

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works *WLM*

BOARD AGENDA # *C-3

Urgent Routine

AGENDA DATE August 27, 2013

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Award Asphalt Rejuvenation Emulsion Contract for the Stanislaus County 2013 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion) to Telfer Oil Company of Martinez, California

STAFF RECOMMENDATIONS:

1. Approve the conditional award of the contract in the amount of \$914,480 to Telfer Oil Company, of Martinez, California, for the Stanislaus County 2013 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion), subject to receipt of appropriate insurance and bonds.
2. Authorize the Director of Public Works to execute a contract with Telfer Oil Company for \$914,480 and to sign necessary documents.
3. Authorize the Director of Public Works to execute change orders in accordance with Public Contract Code, Section 20142.

(Continued on Page 2)

FISCAL IMPACT:

Costs associated to assure delivery of this project are in the amount of \$1,420,928 (\$914,480 for the polymer asphalt rejuvenation emulsion contract; \$91,448 for contingencies, and \$415,000 for the trucking and rock chips). Funding is available in the Fiscal Year 2013-2014 Public Works Road and Bridge Operations budget. The project is fully funded with Local Transportation Funds (LTF).

BOARD ACTION AS FOLLOWS:

No. 2013-433

On motion of Supervisor Withrow, Seconded by Supervisor De Martini
and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST:

CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Award Asphalt Rejuvenation Emulsion Contract for the Stanislaus County 2013 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion) to Telfer Oil Company of Martinez, California

STAFF RECOMMENDATIONS (Continued):

4. Authorize the Construction Manager to issue a Notice to Proceed contingent on proper insurance and bonds.

DISCUSSION:

The Stanislaus County 2013 Chip Seal Program consists of sealing existing County roadways with polymer asphalt rejuvenating emulsion and the placement of rock chips on the emulsion. The total mileage to be chip sealed is 75 miles. The emulsion will seal cracks in the road and prevent moisture from seeping under the pavement. The rock chips will improve the skid resistance and driving surface of the road. Department of Public Works Road Operation's crews will provide the traffic control, road preparation, sweeping and spreading of the chips. Chip Seal is anticipated to add up to 10 years to the life of the road.

The Stanislaus County 2013 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion) is a preventive maintenance step. These roads are low and medium volume roads that chip seal can protect. Constituent complaints were also a consideration for inclusion on the list of selected roads.

The following roads are included in the program:

- Bent Road (North of Hwy 132 to Garst Road)
- Root Road (North of Hwy 132 to end of the road)
- Goodwin Road (North of Hwy 132 to end of the road)
- Leek Road (South of Hwy 132 to end of the road)
- Fairland Road (South of Hwy 132 to end of the road)
- Davison Road (South of Hwy 132 to end of the road)
- Bearden Road (West of Wellsford Road to end of the road)
- Parker Road (Church Road to Wellsford Road)
- Johansen Road (South of Hwy 132 to end of the road)
- Wellsford Road (Hwy 132 to Milnes Road)
- Dusty Lane (East of Wellsford Road to end of the road)
- Garst Road (Church Road to Wellsford Road)
- Crane Road (North of Patterson Road to Oakdale City Limits)
- Langworth Road (Milnes Road to Hwy 120)
- Crawford Road (South of Hwy 120 to end of the Road)
- Stoddard Road (Alvarado Road to Warnerville Road)
- Smith Road (Rice Road to Warnerville Road)
- Workman Road (Crow Road to Smith Road)
- Bond Road (Stoddard Road to Alvarado Road)
- Oakdale/Waterford Hwy (Waterford City Limits to Albers Road)
- Charles Road (Hatch Road to Leedom Road)
- Mountain View Road (Hatch Road to Leedom Road)

Approval to Award Asphalt Rejuvenation Emulsion Contract for the Stanislaus County 2013 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion) to Telfer Oil Company of Martinez, California

