

CITY OF TULARE
REQUEST FOR
BID (“RFB”)

RFB NO. 18-628

PROJECT: SUPPLY & DELIVERY OF CHIP SEAL
EMULSION OIL

BID SUBMITTAL DEADLINE: 2:00 P.M. on THURSDAY, SEPTEMBER 14, 2017

The City of Tulare expressly reserves the right to modify, or withdraw from, the process initiated and described herein. No rights shall be vested in any party, individual or entity by virtue of its preparation to participate in, or its participation in, such process. The City expressly reserves the right to modify, for any reason, the schedule and any provision contained herein. The City reserves to itself the selection of winning respondent(s), if any, in the exercise of its sole discretion. No binding commitment shall arise on the part of the City to any respondent under this Request for Bid until and unless the parties sign documents of agreement that become effective in accordance with their terms. Responses to this RFB, however, shall be held firm by Respondent for at least ninety (90) days.

Advertisement Dates: 8/15/17
8/22/17

**CITY OF TULARE
STATE OF CALIFORNIA
REQUEST FOR BID
RFB 18-628**

SEALED BIDS will be received by the City Clerk, 411 East Kern Avenue, 2nd floor, Tulare, California 93274, until **2:00 p.m., Thursday, September 14, 2017** for:

SUPPLY & DELIVERY OF CHIP SEAL EMULSION OIL

The City of Tulare is requesting bids for supply and delivery of chip seal emulsion oil for a chip seal project on various streets within the City. Bidding documents may be inspected and obtained in the office of the Purchasing Division, 411 East Kern Avenue, Tulare, California 93274 or by calling (559) 684-4232.

The City hereby affirmatively ensures that Minority Business Enterprises will be afforded full opportunity to submit proposals in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, handicap, gender, or religion in any consideration leading to the award of contract.

The City also hereby affirmatively ensures that Disadvantaged Business Enterprises (DBE) shall have the maximum opportunity to participate in the performance of contracts. As such, Disadvantaged Business Enterprises (DBEs) will be afforded full opportunity to submit bids in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, disability, gender or religion in any consideration leading to the award of contract.

No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity leading to the award of a contract.

The right is reserved by the City of Tulare to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted and to award the contract according to the proposal which best serves the interests of said City.

Publication Date: Tuesday, August 15, 2017 and Tuesday, August 22, 2017

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I. DEFINITIONS

For purposes of RFB NO. 18-628, the following terms shall have the meanings indicated:

1. "City" means the City of Tulare
2. "City Council" means the Council of the City of Tulare
3. "Bidder", "Vendor", "Supplier", "Consultant", "Contractor" and "Subrecipient" are used interchangeably throughout this invitation to mean the person, firm, or corporation or other entity submitting a Bid in response to the Request for Bid.
4. "Bid" and "Proposal" are used interchangeably to mean an individual's or entity's offer in response to this Request for Bid.
5. "RFB" means Request for Bid No. 18-628.

II. PROJECT INTRODUCTION

The City of Tulare Streets Division is soliciting Bids for the supply and delivery of (PRME) emulsion oil and flush coat for finale surface coat of chip seal project. The Material Supplier firm will work directly under the City of Tulare Streets Division Manager and participate throughout the life of project to ensure that all chip seal emulsion oil materials supplied and delivered meet Caltrans standard Specifications and City requirements.

This project is funded by local revenues and is subject to prevailing wage requirements.

1. Bid Timeline (subject to changes):

Advertise for Bids:	Tuesday, August 15 and Tuesday, August 22, 2017
Questions due:	Thursday, August 31, 2017 by 5:00 pm
Response to questions:	Friday, September 8, 2017 by 5:00 pm
Bids due:	Thursday, September 14, 2017 by 2:00 pm
Award of Bid:	TBD
2. Project Start Date: Contractor must be able to begin the work described in this bid within fourteen (14) calendar days of the effective date on the Notice to Proceed. The Notice to Proceed shall be issued in writing by the City's Project Manager.
3. Time of Completion Deadline: Project Completion deadline has been established as (20) twenty calendar days from the start of work.
4. Estimate: for this project is approximately \$30,000.
5. Prevailing Wages: Under the requirements of Labor Code section 1782 passed by SB7 and in compliance with City of Tulare Resolution 14-75, this public works project is subject to State prevailing wages as specified in the plans and specifications.
6. Contractor's License Requirements: No bid will be accepted from a Contractor who is not duly licensed in accordance with the provisions of Chapter 9, Division III of the State of California Business and Professions Code and has a current California Contractor's License, Class A or Specialty Class C-57 Well Drilling Contractor. The classification provided for information purpose only. The City does not warrant that all classifications required for the project are listed.

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section

7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(See Section III for additional Department of Industrial Relations Registration Requirements which apply to all Contractors and Subcontractors this project).

7. Use of Subcontractors: Your proposal may include subcontractors and you should clearly delineate the responsibilities of each of those participants within your proposal. However, the City will recognize the party legally signing the Bid Proposal as prime contractor and contacting party, who, as such, will assume ultimate responsibility for ensuring compliance with the specifications, terms and conditions of the Invitation to Bid. The Prime Contractor must complete a minimum of 50% of the total amount of work under this contract.

III. DEPARTMENT OF INDUSTRIAL RELATIONS REQUIREMENTS, PUBLIC WORKS CONTRACTOR REGISTRATION PROGRAM AND PROJECT LABOR AGREEMENTS

Notice is hereby given that this is a public works project and therefore, subject to DIR monitoring. All contractors and subcontractors bidding and performing work on Public Works Projects must:

1. Register on an annual basis with the California Department of Industrial Relations (DIR)
2. Furnish electronic payroll records to the Labor Commissioner

No contract will be awarded unless that contractor and/or subcontractors are registered with the California Department of Industrial Relations (DIR). Bids submitted by unregistered contractors or that list unregistered subcontractors may be rejected.

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

If a project labor agreement (the term "project labor agreement" is defined in Public Contract Code 2500(b)(1) as a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code) is used, then it must comply with the taxpayer protection provisions set forth in Public Contract Code section 2500(a). City of Tulare has no ordinances requiring or prohibiting such agreements.

The following statements and requirements are to be included in all City of Tulare public work contracts that require the payment of prevailing wages in accordance with California Labor Code (CLC). This RFB document becomes a part of the public works contract for this project and therefore, the CLC contract language requirements are incorporated into the contract.

- ☐ As set forth in CLC section 1771.1(a), all contractors and subcontractors must be currently registered and qualified to perform public work pursuant to CLC section 1725.5 to be qualified to bid, be listed in a bid proposal, or perform any public work for the City of Tulare. Proof of registration for each contractor and subcontractor listed on the bid is required.

- ❑ As set forth in CLC section 1771.4 (a)(1), notice is given that this project is a public work, subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- ❑ As set forth in CLC section 1771.4(a)(2), the prime contractor is required by the City of Tulare to post job site notices, as prescribed by regulation. Information on required workplace postings may be found on the Department of Labor website at: <http://www.dir.ca.gov/wpnodb.html>.
- ❑ The contractor and each subcontractor shall maintain all project records required under CLC for public works projects and preserve them for a minimum 3-year period to begin on the date a Notice of Completion is filed for the project. Please refer to the retention period required for any grant or specialized project funding. Some funding sources require an extended time period for records retention.
- ❑ In accordance with CLC section 1773.2, the contractor is required, by the City of Tulare, to post a copy of the determination of the Director of Labor Standards prevailing rate of per diem wages for each craft, classification, or type of worker needed to execute the contract at each job site.
- ❑ In accordance with labor code section 1776 and its enforcement (1771.4(a)(3)), for initial contracts awarded on or after April 1, 2015 each project contractor and subcontractor shall;
 - Maintain and furnish directly to the Labor Commissioner, bi-weekly, a certified copy of each weekly payroll as specified in section 1776 containing a statement of compliance with labor code sections 1771, 1811 and 1815, signed under penalty of perjury.
 - Make available or provide a certified copy of these payroll records and their supporting documentation within 10 days to all authorized parties upon written request and be subject to penalties for non-compliance as detailed in labor code section 1776.
 - Inform the City of Tulare of the location of the payroll records kept in compliance with labor code section 1776(g) and notify the City of Tulare within 5 working days of any change in their location.
- ❑ The City of Tulare will comply with any prevailing wage monitoring and enforcement activities required by the labor compliance programs of the Department of Industrial Relations including the withholding of contract payments in the amount of any underpayment of prevailing wage and applicable penalties as directed by the Department of Labor Standards Enforcement in accordance with CLC section 1727(a). Any amount withheld will be released as directed by the Labor Commissioner upon receipt of a certified copy of a final order no longer subject to judicial review in accordance with CLC section 1742(f).
- ❑ As set forth in labor code section 1775(b), the following subcontractor provisions shall be included in any contract executed between the contractor and a subcontractor for performance of work on this public work project:
 - As set forth in CLC section 1775(b)(1), any contract executed between a contractor and a subcontractor for the performance of work on a City of Tulare public works project shall include a copy of the provisions of Labor Code sections 1771, 1776, 1777.5, 1813, and 1815. *These labor code sections must be included within or as attachments to the contract.*
 - As set forth in CLC section 1776, the subcontractor shall maintain and furnish directly to the Labor Commissioner, bi-weekly, a certified copy of each weekly payroll as specified in section 1776 containing a statement of compliance with labor code sections 1771, 1776, 1811 and 1815, signed under penalty of perjury.
 - As set forth in CLC section 1775(b)(2), the contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review

of the certified payroll records of the subcontractor.

