

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

DEPT: Public Works *adw*

BOARD AGENDA # *C-1

Urgent Routine

AGENDA DATE August 24, 2010

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Award Contract to VSS Emultech of Sacramento, California, for the Stanislaus County 2010 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion)

STAFF RECOMMENDATIONS:

1. Award contract in the amount of \$482,405.20 to VSS Emultech, of Sacramento, California, for the construction of the Stanislaus County 2010 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion).
2. Authorize the Director of Public Works to execute a contract with VSS Emultech for \$482,405.20 and to sign necessary documents.
3. Authorize the Director of Public Works to execute change orders in accordance with Public Contract Code, Sections 20142 and 20395.

Continued on Page 2

FISCAL IMPACT:

The total cost of the project is approximately \$750,000. This includes the requested contract amount of \$482,405.20 for the polymer asphalt rejuvenation emulsion and approximately \$265,000 for rock chips. Costs associated to assure the delivery of this project will be satisfied with Proposition 1B Local Streets and Road funds. These funds are available in the Fiscal Year 2010-2011 Public Works Road Operations Budget. There will be no impact to the Stanislaus County General Fund.

BOARD ACTION AS FOLLOWS:

No. 2010-528

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, DeMartini, and Vice-Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: Chairman Grover

Abstaining: Supervisor: None


1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Award Contract to VSS Emultech of Sacramento, California, for the Stanislaus County 2010 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion)

4. Upon project completion, authorize the Director of Public Works to accept the completed improvements and perform all necessary closeout activities.

DISCUSSION:

The Stanislaus County 2010 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion) consists of sealing approximately 43 miles of existing County roadways with polymer asphalt rejuvenation emulsion and placement of rock chips on the emulsion. 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 staff will provide the labor to complete this project.

This project is a preventative maintenance step. These roads are low to medium volume roads that chip seal can protect. Chip seal treatment is anticipated to add up to 10 years to the life of the road. The following roads are included in the program:

1. Doerksen Road (Gratton Road to Sperry Road)
2. Downie Road (Service Road to Whitmore Avenue)
3. Glenwood Avenue (Walnut Avenue to West End)
4. Hamlow Road (Sperry Road to Gratton Road)
5. Hamlow Road (Gratton Road to Swanson Road)
6. Hamlow Road (Swanson Road to Downie Road)
7. Harding Road (Washington Road to Faith Home Road)
8. Linwood Avenue (Paulson Road to County Line)
9. Roselawn Avenue (East Avenue to County Line)
10. Saylor Road (Grayson Road to Service Road)
11. Simmons Road (Tegner Road to Washington Road)
12. Soderquist Road (Bradbury Road to Harding Road)
13. Swanson Road (John Fox Road to Whitmore Avenue)
14. Tegner Road (Linwood Avenue to County Line)
15. Verduga Road (Hawkeye Avenue to Linwood Avenue)
16. Vincent Road (Santa Fe Avenue to County Line)
17. Vincent Road (Santa Fe Avenue to Monte Vista Avenue)
18. Pellerin Road (McEwen Road to Missouri Avenue)
19. Pellerin Road (McEwen Road to Indiana Avenue)
20. Blossom Road (Hwy 132 to Star Avenue)
21. Blossom Road (Hwy 132 to Pellerin Road)
22. Star Avenue (West End to Blossom Road)
23. Star Avenue (Blossom Road to Reinway Avenue)
24. Helena Avenue (Star Avenue to North End)

Approval to Award Contract to VSS Emultech of Sacramento, California, for the Stanislaus County 2010 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion)

25. Alvarado Road (Oakdale-Waterford Hwy to Ellenwood Avenue)
26. Cleveland Avenue (Lon Dale Road to Valley Home Road)
27. Cleveland Avenue (Lon Dale Road to River Road)
28. Frontage Road (Cleveland Avenue to Lon Dale Road/Highway 120)
29. Cracker Box Road (Lon Dale Road/Hwy 120 to Wilkins Avenue)
30. Wilkins Avenue (Cleveland Avenue to Sawyer Avenue)
31. Sawyer Avenue (Lon Dale Road to River Road)
32. Mission Avenue (Pioneer Avenue to Sawyer Avenue)
33. 28 Mile Road (Eastman Road to South 2.5 miles)
34. 28 Mile Road (South 2.5 miles to Dorsey Road)
35. Warnerville Road (Stoddard Avenue to Railroad Tracks)

On July 22, 2010, three sealed bids were received, publicly read and opened. A summary of the bids follows:

CONTRACTOR	BID
VSS Emultech	\$482,405.20
Telfer Oil Company	\$587,300.40
Western Emulsions, Inc.	\$714,532.24

This project is exempt from California Environmental Quality Act (CEQA) under Title 14, Section 15301 (Existing Facilities) of the California Code of Regulations.