- Whitmore Avenue (Crows Landing Road to Ustick Road)
- Whitmore Avenue (Crows Landing Road to the Railroad Tracks)
- Claus Road (Sylvan Avenue to Briggsmore Avenue)
- Doerkson Road (East of Gratton Road to end of the road)
- Sperry Road (Keyes Road to Service Road)
- Twenty Six Mile Road (Gilbert Road to Hwy 4)
- Twenty Six Mile Road (Hwy 4 to Merced County Line)
- Dodds Road (Twenty Six Mile Road to Merced County Line)
- Leedom Road (Santa Fe Avenue to Charles Road)
- Hickman Road (Whitmore Avenue to Keyes Road)
- Warnerville Road (Stearns Road to Dirt Road)

On July 2, 2013, the Board of Supervisors approved and adopted the plans and specifications for the 2013 Chip Seal Program and directed the Public Works staff to publish and mail the notice inviting bids. On July 23, 2013, the Board of Supervisors approved a Memorandum of Understanding with the City of Modesto for an exchange of road maintenance services for various roads within City and County jurisdiction of which two City road segments, Whitmore Avenue and Claus Road, are part of this project. On July 31, 2013, three sealed bids were received, publicly read, and opened. The engineer's estimate for the budget of the project is \$1,164,400. The lowest bid is 21.46% below the engineer's estimate. A summary of the bids follows:

CONTRACTOR	BID
Telfer Oil Company	\$914,480
VSS International	\$921,580
Western Emulsion	\$967,020

This project is exempt from the California Environmental Quality Act, Class 1, California Code of Regulations, Title 14, §15301 (Existing Facilities). On May 3, 2013, a Notice of Exemption (NOE) was filed with the County Clerk-Recorder. Several additional roads were added to the NOE and was filed with the County Clerk-Recorder on May 29, 2013.

Staff has reviewed the bid of Telfer Oil Company and found it to be regular in all respects and recommends awarding a contract in the amount of \$914,480.

POLICY ISSUES:

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Healthy Community, and A Well Planned Infrastructure System by improving the road surface and prolonging the life of roads.

Approval to Award Asphalt Rejuvenation Emulsion Contract for the Stanislaus County 2013 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion) to Telfer Oil Company of Martinez, California

STAFFING IMPACT:

As part of their regular job duties, existing Road Operations and Maintenance staff will provide the labor to complete this maintenance project.

CONTACT PERSON:

Matt Machado, Public works Director. Telephone: (209) 525-4130.

DB/NW:sn

L:\ROADS\8055 - 2013 Chip Seal\BOS\8-27-13 Board Item_8055-Award Contract_for DBazyuk_BOS 8.27.13

**COUNTY OF STANISLAUS
AGREEMENT**

THIS AGREEMENT, by and between TELFER OIL COMPANY, whose place of business is located at 211 Foster Street, Martinez, California (“Contractor”), and the COUNTY OF STANISLAUS (“County”), acting under and by virtue of the authority vested in the County by the laws of the State of California.

WHEREAS, County, by its Resolution No. 2013-433 adopted on the 27th day of August, 2013 awarded to Contractor the following Contract:

**2013 CHIP SEAL PROGRAM (ASPHALT REJUVENATION EMULSION)
Contract No. 8055**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and County agree as follows:

Article 1. Work

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

Article 2. Architect/Engineer and Project Manager

- 2.1 Public Works staff designed the Project and furnished the Plans and Specifications. Public Works shall have the rights assigned to Architect/Engineer in the Contract Documents.
- 2.2 County has designated the Public Works Construction Manager as its Project Manager to act as County’s Representative in all matters relating to the Contract Documents.

Article 3. Contract Time and Liquidated Damages

- 3.1 Contractor shall commence Work on the date established in the Notice to Proceed. County reserves the right to modify or alter the Commencement Date of the Work.
- 3.2 Contractor shall achieve Final Completion of the entire Work and be ready for Final Payment in accordance with Contract Closeout Thirty (30) Working Days from the date when the Contract Time commences to run as provided in the Agreement.
- 3.3 Liquidated Damages shall comply with SC-08 of the Special Conditions and 8-1.10 of the Standard Specifications.
- 3.4 Liquidated damages shall apply cumulatively and except as provided below, shall be

presumed to be the damages suffered by County resulting from delay in completion of the Work.