- As set forth in CLC section 1775(b)(3), upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
- As set forth in CLC section 1775(b)(4), prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813. Prior to the release of retention to the contractor, the COV will require a copy of the affidavit(s) completed by each listed subcontractor.
- ❑ In accordance with CLC section 1777.5(e), prior to commencing work on a contract for public work; every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work.
- ❑ Only apprentices, as defined in CLC section 3077, in training under apprenticeship standards approved by the Division of Apprenticeship Standards (DAP) and party to written apprentice agreements under CLC section 3070-3098 may be employed at the apprentice wage rate on public works.
- ❑ Unless exempted under CLC section 1777.5(j), a contractor working on a public works contract of \$30,000 or more shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards (CLC 1777.5(n)). In no event shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.
- ❑ The prime contractor is responsible for compliance with the requirements of CLC section 1777.5 for all apprenticeable occupations employed on the contract. As stated in 1777.5 (o), the apprenticeship requirement does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contract is less than thirty thousand dollars (\$30,000).
- ❑ As stated in section 1777.7(e), the prime contractor will not be liable for any penalties assessed for violations of section 1777.5 if they have complied with the following requirements:
 - The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of section 1771, 1775, 1776, 1777.5, 1813 and 1815. *These labor code sections must be included within or as attachments to the contract.*
 - The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.
 - Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due to the subcontractor for work performed on the public works project until the failure is corrected.
 - Prior to making a final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.
- ❑ The prime contractor is required to provide a signed affidavit declaring their compliance with

California Labor Code sections 1771 (prevailing wage) and 1777.5 (apprenticeship) for all workers employed on the contract before final payment will be made on the contract by the City of Tulare.

Contract inclusion and/or attachments: The following item is required to be included either in the body of, as attachments to, or addendums of all public work contracts:

- As set forth in CLC section 1773, the City of Tulare shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations. This will include the apprenticeship prevailing wage for all apprenticeable trades. In accordance with labor code section 1773.2, this information is to be included in the contract itself.

General prevailing wage determinations made by the director of industrial relations for journeyman and apprentices may be found at:

<http://www.dir.ca.gov/OPRL/PWD/index.htm> and <http://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>

IV. INSTRUCTIONS

1. Fill out attached Bid Form (Exhibit "A") in ink or typewriting completely.
2. Cross out and initial mistakes in ink and place the correct response next to same.
3. Timely submit Bid in a sealed envelope addressed and marked as follows:

To: City of Tulare – City Clerk
411 East Kern Avenue
Tulare, California 93274

From: Bidder's Name
Bidder's Mailing Address

Marked: PROJECT: **SUPPLY & DELIVERY OF CHIP SEAL EMULSION OIL**
RFB NO. 18-628

BID SUBMITTAL DEADLINE: **2:00 P.M., THURSDAY, SEPTEMBER 14, 2017**

4. Submit a security deposit of no less than 10% of the Bid amount to the City with the sealed Bid to guarantee the Bid. City will not consider Bids which are not accompanied by the required security. Security may be made by certified check, cashier's check, or Bidder's bond. Forfeiture of Bid security shall be governed by California Contract Code Section 20172-20174.
5. Submit each of the required Certifications, Affidavits, Bid Guarantees Assurances, Statements and Questionnaires as well as optional waiver(s) to City with the sealed Bid. City will not consider Bids which are not accompanied by the required completed forms.
6. Inquiries: Contract documents may be inspected and obtained at the office of the Streets Division Manager, City of Tulare Corporation Yard, 3981 South K Street, Tulare, CA 93274-4257 or by calling (559) 684-4322, or by Fax (559) 685-2378 or web site at: <http://www.tulare.ca.gov/departments/public-works/streets>. However, to prevent misinterpretations, the City requests that all questions be sent by email to bdykes@tulare.ca.gov.

Questions regarding this RFB are due no later than 5:00 pm on August 31, 2017.

V. SCOPE OF WORK/PROJECT SPECIFICATIONS

The intent of this RFB is to secure a contract for supplying chip seal emulsion oil materials for a chip seal treatment project. These projects are subject to the requirements of prevailing wage rates. In the event the supplier is not able to provide services in a timely fashion on a project, the City reserves the right to assign the contract to another materials supplier. A supplier firm will be considered untimely if they are unable to meet consecutive date/time site supplying or if they cause contractor delays that incur additional costs to the City.

The Materials supplier shall provide to the City of Tulare, on an as-needed basis, chip seal emulsion oil for a City streets projects. The supplier will work directly under the City of Tulare, Streets Division Manager or designee, and participate throughout the life of the projects to ensure that all elements and systems work individually and together as intended.

Staff is anticipating the application of rejuvenating agent on one day, requiring a single day delivery of 8400 gallons of chip seal emulsion oil to cover 24,000 square yards at a rate of .30 gallons per square yard, and 2880 gallons of flush coat to cover 24,000 square yards. Specific Delivery dates and quantities of chip seal emulsion oil will be scheduled with the Streets Manager and provided by the supplier throughout the course of the project to ensure delivery volumes effectively meet the project needs.

a) MATERIALS AND SPECIFICATIONS

PRODUCTS	APPROXIMATE ANNUAL USE
Polymer-Modified Rejuvenating Emulsion (PRME)	24,000 sq. yds coverage, estimated 8400 gallons
Flush Coat	24,000 sq. yds coverage, estimated 2880 gallons

The asphalt emulsion shall be a polymer modified rejuvenating Emulsion with a polymer, rejuvenating agent and asphalt and shall meet the following specifications:

Product Specification for concentrate

Test on Emulsion	Method	Polymer Modified Rejuvenating Emulsion
Viscosity @77 (SFS)	ASTM D244	75-350
Residue, W% Minimum.	ASTM D244	67
pH	ASTM E70	2.0-5.0
Sieve, w%, max.	ASTM D244	0.1
Oil distillate, w% max.	ASTMD244	0.5
Test on Residue(1)		
Viscosity @ 140 F, P, max	ASTM D2170	2000
Penetration @39.2 F, min	ASTM D5	50
Elastic Recovery on residue by distillation(1,2)	AASHTO T59 T301	50
Test on Latex		
Tensile strength, die C dumbbell, psi, minimum	ASTM D412	500

Swelling in Rejuvenating agent, % maximum 48 hours exposure @ 104° F	ASTM D412	40% intact film
Test on rejuvenating agent;		
Flash point	ASTM D92	>380
Hot mix Recycling Agent Classification	ASTM D4552	See section II

- (1) Exception to AASHTO T 59: Bring the temperature on the lower thermometer slowly to 350 F plus or Minus 10 F. Maintain at this temperature for 20 minutes. Complete total distillation in 60 plus or minus 5 minutes from first application of heat.
- (2) Elastic Recovery @ 10 C (50F): Hour glass sides, pull 20cm, hold 5 minutes then cut, let sit 1 hour.
- (3) Latex films shall be cured at 75°F and 50% relative humidity for 14 days prior to cutting or molding specimens suitable substrate for film formation shall be polyethylene boards, silicone rubber sheeting, glass, or any substrate for film formation shall be polyethylene boards, silicone rubber sheeting, glass or any substrate which produces a cured film of uniform cross section.
- (4) Report mass increase as percent by weight of the original latex film mass upon exposure of films to the recycling agent.

