

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

DEPT: Public Works

BOARD AGENDA:5.C.1  
AGENDA DATE: June 12, 2018

**SUBJECT:**

Approval to Adopt Plans and Specifications for the 2018 Chip Seal Project and Award the Construction Contract to Telfer Pavement Technologies, LLC of Martinez, California

**BOARD ACTION AS FOLLOWS:**

**RESOLUTION NO. 2018-0277**

On motion of Supervisor Monteith , Seconded by Supervisor Chiesa  
and approved by the following vote,

Ayes: Supervisors: Olsen, Chiesa, Withrow, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

ATTEST:

  
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
AGENDA ITEM**

DEPT: Public Works

BOARD AGENDA:5.C.1  
AGENDA DATE: June 12, 2018

CONSENT:

CEO CONCURRENCE:

4/5 Vote Required: No

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**SUBJECT:**

Approval to Adopt Plans and Specifications for the 2018 Chip Seal Project and Award the Construction Contract to Telfer Pavement Technologies, LLC of Martinez, California

**STAFF RECOMMENDATION:**

1. Approve the Plans and Specifications for the 2018 Chip Seal Project.
2. Award a contract for Construction Services to Telfer Pavement Technologies, LLC of Martinez, California for the 2018 Chip Seal Project.
3. Authorize the Director of Public Works to execute a contract with Telfer Pavement Technologies, LLC in the amount of \$753,974 and to sign necessary documents, including any amendments to the agreement not to exceed 10%, in accordance with Public Contract Code Section 20137 and 20142.
4. Authorize the Director of Public Works to take any appropriate action necessary to carry out the purpose and intent of these recommendations.

**DISCUSSION:**

The 2018 Chip Seal Project aims to address the needs of deteriorating county roads. The work to be accomplished for this contract includes supplying and applying emulsion for chip seal at various locations. County workers will then perform the chip seal using county equipment.

This project is exempt from the California Environmental Quality Act (CEQA), under Class 1 of California Code of Regulations, Title 14, §15301 (Existing Facilities). On March 23, 2018, a Notice of Exemption was filed with the Stanislaus County Clerk-Recorder.

On April 2, 2018, an invitation to bid was electronically posted to the Modesto Reprographics website. On May 2, 2018, three sealed bids were received, publicly read, and opened. The engineer's estimate for the project was \$750,000. A summary of the bids follows:

<b>CONTRACTOR</b>	<b>BID AMOUNT</b>
Western Emulsions	\$ 737,224
Telfer Pavement Technologies, LLC	\$ 753,974
VSS Emultech	\$ 757,640

Public Works staff reviewed the bid proposal package from Western Emulsions and after further discussions and review with County Counsel, it was determined to be non-responsive. Public Works staff has reviewed the bid proposal package from Telfer Pavement Technologies, LLC and has determined it to be regular in all respects and recommends awarding a contract in the amount of \$753,974. A Notice of Intent was posted on May 10, 2018 with a ten day protest period. The protest period is closed and no protests were received.

The construction phase of this project is scheduled to begin July 2018.

**POLICY ISSUE:**

Public Contract Code Section 22032 requires Board of Supervisors' approval for all contracts exceeding \$175,000.

**FISCAL IMPACT:**

Costs associated to assure delivery of this project are in the amount of \$864,371 as follows:

- Contract: \$753,974
- Contingencies: \$75,397
- Construction Engineering: \$35,000

The project is fully funded with Measure L – Local Streets and Roads funds. Funding is available in the Fiscal Year 2018-2019 Proposed Public Works Road budget.

**BOARD OF SUPERVISORS' PRIORITY:**

The recommended actions are consistent with the Boards' priority of *Delivering Efficient Public Services & Community Infrastructure* by improving roadway surfaces and preserving pavements.

**STAFFING IMPACT:**

Existing Public Works staff is overseeing this project.

**CONTACT PERSON:**

David Leamon, Public Works Interim Director Telephone: (209) 525-4151.

**ATTACHMENT(S):**

1. 2018 Chip Seal Project Agreement
2. Plans and Specifications (Available From Clerk)

**COUNTY OF STANISLAUS  
AGREEMENT**

THIS AGREEMENT, by and between Telfer Pavement Technologies, LLC, whose place of business is located at 211 Foster Street, Martinez, California 94553 (“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. 2018-0277 adopted on the 12th day of June, 2018 awarded to Contractor the following Contract:

**2018 Chip Seal Project (oil only)  
County Contract #9647**

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 Stanislaus County Public Works designed the Project and furnished the Plans and Specifications. Stanislaus County 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 Forty-Five (45) 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 of Seven Hundred Fifty-Three Thousand Nine Hundred Seventy-Four Dollars (\$753,974)** for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid (Exhibit A).

#### **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:

- Agreement
- Encroachment Permit (if applicable)
- Form FHWA-1273 (if applicable)
- Project Plans
- Project Specifications
- State Standard Specifications and Standard Plans

#### **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:

Randy Avants, Road Superintendent  
Stanislaus County Public Works  
1716 Morgan Road  
Modesto, CA 95358

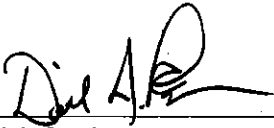
If to Contractor:

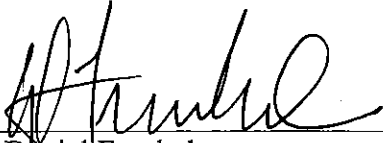
Dan Frankel, Vice President  
Telfer Pavement Technologies, LLC  
P.O. Box 709  
Martinez, CA 94553

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

**COUNTY OF STANISLAUS**

**TELFER PAVEMENT TECHNOLOGIES, LLC**

By:   
\_\_\_\_\_  
David A. Leamon  
Interim Director  
Department of Public Works

By:   
\_\_\_\_\_  
Daniel Frankel  
Vice President

**APPROVED AS TO FORM:**

John P. Doering, County Counsel

By:   
\_\_\_\_\_  
Amanda DeHart  
Deputy County Counsel

**EXHIBIT A**


Contract No. 9647

**CONTRACTOR'S BID SHEET**

**2018 Chip Seal Project**

Item Number	SP No.	Item Description	Unit Of Measure	Estimated Quantity	Unit Prices (In Figures)	Item Total (In Figures)
1	SP-02	POLYMER MODIFIED REJUVENATING EMULSION (PMRE)	TON	1,206	\$ 617. <sup>00</sup>	\$ 744,102. <sup>00</sup>
2	SP-03	POLYMER MODIFIED ASPHALTIC EMULSION (GRADE PMCRS2h)	TON	16	\$ 617. <sup>00</sup>	\$ 9872. <sup>00</sup>

**TOTAL PROJECT COST:** \$ 753,974.<sup>00</sup>

(SIGNED) 

Date: 05/01/2018

Note: All line items must have an entry placed in its appropriate box, and this form must be signed for the bid to be accepted as complete.

# **AVAILABLE FROM CLERK**

Plans and Specifications for the  
2018 Chip Seal Project