- 3.5 Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by County as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from County (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

Article 4. Contract Sum

- 4.1 County shall pay Contractor the Contract Sum for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid.

Article 5. Contractor's Representations

In order to induce County to enter into this Agreement, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, which have been made available for Bidders or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.
- 5.3 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the Special Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such

purposes.

- 5.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

Article 6. Contract Documents

- 6.1 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Notice of Award
Agreement
Notice to Proceed
Construction Performance Bond
Construction Labor and Material Payment Bond
Special Conditions
Addenda
Special Provisions
Drawings
Encroachment Permit [if applicable]

- 6.2 There are no Contract Documents other than those listed in this Document, Article 6.

Article 7. Indemnity

- 7.1 County and each of its officers, employees, consultants and agents including, but not limited to the Board, Architect/Engineer and each County Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- 7.2 To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify and hold harmless, County and each of its officers, employees, consultants and agents, including but not limited to the Board, Architect/Engineer and each County representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of County or by any person or entity

required to be indemnified hereunder.

- 7.3 With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against County and each of its officers, employees, consultants and agents including, but not limited to County, the Board, Architect/Engineer and each County representative.
- 7.4 Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 7.5 To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party(is) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, County may in its discretion back charge Contractor for County's costs and damages resulting therefrom and withhold such sums from progress payments or other contract moneys which may become due.
- 7.6 The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to County or other indemnified party to the extent of its active negligence.

Article 8. Miscellaneous

- 8.1 Terms and abbreviations used in this Agreement are defined in Special Conditions, Section 1: DEFINITIONS AND TERMS and will have the meaning indicated therein.
- 8.2 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of County or acting as an employee, agent, or representative of County, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the County is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 8.3 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*
- 8.4 The Contract Sum includes all allowances (if any).
- 8.5 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and

agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time County tenders final payment to Contractor, without further acknowledgment by the parties.

- 8.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at County's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §1861, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 8.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 8.8 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Stanislaus, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Stanislaus County Superior Court. Contractor accepts the Claims Procedure in Special Conditions, Article SC-16, WORK DISPUTES, as a claims procedure by agreement under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.
- 8.9 Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c)

48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

If to County:

Chris Brady, Construction Manager
Stanislaus County Public Works
1716 Morgan Road, Modesto CA 95358


If to Contractor:

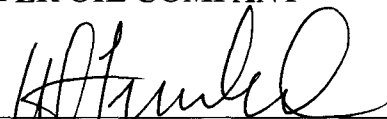
Dan Frankel, Vice President
Telfer Oil Company
P.O. Box 709
Martinez, CA 94553

IN WITNESS WHEREOF the parties have executed this Agreement in quadruplicate the day and year first above written.

COUNTY OF STANISLAUS

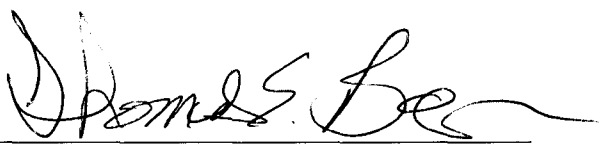
TELFER OIL COMPANY

By: 
Matt Machado, Director
Public Works Department

By: 
Dan Frankel
Vice President

APPROVED AS TO FORM:


John P. Doering, County Counsel

By: 
Thomas E. Boze
Deputy County Counsel

END OF AGREEMENT

CONTRACTOR BID SHEETS

Item No.	Item	Estimated Quantity	Unit of Measure	Unit Price (In Figures)	Item Total (In Figures)
1	Asphalt Rejuvenating Emulsion	1,420	Tons	\$ 644. ⁰⁰	\$ 914,480. ⁰⁰
				TOTAL BID	\$ 914,480. ⁰⁰

(SIGNED) _____  Date: July 30, 2013

Note: All line items must have an entry placed in its appropriate box.