Recycling Agent

The recycling agent shall meet the following specification:

Test	Specification
Viscosity, 140F, CST	50-175
Flash Point, F, COC	380 Min.
Saturate, % by wt	30 Max
Asphaltenes	1.0 Max.
Test on Residue	
Weight Change, %	6.5 Max
Viscosity Ratio	3 Max

Material Certifications and Testing

The emulsion supplier shall submit to the agency certification that the emulsion meets the specification. The emulsion supplier shall submit to the agency a certification from the approved laboratories certifying that the polymer and the recycling agent meet the required specifications. For the latex, certification must be from a laboratory with IAS ISO 17025 accreditation. Laboratories must be accredited in the test procedures specified above for the latex and rejuvenating agents.

All certifications shall be submitted to the agency and approved by the agency 5 days prior to supplying material.

Polymer Latex

Styrene Butadiene Rubber latex shall be added to the water/soap phase by injection prior to the mill manufacture of the asphaltic emulsion by the emulsion producer. The latex shall be NX 1118 manufactured by BASF or approved equal. The amount of latex solids shall be between 3 and 4 percent of the asphalt residual content and shall be certified by the emulsion producer on each load of emulsion delivered to the job site. **No post or field addition of Polymer Latex will be allowed.**

Placing

The emulsion for chip seal shall be applied in conformance with these special provisions.

The emulsion shall be applied with a distributor truck to the pavement surface at a rate of 0.16 to 0.30 gallons per square yard for the 6.3mm (1/4-inch) max. aggregate grading and 0.18 to 0.40 gallons per square yard for the 8.0mm (5/16-inch) max. aggregate grading. The emulsion application rate shall be adjusted up or down, at the Engineers discretion, depending on ability to fill cracks in the roadway. The emulsion shall be heated at a temperature above one hundred (100 F) degrees, but not to exceed one hundred and fifty (150 F) degrees at application. For smaller areas the emulsion may be applied with a wand.

A. An asphalt distributor for application of the emulsion shall have a full circulation spray bar that is adjustable to at least sixteen (16) feet wide and capable of heating and circulating the emulsion simultaneously. It must have computerized rate control for adjusting and controlling the application from the cab by .01 gallons per square yard increments. The distributor shall also be equipped with a volume measuring devise and a thermometer for measuring the emulsion temperature in the tank.

The Contractor shall take precautions such that no asphaltic emulsion or screenings are allowed to enter streams and waterways near the project during the course of the work.

Immediately before commencing the chip seal operations, all surface metal utility covers (including survey monuments) shall be protected by thoroughly covering the surface with an appropriate adhesive and paper or plastic. No adhesive material shall be permitted to cover, seal or fill the joint between the frame and cover of the structure. Covers are to be uncovered and cleaned of chip material by the end of the same work day.

For the purpose of this project, the construction zone is defined to include all stockpile staging areas and travel routes to/from streets where the chip seal is to be applied.

The Contractor shall abide, at all times, to the State of California, Department of Transportation's "Manual of Traffic Controls for Construction and Maintenance Work Zones" as applicable to this project.

Finishing

Chip seal shall be finished in conformance with the provisions for finishing screenings spread on asphaltic emulsion in these special provisions.

The Contractor shall exercise care to prevent oil from being deposited on concrete surfaces. The Contractor shall remove oil from the surfaces not designated to be chip sealed.

The Materials Supplier firm shall perform materials testing on its material supply and determine if it meets subject standards for placement within the Public Right-of-Way to insure compliance with plans and engineering standard specifications. The Supplier of chip seal emulsion oil material firm's responsibilities may include but are not limited to the following:

- Provide specifications illustrating that chip seal emulsion oil and flush coat materials meet or exceed City and Caltrans standards.
- Ensures that all materials tests executed prior to delivery complied with the applicable Standard Specifications as per Caltrans Standards.
- Notifies contractors and the City of Tulare Streets Department of non-compliance of the materials with stated specifications in a timely manner.
- Spreading the chip seal emulsion oil and flush coat on the target project area in coordination with City staff's application of chip seal treatment product.
- Material Suppliers will be required to provide their own method of transportation to and from construction sites.
- Coordinate the specific number of deliveries and estimated quantity of materials to be delivered in each delivery, to be scheduled with the Streets Manager.

VI. SCHEDULE OF WORK ITEMS

Name of Bidder _____

SCHEDULE OF WORK ITEMS

(See Bid Item Descriptions, Section V., for Detailed Scope of Work)

Item No.	Approx. Quantity	Description (per well)	Units	Unit Price	Total Amount
1.	8,400 gallons	Chip Seal Emulsion Oil	Gallons		
2.	2880 gallons	Flush Coat	Gallons		
3.	1 day	Labor	Per day		
4.	1 delivery	Freight	Per delivery		
Total Sum of Bid (Items 1 through 4)					

Total sum written in words _____

Bidding Agency (Print or Type)

(1) _____
Corporation, Partner, Joint Venture

(2) _____
Business Address City State Zip Code

Telephone Number Fax Number Email Address

(3) _____
Signature of Authorized Person (Date)

_____ Type or Print Authorized Person's Name

PLEASE SEE THE FOLLOWING INSTRUCTIONS REGARDING SIGNATURE

(1) If the BIDDER is an individual, enter name here in style used in business; if a joint venture, exact

name of entities joining in the venture; if a partnership, the correct trade style of the partnership; if a corporation, the exact name of the corporation.

(2) If BIDDER is other than an individual, identify here its character, i.e., joint venture, partnership, corporation, including the state of incorporation. If BIDDER is an individual operating under a trade name, state "an individual dba (trade name in full)".

(3) State on this line, the address to which all communications and notices regarding the Bid Proposal, and any contract awarded thereunder, are to be addressed.

(4) If BIDDER is a joint venture, signature must be by one of the joint venturers, and if one or both of the joint venturers is a partnership or a corporation, each participating partnership must sign by a general partner, and each corporation by an authorized officer or employee; if a partnership, by a general partner; if a corporation, by an authorized officer or employee. The title of the person signing must appear after his/her signature. Where BIDDER is a partnership or corporation, the names of all other general partners, or the president or secretary of the corporation and their business addresses must be shown below.

Note: All names must be typewritten under written signature. All Addresses must be complete with street number, city, state and zip code.

BIDDING CONTRACTOR'S LICENSE INFORMATION

STATE CONTRACTOR'S LIC. CLASS: _____ # _____ EXP. DATE: _____

STATE D.I.R. REGISTRATION # _____ FEDERAL TAX I.D. # _____

CITY OF TULARE BUSINESS TAX CERTIFICATE # _____ (A City Business Tax Certificate (license) is not required to submit a bid; however, vendor is required to obtain a City License prior to commencement of work or if vendor is presently transacting business within the City of Tulare, regardless of whether the business address is actually located within the City. Contact the business License Division for clarification of questions at 559-684-4232.

CONTRACTOR'S REFERENCES

The following are the names, addresses, and telephone numbers for at least three (3) agencies for which BIDDER has performed work similar in size and scope within the past two (2) years.

REFERENCE 1

NAME OF AGENCY: _____ CONTACT PERSON: _____

AGENCY ADDRESS: _____ PHONE #: _____

REFERENCE 2

NAME OF AGENCY: _____ CONTACT PERSON: _____

AGENCY ADDRESS: _____ PHONE #: _____

REFERENCE 3

NAME OF AGENCY: _____ CONTACT PERSON: _____

AGENCY ADDRESS: _____ PHONE #: _____

DESIGNATION OF SURETIES

The following are the names, addresses, and telephone numbers for all brokers and sureties from whom BIDDER intends to procure insurance.

COMPANY NAME: _____ TYPE OF INSURANCE: _____

ADDRESS: _____ TELEPHONE# _____

COMPANY NAME: _____ TYPE OF INSURANCE: _____

ADDRESS: _____ TELEPHONE# _____

COMPANY NAME: _____ TYPE OF INSURANCE: _____

ADDRESS: _____ TELEPHONE# _____

SUBCONTRACTOR LISTING

BIDDING FIRM: _____

The undersigned hereby designates below for the project, opposite various portions of the work, the names and locations of the places of business of each subcontractor who will perform work or labor in an amount in excess of one-half of one percent (1/2 of 1%) of the of the total bid. All work not listed below shall be performed by the undersigned BIDDER. It is understood that the BIDDER, if awarded the contract, shall not substitute any subcontractor in place of the subcontractors herein designated without the approval of the Project Manager.