The engineer's estimate for the project was \$762,000. Per Public Contract Code Section 20395, this project is an in-house maintenance project not requiring the adoption of plans or specifications. The Department of Public Works requests that the Board of Supervisors award the contract to the lowest bidder, VSS Emultech of Sacramento, California, in the amount of \$482,405.20 for the purchase of the necessary material to complete this project.

POLICY ISSUES:

The Stanislaus County 2010 Chip Seal Program meets the Board's priorities of providing A Safe Community, A Healthy Community and A Well Planned Infrastructure System by preserving and extending the life of the County road system. Furthermore,

Approval to Award Contract to VSS Emultech of Sacramento, California, for the Stanislaus County 2010 Chip Seal Program (Polymer Asphalt Rejuvenation Emulsion)

through approval of staff's recommendation, the Board authorizes the Director of Public Works to issue change orders in accordance with Public Contract Code, Section 20142.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

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

NW:yg
L:\ROADS\8030 - 2009 Chip Seal\Design\Board Items\BOS Item_8.17.10

COUNTY OF STANISLAUS

AGREEMENT

THIS AGREEMENT, dated this 24th day of August, 2010, by and between VSS EMULTECH, whose place of business is located at 3785 Channel Dr., West Sacramento, California 95691 (“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. _____ adopted on the 24th day of August, 2010 awarded to Contractor the following Contract:

**CONTRACT # 8030
2010 CHIP SEAL PROGRAM
(Polymer Asphalt Rejuvenation Emulsion)**

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 Engineering Services designed the Project and furnished the Plans and Specifications. Engineering Services shall have the rights assigned to Architect/Engineer in the Contract Documents.
- 2.2 County has designated the Public Works Road 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 Contract Time

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.

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.

3.2 Liquidated Damages

County and Contractor recognize that time is of the essence of this Agreement and that County will suffer financial loss in the form of Contract administration expenses (such as Project management and consultant expenses), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Contractor and County agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by County because of a delay in completion of all or any part of the Work. Accordingly, County and Contractor agree that as liquidated damages for delay Contractor shall pay County:

Two Thousand Five Hundred dollars (\$2,500.00) for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

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.

- 3.3 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
- Special Provisions
- Construction Performance Bond
- Construction Labor and Material Payment Bond
- Special Conditions
- Addenda
- 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 Provisions, 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:

Stanislaus County Public Works
Attn: Gary Hayward, Roads Manager
1716 Morgan Road
Modesto, CA 95358
Phone: (209) 525-4136
Fax: (209)525-4140

If to Contractor:

VSS Emultech
3785 Channel Dr.
West Sacramento, CA 95691
Phone: (916) 371-8980
Fax: (916) 373-0183

(SIGNATURES NEXT PAGE)

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

COUNTY OF STANISLAUS

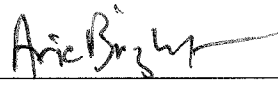
VSS EMULTECH

By: _____
Matt Machado, Director
Public Works Department

By: _____

Approved: BOS Resolution # _____
Dated: _____

APPROVED AS TO FORM:
John P. Doering, County Counsel

By:  _____
for Thomas E. Boze
Deputy County Counsel

END OF AGREEMENT

FORM OF BID

**STANISLAUS COUNTY GSA PURCHASING DIVISION
COUNTY OF STANISLAUS, STATE OF CALIFORNIA**

The bidder shall perform all work and provide all labor, equipment, materials, delivery and pick up for the completion and operation of the project for which this bid is made at bid amounts as stated below.

Item	Est. Qty	Unit	Description	Unit Cost	Ext. Amount
1	795.80	Tons	Supply Asphalt Emulsion per enclosed specifications, drawings, and terms and conditions.	\$604.00	\$480,663.20
2			Cost of Bid Bond		\$300.00
3			Cost of Performance Bond		\$721.00
4			Cost of Payment Bond		\$721.00
			TOTAL COST OF THE PROJECT		\$482,405.20

F.O.B. - Destination

Prompt Payment Discount


Cash discount of 0 % for payment within 30 calendar days, which will be computed from the date delivery is made and accepted by the County or the date a proper invoice is received, **whichever is later**. Discount offered with payment terms of less than (20) calendar days will not be considered for award purposes. If no discount is shown, then it shall be assumed that **none** is offered and that the terms are **Net 30 days**.

