County Counsel
Office of the County Counsel
168 W. Alisal, 3rd Floor
Salinas, California 93901

Legal Counsel: Pat Mitchell
Downey Brand
3001 Douglas Blvd. Suite 360
Roseville, California 95661

9j.(2). At any time either Party may designate a new or different address to which notices are to be sent, which notice of a new or different address shall be given as herein above immediately provided.

9.j.(3). Any notice shall be deemed given as of the time (i) that the same is personally delivered to the intended recipient; (ii) as of a date two (2) days (excluding weekends and federal and State of California holidays) later that the time that the same is properly deposited in the United States mail, if such notice, deposited in the United States mail, is given as herein above provided; (iii) as of a date one day (excluding weekends and federal and State of California holidays) later that that the same is properly given to a commercial overnight courier service, for delivery to the other Party; of (iv) as of the date of receipt of facsimile if sent by facsimile to the facsimile number listed above during normal business hours for the recipient (or as of the next business day if sent by facsimile outside of normal business hours) and provided sender obtains a confirmation indicating that the facsimile has been transmitted without incident.

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

9.l. **Transfer of Interest.** SBS may not assign its rights, nor delegate, transfer, or assign its responsibilities, under this Agreement without the prior written consent of the County. County shall not unreasonably withhold or delay its consent. Any assignment consented to by county shall be evidenced by an instrument in such written form as is reasonable satisfactory to County and executed by SBS and the assignee. County may impose reasonable conditions on any proposed assignment which may include without limitation (a) that the proposed assignee assume SBS' obligations under this Agreement (without, however, releasing SBS therefrom). Notwithstanding any such assignment, SBS shall continue to be liable for the performance of all requirements of this Agreement.

9.m. **Days.** All references to "days" shall mean calendar days unless specifically modified herein to be "business or working days". All references to "notice" shall mean written notice given in compliance with Section 9.j. All references, if any, to "month" or "months" shall be deemed to include the actual number of days in such actual month or months.

9.n. **Interpretation.** It is expressly understood and agreed that the Parties have each had the opportunity to read and review this Agreement and that each Party has had the opportunity to have this Agreement reviewed by its attorney. If a Party has declined to do so, it has made an independent determination that such a review is unnecessary.

Therefore, this Agreement is not to be construed either for or against either County of SBS and this Agreement shall be construed either fairly for or against either County or SBS and this Agreement shall be construed fairly, reasonably and impartially as between County and SBS.

9.o. **Negotiated Agreement.** It is agreed and understood by the Parties hereto, that this agreement has been arrived at through negotiations and that neither Party is to be deemed the Party which prepared this Agreement within the meaning of Civil Code Section 1654.

9.p. **Warranties.** Each of the individuals signing this agreement warrants that he/she possesses authority to bind the Party of which he/she purports to act.

9.q. **Survival.** Each of the provisions of the Agreement which may or must occur following the termination or expiration of this Agreement, including, but not limited to, indemnification and insurance, shall survive the termination or expiration of this Agreement.

9.r. **Conflicts.** In the event of any conflict between this Agreement and Attachment A, this Agreement shall be controlling. In the event of any conflict between this Agreement and Use Permit No. PLN 010239, as set forth in Planning Commission Resolution No.05019, the terms of the Permit shall prevail.

IN WITNESS WHEREOF, the Parties hereto have executed this Pavement Maintenance Agreement as of the Effective Date of this Agreement. The effective date of this Agreement, shall be the date on which this Agreement has been executed by the Parties.

COUNTY OF MONTEREY
County

SAN BENITO SUPPLY

BY: _____
CHAIR Date
MONTEREY COUNTY BOARD OF
SUPERVISORS

by: _____ 6/6/06
MARK SCHIPPER Date
PRESIDENT

Approved as to form

By: Mary G. Perry 6.14.06
Deputy County Counsel Date

* Suspect to second signature
by Corp. officer per CA Corp code 5313.
Risk Management: By: _____
Date: _____

and by: _____ 7-10-06
* [Signature]
Secretary, Assistant Secretary,
CFO or Assistant Treasurer.
Imp 6.14.06

STATE OF CALIFORNIA)
COUNTY OF SAN BENITO)

ACKNOWLEDGEMENT

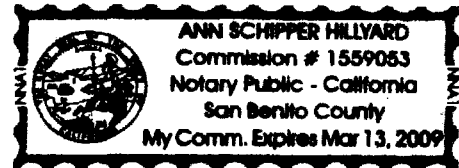
On **June 6, 2006**, before me, **Ann Schipper Hillyard**, Notary Public, personally appeared **Mark Schipper**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

Ann Schipper Hillyard

(Seal)



STATE OF CALIFORNIA)
COUNTY OF SAN BENITO)

ACKNOWLEDGEMENT

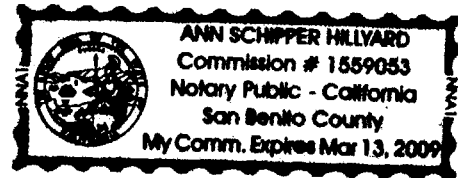
On 07/10/06 before me, Ann Schipper Hillyard, Notary Public, personally appeared Theodore J. Schipper, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Ann Schipper Hillyard

(Seal)



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