SUBCONTRACTOR INFORMATION & TRADE CLASSIFICATION (CIRCLE ALL THAT APPLY)

1.	Subcontractor Name:	Asbestos	Drywall Finisher	Laborers	Roofers
Business Address:		Boilermaker	Drywall/Lathers	Millwrights	Sheet Metal
Email Address:		Bricklayers	Electricians	Operating Engineers	Sound/Comm
CSLB #		Carpenters	Elevator Mechanic	Painters	Surveyors
Expires:		Carpet/Linoleum	Glaziers	Pile Drivers	Teamster
DIR Registration #		Cement Mason	Iron Worker	Pipe Trades	Tile Worker
				Plasterers	Other: _____

2.	Subcontractor Name:	Asbestos	Drywall Finisher	Laborers	Roofers
Business Address:		Boilermaker	Drywall/Lathers	Millwrights	Sheet Metal
Email Address:		Bricklayers	Electricians	Operating Engineers	Sound/Comm
CSLB #		Carpenters	Elevator Mechanic	Painters	Surveyors
Expires:		Carpet/Linoleum	Glaziers	Pile Drivers	Teamster
DIR Registration #		Cement Mason	Iron Worker	Pipe Trades	Tile Worker
				Plasterers	Other: _____

If more space is needed to list additional subcontractor and trade classifications, please list remaining subcontractors on a separate sheet of paper (providing all of the requested information for each subcontractor) and submit with Bid.

VII. BID OPENING AND CONFIDENTIALITY

1. Bid Opening. Bids shall be opened publicly in the presence of attendees, if any, on **Thursday, September 14, 2017, at 2:00 p.m.** at the office of the City Clerk located at 411 E. Kern Ave., Tulare, CA, City Hall. The name of each Bidder and the amount of each Bid shall read aloud at the Bid opening and after an award decision has been made shall be open to inspection. Other Bid information will not be available for public review during the evaluation phase or until the award of the contract.
2. Bid Confidentiality. The City favors full and open disclosure of all Bid records. The City will not expend public funds defending claims for access to, inspection of, or to be provided copies of any such records. By submitting a Bid, a Bidder agrees to indemnify and defend the City against all claims or actions brought against it to seek access to, or compel disclosure of, any records or documents in the City's possession.

After the award, the City intends that its selection process will be open and public. Respondents are advised that the California Public Records Act ("PRA") provides that any person may inspect or be provided a copy of any identifiable public record or document that is not exempted from disclosure by the express provisions of the Act. The Federal Freedom of Information Act ("FOIA") contains a similar provision. Each Bidder shall clearly identify any information within its Bid that it intends to ask the City to withhold as exempt under either the PRA or FOIA. Any information contained in a Bidder's submission which the Bidder believe qualifies for exemption from public disclosure as "Proprietary" or "Confidential" must be identified as such at the time of first submission of Bidder's Bid to this RFB. Any failure to identify information contained in a Bidder's Bid to this RFB as "Proprietary" or "Confidential" shall constitute a waiver of Bidder's right to object to the release of such information upon request under either Act.

VIII. AWARD

1. Most Responsive, Responsible Bidder. A Contract (substantially similar to that attached hereto as Exhibit "C") shall be awarded with reasonable promptness by appropriate written notice. Award shall be made to the most responsive, responsible Bidder whose Proposal meets the requirements and criteria set forth in this RFB, price and other factors considered, and whose Bid is determined to result in the optimum economic advantage to the City. A responsible Bidder is one who has the capability, financial capacity and integrity to perform the contract. A responsive Bidder is one who commits to all of the material terms, for example, price, quantity, quality and delivery, of this RFB. Contractor must return a signed copy of the contract provided by the City with its Award Notice to City within ten (10) working days of receipt thereof.
2. Reservation of Rights. The City reserves the right to reject any item or items in the Bid; to waive informalities, technical defects, and minor irregularities in Bids received; and to select the Bid(s) deemed most advantageous to the City.

IX. PROTESTS/APPEALS

Because it is essential that Bidders have confidence in the procurement procedures for soliciting and awarding contracts, it is the policy of the City to offer Bidders the opportunity to appeal award of contracts. The following procedures shall apply in regard to appeals:

1. Any actual Bidder who is aggrieved in connection with this RFB or award of a contract hereunder may protest to the City of Tulare Purchasing Division in writing within five (5) working days after such aggrieved Bidder knows, should have reasonably known, or could reasonably be expected to know of the facts giving rise thereto; and

2. Should identify only the areas regarding bid contradictions, procurement errors, quotation rating discrepancies, legality of procurement context, conflict of interest in the rating process and inappropriate or unfair competitive procurement grievance regarding the Bid process.
3. The City's Purchasing Division shall have the authority to settle and resolve each protest. The resolution will be provided to Bidder in writing within five (5) working days of receipt of the appeal unless the Bidder is notified more time is required.
4. If the protest cannot be resolved by mutual agreement, or if the protesting bidder is not satisfied with the decision of the Purchasing Agent and/or Chief Financial Officer, he/she shall have the right to appeal to the City Manager within five (5) business days after notification of the Purchasing Agent decision.
5. If the protesting bidder is not satisfied with the decision of the City Manager, the final level of appeal is with the City Council. Complainant may appear at the City Council meeting to be heard by Council.

In general, the filing of a protest should cause the solicitation proceedings, which are subject to protest, to be halted until the appeal is resolved. In order to allow essential City functions to continue, the City may proceed with the solicitation or award of contract, despite the protest, upon an adequate determination in writing by the City's Purchasing Agent or Chief Financial Officer that such action is necessary. It is expected that such determination will occur only in those few circumstances where it is necessary to protect a substantial interest of the City of Tulare.

In an effort to limit frivolous protests, protesters who file two (2) protests within twelve (12) calendar months, whose protests are not resolved in their favor, may be withheld from future bid.

X. SPECIAL CONDITIONS

1. Project Administrative Issues

- a. Complete Project. The successful Bidder shall be responsible for providing all materials, labor, equipment and services necessary to fulfill the requirements of this RFB. It is the intent of this RFB and related agreement to describe a functionally complete project.
- b. Quantities/Change Orders. The City reserves and shall have the right to make such changes to the work as may be necessary and desirable to complete the work originally intended in an acceptable manner. Unless otherwise specified herein, the Project Manager shall be and is hereby authorized to make such changes, in the work as may increase or decrease the originally awarded contract quantities and/or total contract cost. The Contract Price, or the amount due the Contractor will only be reduced/increased after the price change is reviewed and authorized by the City Manager and/or City Council.

Should the Contractor disagree with any terms or conditions set forth in an approved contract change order not executed by the Contractor, the Contractor shall submit a written protest to the Project Manager within 15 days after the receipt of the approved contract change order and the procedures outlined in Section 4-1.03 of the Standard Specifications apply.

If a requested change order is sent back to the Contractor for revisions, the Contractor has 15 (fifteen) calendar days to resubmit.

Changes shall not invalidate the contract nor release the surety, and the Contractor agrees to accept payment for such changes as if the altered work had been a part of

the original contract. These changes which are for work within the general scope of the contract shall be covered by Change Orders issued by the City. Change orders for altered work shall include extensions of contract time where, in the Project Manager's opinion, such extensions are commensurate with the amount and difficulty of added work.

Excessive altered work shall be covered by supplemental agreement that is subject to funding agency approval as applicable. If the City and the Contractor are unable to agree on a unit adjustment for any contract item that requires a supplemental agreement, the City reserves the right to terminate the contract with respect to the item and to make other arrangements for its completion.

- c. Omitted Items. Project Manager is authorized to omit minor contract items. Major items must be omitted by supplemental agreement.
- d. Extra Work. Contractor is prohibited from doing extra work, unless authorized in writing by Project Manager before the work is done. The Project Manager should obtain authorization from the City Manager and/or Board of Public Utilities before agreeing to extra work requested by the Contractor. In the instances where it is necessary for the work to be done immediately, the Project Manager may authorize the work prior to taking the additions to the City Manager and/or Board of Public Utilities. Payment for approved Extra Work shall be as agreed to in writing by the Project Manager prior to the Extra Work being completed or the City Manager and/or Board of Public Utilities shall approve an increase in a Change Order issued after the Extra Work is completed. No additional payment is due for unauthorized Extra Work.

If the Project Manager authorizes Extra Work but the payment for the Extra Work has not been agreed to in writing prior to the work being completed, then Contractor shall submit to the Project Manager the documentation required for a Change Order within thirty (30) days of completing the Extra Work. The Project Manager will submit a Change Order request for review and approval by the City Manager and/or Board of Public Utilities. If the Contractor does not submit any documentation within that time period the Project Manager may move forward with issuing a Change Order to adjust the contract price.