Payment and Invoicing

Payment for services rendered and accepted will be made monthly/quarterly, in arrears, after receipt of a proper invoice approved by County authorized representative. All invoices must be submitted **in duplicate** to facilitate payment.

The undersigned bidder has examined all of the documents and specifications.

DATE: 7-21-10

CONTRACTOR'S SIGNATURE: 

Alan S. Berger

TITLE:

Vice President

COMPANY NAME:

VSS Emu Tech

DO NOT DETACH THIS SHEET – SUBMIT ENTIRE BID PACKAGE AS YOUR BID

COUNTY OF STANISLAUS

AGREEMENT

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WHEREAS, County, by its Resolution No. 2010-528 adopted on the 24th day of August, 2010 awarded to Contractor the following Contract:

**CONTRACT # 8030
2010 CHIP SEAL PROGRAM
(Polymer Asphalt Rejuvenation Emulsion)**

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Article 1. Work

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Article 2. Architect/Engineer and Project Manager

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

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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.

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Two Thousand Five Hundred dollars (\$2,500.00) for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

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.

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- 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

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- 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.

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

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- Special Conditions
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- Drawings
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- 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 Provisions, 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:

Stanislaus County Public Works
Attn: Gary Hayward, Roads Manager
1716 Morgan Road
Modesto, CA 95358
Phone: (209) 525-4136
Fax: (209)525-4140

If to Contractor:

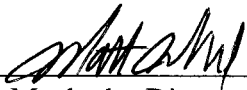
VSS Emultech
3785 Channel Dr.
West Sacramento, CA 95691
Phone: (916) 371-8980
Fax: (916) 373-0183

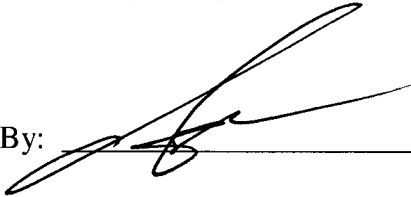
(SIGNATURES NEXT PAGE)

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

COUNTY OF STANISLAUS

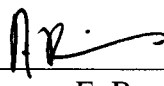
VSS EMULTECH

By: 
Matt Machado, Director
Public Works Department

By: 
Alan S. Berger
Vice President

Approved: BOS Resolution # 2010-528
Dated: 08-24-2010

APPROVED AS TO FORM:
John P. Doering, County Counsel

By:  (Eric Knight)
for Thomas E. Boze
Deputy County Counsel

END OF AGREEMENT

ACKNOWLEDGMENT

State of California
County of Yolo)

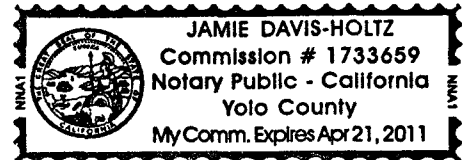
On September 2, 2010 before me, Jamie Davis-Holtz, Notary Public
(insert name and title of the officer)

personally appeared Alan S. Berger,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



FORM OF BID

**STANISLAUS COUNTY GSA PURCHASING DIVISION
COUNTY OF STANISLAUS, STATE OF CALIFORNIA**

The bidder shall perform all work and provide all labor, equipment, materials, delivery and pick up for the completion and operation of the project for which this bid is made at bid amounts as stated below.

Item	Est. Qty	Unit	Description	Unit Cost	Ext. Amount
1	795.80	Tons	Supply Asphalt Emulsion per enclosed specifications, drawings, and terms and conditions.	\$604.00	\$480,663.20
2			Cost of Bid Bond		\$300.00
3			Cost of Performance Bond		\$721.00
4			Cost of Payment Bond		\$721.00
			TOTAL COST OF THE PROJECT		\$482,405.20

F.O.B. - Destination

Prompt Payment Discount

Cash discount of 0 % for payment within 30 calendar days, which will be computed from the date delivery is made and accepted by the County or the date a proper invoice is received, **whichever is later**. Discount offered with payment terms of less than (20) calendar days will not be considered for award purposes. If no discount is shown, then it shall be assumed that **none** is offered and that the terms are **Net 30 days**.

Payment and Invoicing

Payment for services rendered and accepted will be made monthly/quarterly, in arrears, after receipt of a proper invoice approved by County authorized representative. All invoices must be submitted **in duplicate** to facilitate payment.

The undersigned bidder has examined all of the documents and specifications.

DATE: 7-21-10

CONTRACTOR'S SIGNATURE: 

Alan S. Berger

TITLE:

Vice President

COMPANY NAME:

VSS Emu Tech

DO NOT DETACH THIS SHEET - SUBMIT ENTIRE BID PACKAGE AS YOUR BID