2. City-Contractor Relations

- a. Project Manager's Responsibility and Authority. City will designate a Project Manager. All work shall be done under the general supervision of such Project Manager or his or her designee(s). The Project Manager shall decide issues of quality and acceptability of materials, work performance, rate of progress of work, interpretation of drawings and specifications, and all questions related to fulfillment of the contract for the project. Project Manager shall not have control over acts or omissions of the Contractor, Subcontractors, their agents or employees.
- b. Contractor/Contractor's Superintendent. Contractor shall bear all responsibility for, and have all control over, the construction means, methods, techniques, sequences, procedures and safety precautions or programs related to the project. Contractor may designate a superintendent.
- c. Control of Materials:
 - Source of Supply and Quality of Materials Guarantee. All materials, parts and equipment supplied by the Contractor shall be new and/or of a quality equal to that specified.

- Equivalent Materials. Trade names or manufacturer's catalog information, where used, are a means of indicating kind, type, design, style, finish, durability or quality desired and are not intended to exclude or omit the products of any responsible manufacturer, if such products are equal in every respect to those specified. The burden of proof of compliance with the specifications is the responsibility of Contractor. City shall be the sole judge as to the adequacy of any item for substitution.
 - Manufacturer's Directions. Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- d. Labor
- (1) Workmanship. Workmanship shall be equal to the best general practice of modern day fabrication shops and good construction practice.
 - (2) Qualification. Contractor shall ensure that each employee who works on this project is qualified to perform their assigned duty in a safe manner.
3. Legal Responsibilities. It is the responsibility of Contractor to comply with all local, state, and federal laws and regulations which apply to this project. This includes, but is not limited to, compliance with Uniform Building, Plumbing, Mechanical, Electric, and Fire Codes. Contractor shall provide a safe working environment in compliance with the Occupational Safety and Health Act, and California Health and Safety Codes. Additionally, Contractor shall secure all necessary permits, licenses, and similar requirements to carry out the project. Contractor shall comply with all applicable labor laws, and ensure against discrimination.

XI. GENERAL CONDITIONS

1. It is the policy of the City to provide equal opportunity to all candidates when selecting Bidders to provide public services. Bidders are expected to be equal opportunity employers. The City hereby affirmatively ensures that Disadvantaged Business Enterprises (DBE) will be afforded full opportunity to submit a Bid in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, disability, gender or religion in any consideration leading to the award of contract.

No qualified disabled person shall, on the basis of disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance. Bidder shall provide to the City a list of all instances within the last ten (10) years where a complaint was filed or pending against Bidder in a legal or administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors or suppliers. A description of the status or resolution of that complaint, including any remedial action taken is required.
2. Post-Closing Date Corrections are prohibited.
3. Bids will not be accepted unless signed in ink (not typed) in the appropriate space(s) by an authorized officer or employee of the Bidder.
4. Bids must be submitted on or before the Closing Date. Any Bids received after the Closing Date shall be returned, unopened, to the Bidder, provided the request number, opening date, and Bidder's return address are on the envelope.
5. Bids may be withdrawn prior to the Bid Closing Date by writing to the Purchasing Division.

6. Telegraphic, telephonic, electronic and facsimile Bids and withdrawal requests will not be accepted.
7. Prices submitted are considered accurate for a period of ninety (90) days and cannot be withdrawn after the Closing Date.
8. All Bids are the property of the City after submission.
9. City is not responsible for Bid errors and omissions.
10. Bids should be prepared in a straightforward, concise manner. Information provided which was not specifically requested will be considered only in City's discretion.
11. A written amendment or addenda issued by City's Purchasing Division is the only method which should be relied on with respect to changes to the RFB. Respondent is responsible to contact City's Purchasing Division prior to submitting a Bid to determine if any amendments were made to the RFB.
12. Any contract resulting from the RFB will be jointly administered by the City's Purchasing Division, and the Department requesting Bids.
13. Prior to conducting business in the City, a business tax certificate (license) must be obtained. Call (559) 684-4232 for more information.
14. Bidder shall provide insurance as required by law and as indicated in the proposed contract.
15. Bidder shall maintain all personnel files and payroll records for employees used to implement the proposed contract.
16. Bidder shall withhold, pay and report all taxes and issue W-2 forms at the end of each calendar year for employees used to implement the proposed contract.
17. Pursuant to the City's Charter, all other things being equal, tie Bids shall be awarded to a local merchant to the extent quality and prices are equal. If neither is a local vendor, the Bid shall be awarded by the flip of a coin by the Purchasing Division in the presence of at least one witness.
18. The City may make such investigation of the Bidder and information in the Bid as it determines necessary. This may include the collection of criminal history information, contractual and business associations and practices, employment histories and reputation.
19. Each Bidder, will be required to submit Certifications, Affidavits, Bid Guarantees, Assurances, Statements and Questionnaires which are attached in Exhibit "B".
20. The quantities given on the Bid Proposal form and any related contract documents are approximate only. They are given as a basis for comparison of Bids. The City of Tulare does not, expressly or impliedly agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of work, or to omit portion of the work, as the City deems necessary or advisable, at the prices Bid.
21. Bidders shall satisfy themselves by personal examination of the work site, specifications, plans, and other contract documents, and by any other means as they believe necessary, as to the actual physical conditions, requirements, and difficulties under which the project must be performed. The submission of a Bid shall be conclusive evidence that the Bidder has investigated, and is satisfied as to the conditions encountered, as to the character, quality, and quantities of work to be performed, and the materials to be furnished, and as to

the requirements of the RFB and the City. No allowance shall subsequently be made because of lack of such examination or knowledge.

22. All Bidders are required to make a Bid on the complete Bid Form (Exhibit "A"). Contractor may be required to submit Proposals on alternate items. The City reserves the right to award the contract based on the lowest combination or combinations of Proposal items and alternate proposed items.
23. No mention shall be made in the Proposal of sales tax, use tax or any other tax, as all amounts Bid will be deemed and held to include any such taxes, which may be applicable.
24. Only one Bid may be submitted as a "Prime Contractor" for the same work by any firm, individual, partnership, corporation or combination thereof. A Contractor submitting a Bid as a Prime Contractor may not also submit sub-Bids to other competing Prime Contractors. Reasonable grounds for believing that any individual, firm, partnership, corporation or combination thereof is interested in more than one Proposal for the work contemplated will cause the rejection of all Proposals in which such individual, firm, partnership, corporation or combination thereof is interested. A Contractor who is not submitting a Bid as a Prime Contractor may submit any number of sub-Bids to competing Prime Contractors.
25. The City of Tulare is not liable for any costs incurred by Bidder in responding to this Request for Bid.

XII. POST AWARD RESPONSIBILITIES

1. Written Contract with City. A written agreement in a form similar to that attached to this Request for Bid as Exhibit "C" with Attachments 1-2 must be entered into between the City and the Contractor to whom the project is awarded. The Agreement forms the basis for the contractual obligation between the parties regarding the project. A contract will be provided with the Notice of Award and must be executed and returned to City within ten (10) working days of the date of award notification unless otherwise agreed.
2. Post-Award Responsibilities. Upon execution of the Agreement between the City and the Contractor, the Contractor shall immediately report all changes in its Articles of Incorporation, By-Laws, or Tax-Exempt status to the City.
3. Insurance. Contractor shall obtain and maintain the minimum insurance coverage outlined Exhibit "C". Contractor shall provide evidence of such insurance to City's Purchasing Division prior to commencement of work on the project.
4. Required Bonds: The Bidder(s) awarded contract(s) pursuant to this RFB will be required to provide to the City of Tulare: 1) a "Performance Bond" and 2) a "Labor and Materials Bond", each in the amount of 100% of the contract amount within ten (10) working days of the date of the "Notice of Award". According to City standard the surety company must be either a California Admitted Surety to its specified dollar limitation AND a current A.M. Fest A: VIII rated surety. The Performance bond shall remain in force for one year after the date of completion.

Upon determination by the City that a contract has been entered and Contractor has provided all of the information that it is required to provide pursuant to this RFB, City will issue, in writing, a notice to proceed on the project to Contractor.

EXHIBIT "A" BID FORM
RFB NO. 18-628

BIDDING FIRM

Project: SUPPLY & DELIVERY OF CHIP SEAL EMULSION OIL

TO: THE CITY OF TULARE PURCHASING DIVISION:

In compliance with the City's Notice Inviting Sealed Bids No. 18-628 dated: _____, the undersigned BIDDER hereby proposes to furnish all permits, licenses, labor, materials and equipment required for the above stated project as set forth in the RFB, including all Exhibits and related contract documents therefore, and to perform all work in the manner and time prescribed therein.

BIDDER declares that this proposal is based upon careful examination of the work site, Instructions to BIDDERS, and the contract requirements. If this proposal is accepted for award, BIDDER agrees to enter into a contract with CITY at the unit and/or lump sum prices set forth in the following Bid Schedule. BIDDER understands that failure to enter into a contract in the time and manner prescribed will result in forfeiture to the City of the Bid Guarantee accompanying this proposal.

BIDDER understands that a bid is required for the entire work and that final compensation under the contract will be based upon the actual quantities of work satisfactorily completed. It is agreed that the unit and/or lump sum prices bid include all appurtenant expenses, taxes, royalties and fees. In the case of discrepancies in amounts bid, unit prices shall govern over extended amounts and words shall govern over figures.

BIDDER hereby agrees to execute a contract and provide bonds within ten (10) working days, or such further time as may be allowed in writing by the Purchasing Division, after receiving notification of the acceptance of this Bid, and it is hereby mutually understood and agreed that in case the BIDDER does not, the accompanying Bid Guarantee shall be forfeited to the City of Tulare as liquidated damages, and said Purchasing Division may proceed to award the contract to others.

BIDDER agrees to commence the work within fourteen (14) calendar days after the effective date on the Notice to Proceed and to complete the work by twenty (20) working days after the effective date on the Notice to Proceed, per test well site, unless extended in writing by the Purchasing Division.

BIDDER shall pay the City LIQUIDATED DAMAGES in the amount of two hundred dollars (\$200) per day for each calendar day the project is delayed beyond the "TIME OF COMPLETION DATE".

BIDDER proposes to furnish a Payment Bond in the amount of one hundred percent (100%) and a Performance Bond in the amount of one hundred percent (100%) of the agreement, as surety condition for the full, complete and faithful performance of the agreement. According to City standards the surety company must be either a California Admitted Surety OR current Treasury Listed Surety (Federal Register) to its specified dollar limitation AND a current A.M. Best A: VIII rated surety.

BIDDER further declares that he/she has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with said bid.

BIDDER has read and hereby agrees to the conditions stated in this proposal by affixing his/her signature below.

The following amounts to be shown in both words and figures. In case of discrepancy between words and figures, the words shall prevail.

EXHIBIT "B-1"
TO RFB 18-628

**BIDDER'S STATEMENT ON PREVIOUS
CONTRACTS SUBJECT TO EQUAL
EMPLOYMENT OPPORTUNITY CLAUSE
(EXECUTIVE ORDER 11246)**

The BIDDER shall complete the following statement by checking the appropriate blanks:

The BIDDER has____has not_____participated in a previous contract subject to the Equal Employment Opportunity Clause prescribed by Executive Order 11246, as amended, of September 24, 1965.

The BIDDER has____has not_____submitted all compliance reports in connection with any such contract due under the applicable filing requirements; and that representations indicating submission of required compliance reports signed by proposed subBIDDERS will be awarded prior to award of subcontracts.

If the BIDDER has participated in previous contracts subject to the Equal Employment Opportunity Clause and has not submitted compliance reports due under applicable filing requirements, the BIDDER shall submit a compliance report on Standard Form 100, "Employee Information Report EEO-I" prior to award of the contract.

Note: Failure to complete the blanks may be grounds for rejecting the bid.

Company: _____

Business Address: _____

Signature: _____

Name of Signing Official: _____

Title of Signing Official: _____

Date: _____

Company Seal:

EXHIBIT "B-2"
EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE CERTIFICATE
(EXECUTIVE ORDER 11246)

Equal Opportunity Clause

Unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Executive Orders 10925, 11114 or Section 204 of Executive Order 11246 of September 24, 1965, during the performance of each contract with the City of Tulare, the BIDDER agrees as follows:

1. The BIDDER will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin or political affiliation. The BIDDER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, gender, national origin or political affiliation. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The BIDDER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The BIDDER will, in all solicitations or advertisements for employees, placed by or on behalf of the BIDDER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, national origin or political affiliation.
3. The BIDDER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or the workers' representative of the BIDDER's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice on conspicuous places available to employees and applicants for employment.
4. The BIDDER will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevancy orders of the Secretary of Labor.
5. The BIDDER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the BIDDER's non-compliance with the non-discrimination clauses of this subcontract or with any of such rules, regulations or orders, this subcontract may be canceled, terminated or suspended, in whole, or in part and the BIDDER may be declared ineligible for further government contracts in accordance with the procedures authorized in accordance with Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or otherwise provided by law.
7. The BIDDER will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each SUBBIDDER or vendor. The BIDDER will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event the BIDDER becomes involved in, or is threatened with litigation with a SUBBIDDER or vendor as a result of such direction by the contracting agency, the BIDDER may request the United States to enter into such litigation to protect the interest of the United States.

Company Name: _____

Business Address: _____

Signature: _____ Date: _____

Name of Signing Official (Print or Type): _____

Title of Signing Official: _____ Company Seal:

EXHIBIT "B-3"
CERTIFICATE OF NONSEGREGATED FACILITIES
(BIDDERS/SUBCONTRACTORS)

1. "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

2. By the submission of a bid, the BIDDER certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The BIDDER agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

3. By submission of the bid, the BIDDER further agrees that (except where it has obtained identical certifications from proposed SUBCONTRACTORS for specific time periods) it will:

- (a) Obtain identical certifications from proposed SUBCONTRACTORS before the award of subcontracts under which the SUB-BIDDER will be subject to the Equal Opportunity clause;
- (b) Retain such certifications in its files; and
- (c) Forward this certification and the following notice to the proposed SUBCONTRACTORS:

NOTICE OF PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT
FOR CERTIFICATION OF NONSEGREGATED FACILITIES

A certificate of Nonsegregated Facilities must be submitted before the award of a subcontract under which the SUBCONTRACTOR will be subject to the equal Opportunity clause. The certification may be submitted either for each SUBCONTRACTOR for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

4. By commencing performance of the Contract work, the selected BIDDER certifies to the Nonsegregated Facilities provisions above.

Company: _____

Business Address: _____

Signature: _____ Date: _____

Name of Signing Official (Print or Type): _____

Title of Signing Official: _____ Company Seal:

EXHIBIT "B-4"

BID GUARANTEE

Known all men by these presents:

That we, _____ as principal and _____ as surety, are held and firmly bound unto the City of Tulare (obligee) in the sum of ten percent (10%) of the total amount of the bid of the principal, to be paid to the said City or its certain attorney, its successors and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presented.

In no case shall the liability of the surety hereunder exceed the sum of \$ _____.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal has submitted the above mentioned bid to the City of Tulare for certain construction specifically described as follows, for which bids are to be opened at _____ on _____ for improvement of

Invitation to Bid No. 18-628

Project: SUPPLY & DELIVERY OF CHIP SEAL EMULSION OIL

NOW THEREFORE, if the aforesaid principal is awarded the contract, and within the time and manner required under the specifications, after the prescribed form in accordance with the bid, and files the two bonds with the City of Tulare, one to guarantee faithful performance and the other to guarantee payment of labor and materials, as required by law, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect.

In the event suit is brought upon this bond by the obligee and judgment is recovered, the surety shall pay all costs incurred by the obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this

_____ day of _____, 2016

Company (Principal): _____

Business Address: _____

Signature: _____ Date: _____

Name of Signing Official: _____ Title: _____

Company Seal

Company (Surety): _____

Business Address: _____

Signature: _____ Date: _____

Name of Signing Official: _____ Title: _____

Company Seal:

Note: Signatures of those executing for the surety must be properly acknowledged.

EXHIBIT "B-6"

**WORKERS' COMPENSATION INSURANCE CERTIFICATE
(CALIF. LABOR CODE § 3700)**

STATE OF CALIFORNIA)
) ss
CITY OF TULARE)

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work under this contract.

Company: _____

Business Address: _____

Signature: _____

Name of Signing Official: _____

Title of Signing Official: _____

Date: _____

Company Seal:

EXHIBIT "B-7"

**CERTIFICATION OF ANTI-KICKBACK COMPLIANCE CERTIFICATE
(48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 8741; and 40 U.S.C. (c))**

By submission of a Bid, the BIDDER certifies that it has read the "Anti-Kickback Procedures," referenced above and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Contract. By commencing performance of the Contract work, the selected BIDDER certifies to Anti-Kickback Compliance.

Company: _____

Business Address: _____

Signature: _____

Name of Signing Official: _____

Title of Signing Official: _____

Date: _____

Company Seal:

EXHIBIT "B-8"

AMERICANS WITH DISABILITIES ACT COMPLIANCE CERTIFICATE

By submission of a bid, the BIDDER certifies it will comply with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Contract. By commencing performance of the Contract work, the selected BIDDER certifies to the Americans with Disabilities Act compliance.

Company: _____

Business Address: _____

Signature: _____

Name of Signing Official: _____

Title of Signing Official: _____

Date: _____

Company Seal:

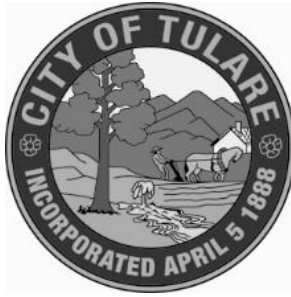


EXHIBIT "B-9"

CITY OF TULARE
Ownership Disclosure for Contractors and Consultants
To Accompany Proposal

NAMES OF PRINCIPALS, PARTNERS, AND/OR TRUSTEES:

Firm Name: _____

Firm Address: _____

List the names of all principals, partners, and/or trustees. For corporations provide names of officers, directors and all stockholders owning more than 10% equity interest in corporation:

Submitted by: Name _____

Date _____

DRUG-FREE WORKPLACE CERTIFICATION

STD.21 (REV.12-93)

To Accompany Proposal

CERTIFICATION

I, the official named below, hereby swear that I am duly authorized legally to bind the contractor or grant recipient to the certification described below. I am fully aware that this certification, executed on the date below, is made under penalty of perjury under the laws of the State of California.

CONTRACTOR/BIDDER FIRM NAME	FEDERAL ID NUMBER
BY(Authorized Signature)	DATE EXECUTED
PRINTED NAME AND TITLE OF PERSON SIGNING	TELEPHONE NUMBER (Include Area Code) ()
TITLE	
CONTRACTOR/BIDDER FIRM'S MAILING ADDRESS	

The contractor or grant recipient named above hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The above named contractor or grant recipient will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:
 - (a) The dangers of drug abuse in the workplace,
 - (b) The person's or organization's policy of maintaining a drug-free workplace,
 - (c) Any available counseling, rehabilitation and employee assistance programs, and
 - (d) Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355©, that every employee who works on the proposed contract or grant:
 - (a) Will receive a copy of the company's drug-free workplace policy statement, and
 - (b) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.
4. At the election of the contractor or grantee, from and after the "Date Executed" and until _____(NOT TO EXCEED 36 MONTHS), the state will regard this certificate as valid for all contracts or grants entered into between the contractor or grantee and this state agency without requiring the contractor or grantee to provide a new and individual certificate for each contract or grant. If the contractor or grantee elects to fill in the blank date, than the terms and conditions of this certificate shall have the same force, meaning effect and enforceability as if a certificate were separately, specifically, and individually provided for each contract or grant between the contractor or grantee and this state agency.

SAMPLE CONTRACT (not to be submitted with BID)

**SUPPLYING and DELIVERING CHIP SEAL EMULSION OIL
MATERIALS TO CITY OF TULARE**

This Agreement, entered into this _____ day of _____, 2017, by and between the City of Tulare, hereinafter referred to as the "CITY," and _____ hereinafter referred to as the "MATERIAL SUPPLIER."

W I T N E S S E T H

WHEREAS, the CITY is authorized and empowered to employ Material Suppliers and specialists in the performance of its duties and functions; and

WHEREAS, the CITY has the desire to secure certain technical and professional services to assist in the preparation and completion of the items of work described as "Scope of Work" in Exhibit "A", and hereinafter referred to as the "PROJECT"; and

WHEREAS, the MATERIAL SUPPLIER represents it is licensed, qualified and willing to provide such services pursuant to terms and conditions of this Agreement.

NOW, THEREFORE, CITY and MATERIAL SUPPLIER agree as follows

I) SERVICES TO BE PERFORMED BY THE MATERIAL SUPPLIER

- A. **Authorized Scope of Work:** The MATERIALS SUPPLIER agrees to perform all work necessary to complete in a manner satisfactory to the CITY those tasks described in Exhibit "A" – Scope of Work, for the cost identified in Exhibit "B" – Project Fees.
- B. **Additional Services:** Incidental work related to the PROJECT and not provided for in Exhibit "A" – Scope of Services. The MATERIALS SUPPLIER agrees to provide any and all additional services at the rates identified in attached Exhibit "B" – Schedule of Fees for Professional Services. Such additional services shall not be performed by MATERIAL SUPPLIER without the written consent of CITY.

II) TIME OF PERFORMANCE

The term of this Agreement shall commence on the Effective Date and expire upon completion of all obligations of the parties, unless earlier terminated by the parties. The initial contract shall be for a twelve (12) month period. Additionally, this Agreement may be terminated for convenience. In the event of termination or expiration of this Agreement, CONTRACTOR shall transfer to CITY any funds and/or accounts receivable on hand attributable to the use of CITY funds.

III) COMPENSATION

- A. **Total Compensation:** For services performed pursuant to this Agreement, the CITY agrees to pay and the MATERIALS SUPPLIER agrees to accept, the rates established in Exhibit "A" – Scope of Work for the cost identified in Exhibit "B." These amounts shall constitute complete compensation, including document production and out-of-pocket expenses for all services for the work and PROJECT identified in Exhibits "A" and "B".
- B. **Payment of Compensation:** The MATERIALS SUPPLIER shall be compensated according to the billing invoice submitted by the MATERIALS SUPPLIER and approved by the CITY as per schedule "B" and "C" and processed within thirty (30) days by the Finance Department. The MATERIAL SUPPLIER shall be paid no later than thirty (30) days following submission of a written, verified billing to the CITY. Said billing shall include the percentage of each task completed to date and since the date of the preceding billing, if any.

IV) AUTHORIZED REPRESENTATIVE

- A. **CITY:** The **STREETS DIVISION MANAGER** shall represent the CITY in all matters pertaining to the services to be rendered under this Agreement, except where approval of the City Council of the City of Tulare is specifically required.
- B. **MATERIALS SUPPLIER:** _____ shall represent and act as principle for MATERIALS SUPPLIER in all matters pertaining to the services to be rendered by it under this Agreement.

V) TERMINATION

The right to terminate this Agreement, with or without cause, may be exercised without prejudices to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

- A. **Termination by Either Party without Cause:** The CITY or MATERIALS SUPPLIER may terminate this Agreement at any time by giving written notice to the other of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.
- B. **Termination of Agreement for Cause:** The CITY may by written notice to the MATERIALS SUPPLIER specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination, terminate the whole or any part of this Agreement in any of the following circumstances:
 - 1. If the MATERIALS SUPPLIER fails to perform the services called for by this Agreement within time(s) specified herein or any extension thereof; or
 - 2. If the MATERIALS SUPPLIER fails to make progress under this Agreement as to endanger performance of this Agreement in accordance with its terms, and does not correct such failure within a period of ten (10) days (or longer period as the CITY may authorize in writing) after receipt of notice from the CITY specifying such failure.
- C. **Post-Termination:**
 - 1. In the event the CITY terminates this Agreement with or without cause, the CITY may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.
 - 2. Except with respect to defaults of sub Material Suppliers, the MATERIALS SUPPLIER shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the MATERIAL SUPPLIER. Such causes include, but are not limited to, acts of God or to the public enemy, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather; but in the event the failure to perform is caused by the default of a sub Material Supplier, the MATERIALS SUPPLIER shall not be liable for failure to perform, unless the services to be furnished by the sub-Material Supplier were obtainable from other sources in sufficient time and within budgeted resources to permit the MATERIALS SUPPLIER to meet the required delivery schedule or other performance requirements.
 - 3. Should the Agreement be terminated with or without cause, the MATERIALS SUPPLIER shall provide the CITY with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by the MATERIALS SUPPLIER pursuant to this Agreement.
 - 4. Upon termination, with or without cause, MATERIALS SUPPLIER will be compensated for the services satisfactorily completed to the date of termination according to compensation provisions contained herein. In no event, shall the total compensation paid MATERIALS SUPPLIER exceed the total compensation agreed to herein.
 - 5. If after notice of termination of this Agreement, as provided for in this article, it is determined for any reason that the MATERIALS SUPPLIER was not in default under the provisions of this article, then the rights and obligations of the parties shall be the same as if the Agreement was terminated without cause.

6. Termination of this Agreement shall not terminate any obligation to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination activities.

VI) INTEREST OF OFFICIALS AND THE MATERIALS SUPPLIER

- A. No officer, member, or employee of the CITY who exercises any functions or responsibilities in the review or approval of this Agreement shall:
 1. Participate in any decision relating to this Agreement which effects their personal interest or the interest of any corporation, partnership, or association in which they have, directly or indirectly, any interest or
 2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his tenure or for one year thereafter.
- B. The MATERIALS SUPPLIER hereby covenants that he has, at the time of the execution of this Agreement, no interest, and that they shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The MATERIALS SUPPLIER further covenants that in the performance of this work, no person having any such interest shall be employed.

VII) NO PERSONNEL, AGENCY OR COMMISSION

The MATERIALS SUPPLIER warrants, by execution of this Agreement, that no personnel agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide established commercial or selling agencies maintained by the MATERIAL SUPPLIER for the purpose of securing business. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

VIII) SUBCONTRACTING

- A. The MATERIALS SUPPLIER shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of the CITY.
- B. In no event shall the MATERIALS SUPPLIER subcontract work in excess of 50% of the contract amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a Materials Supplier performing the particular type of project.

IX) INDEPENDENT CONTRACTOR

In the performance of the services herein provided for, the MATERIAL SUPPLIER shall be, and is, an independent contractor and is not an agent or employee of the CITY. The MATERIALS SUPPLIER has and shall retain the right to exercise full control and supervision of all persons assisting the MATERIAL SUPPLIER in the performance of said services hereunder. The MATERIALS SUPPLIER shall be solely responsible for all matters relating to the payment of its employees including compliance with social security and income tax withholding and all other regulations governing such matters.

X) SPECIFICATIONS

All specifications, manuals, standards, etc., either attached to this Agreement or incorporated by reference, are binding as to the performance of the work specified in this Agreement unless they are changed by written amendment to this Agreement modified in writing to incorporate such changes.

XI) DOCUMENTS/DATA

- A. **Ownership of Documents:** All original papers and documents, produced as a result of this Agreement, shall become the property of the CITY. In addition, CITY shall be provided with access and use of any other papers and documents consistent with the purpose and scope of services covered by this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of the CITY.

Documents, including drawings and specifications, prepared by MATERIALS SUPPLIER pursuant to this Agreement, are not intended or represented to be suitable for reuse by CITY or others on extensions of the PROJECT or on any other project. Any use of the completed documents for other projects and any use of incomplete documents without the specific written authorization from MATERIAL SUPPLIER will be at CITY's sole risk and without liability to MATERIALS SUPPLIER. Further, any and all liability arising out of changes made to MATERIALS SUPPLIER's deliverables under this Agreement by CITY or persons other than MATERIALS SUPPLIER is waived as against MATERIAL SUPPLIER, and the City assumes full responsibility for such changes unless the CITY has given MATERIALS SUPPLIER prior notice and has received from MATERIALS SUPPLIER written consent for such changes.

- B. **Publication:** No report, information, or other data given or prepared or assembled by the MATERIALS SUPPLIER pursuant to this Agreement, shall be made available to any individual or organization by the MATERIALS SUPPLIER without the prior written approval of the CITY. Notwithstanding the foregoing, however, the MATERIALS SUPPLIER shall not be required to protect or hold in confidence and confidential information which (1) is or becomes available to the public with the prior written consent of the CITY; (2) must be disclosed to comply with law; or (3) must be disclosed in connection with any legal proceedings.
- C. **Copyrights:** The MATERIALS SUPPLIER shall be free to copyright material developed under this Agreement with the provision that the CITY be given a nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material for government or public purposes.

XII) INDEMNIFICATION AND INSURANCE

- A. As respects acts, errors, or omissions in the performance of services, MATERIALS SUPPLIER agrees to indemnify and hold harmless CITY, its elected and appointed officers, employees, and CITY designated volunteers from and against any and all claims, demands, losses, defense costs, liability or consequential damages arising directly out of MATERIALS SUPPLIER's negligent acts, errors or omissions in the performance of their services under the terms of this Agreement, except to the extent those arise out of the negligence of CITY.
- B. CITY agrees to indemnify and hold harmless MATERIALS SUPPLIER, its officers, employees, and designated volunteers from and against any and all losses, defense costs, liability or consequential damages to the extent arising out of CITY's negligent acts, errors or omissions in the performance of this Agreement.
- C. As respects all acts or omissions which do not arise directly out of the performance of services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, MATERIALS SUPPLIER agrees to indemnify, defend (at CITY's option), and hold harmless CITY, its elected and appointed officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with MATERIALS SUPPLIER's (or MATERIALS SUPPLIER'S subcontractors, if any) performance or failure or failure to perform , under the terms of this Agreement; except to the extent those which arise out of the negligence of CITY.
- D. Without limiting CITY's right to indemnification, it is agreed that MATERIALS SUPPLIER shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follow:
 - 1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including coverage for Premises and Operations, Contractual Liability, Personnel Injury liability, Products and Completed Operations Liability, Broad Form Property Damage (if applicable), Independent Contractor's Liability (if applicable), with limits no less than **Two Million Dollars (\$2,000,000)** per occurrence. If a

general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limit of no less than **One Million Dollars (\$1,000,000)** per accident for bodily injury and property damage.
 3. **Workers' Compensation:** as required by the State of California, with statutory Limits, and Employer's Liability Insurance with limit of no less than **One Million Dollars (\$1,000,000)** per accident for bodily injury or disease.
- E. CITY's Risk Manager is hereby authorized to reduce the requirements set forth above in the event they determine that such reduction is in the CITY's best interest.
- F. Each insurance policy required by this Agreement shall contain the following clause:
"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the City Clerk, City of Tulare, 411 East Kern Avenue, Tulare, CA 93274-4257."
In addition, the commercial general liability and comprehensive automobile liability policies required by this Agreement shall contain the following clauses:
"It is agreed that any insurance maintained by the City of Tulare shall apply in excess of and not contribute with insurance provided by this policy."
"The City of Tulare, its officers, agents, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured, performed under contract with the City of Tulare."
- G. Prior to commencing any work under this Agreement, MATERIALS SUPPLIER shall deliver to CITY insurance certificates confirming the existence of the insurance required by this Agreement and including the applicable clauses referenced above. Within thirty (30) days of the execution date of this Agreement, MATERIALS SUPPLIER shall provide to CITY endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by CITY, it shall be MATERIALS SUPPLIER's responsibility to see that CITY receives documentation acceptable to CITY which sustains that the individual signing said endorsement is indeed authorized to do so by the insurance company. CITY has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.
- H. In addition to any other remedies CITY may have if MATERIALS SUPPLIER fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:
1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; or
 2. Order MATERIALS SUPPLIER TO STOP WORK UNDER THIS Agreement and/or withhold any payment(s) which become due to MATERIALS SUPPLIER hereunder until MATERIALS SUPPLIER demonstrates compliance with the requirements hereof; or
 3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for MATERIALS SUPPLIER's failure to maintain or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which MATERIALS SUPPLIER may be held responsible for payments of damages to persons or property resulting from

MATERIALS SUPPLIER's or its subcontractor's performance of the work covered under this Agreement.

XIII) NON-DISCRIMINATION

MATERIALS SUPPLIER and all subcontractors shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, or gender in the performance of this Agreement. The MATERIALS SUPPLIER shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the MATERIALS SUPPLIER to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement.

XIV) MISCELLANEOUS PROVISIONS

- A. **Asbestos and Hazardous Materials:** In providing its services hereunder, MATERIALS SUPPLIER shall not be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or hazardous material if such is present in connection with the PROJECT. In the event the CITY becomes aware of the presence of asbestos or hazardous material at the jobsite, CITY shall be responsible for complying with all applicable federal and state rules and regulations, and shall immediately notify MATERIALS SUPPLIER, who shall then be entitled to cease any of its services that may be affected by such presence, without liability to MATERIALS SUPPLIER arising therefrom.
- B. **Successors and Assigns:** This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.
- C. **Prohibition of Assignment:** Neither the CITY nor MATERIALS SUPPLIER shall assign, delegate or transfer their rights and duties in this Agreement without the written consent of the other party.
- D. **Dispute/Governing Law:** Any dispute not resolvable by informal arbitration between the parties to this Agreement shall be adjudicated in a Court of Law under the laws of the State of California.
- E. **Notices:** Notice shall be sufficient hereunder if personally served upon the City Clerk of the City or an officer or principal of the MATERIALS SUPPLIER, or if sent via United States Postal Service, postage prepaid, addressed as follows:

CITY OF TULARE
411 East Kern Ave.
Tulare, CA 93274-4257
Attention: City Clerk

MATERIALS SUPPLIER: _____

Attention: _____

- F. **Jurisdiction/Venue/Waiver of Removal:** The Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Tulare County, California. The MATERIALS SUPPLIER hereby expressly waives any right to remove any action to a county other than Tulare County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
- G. **Integration/Modification:** This Agreement and each of the exhibits referenced herein, which are incorporated by reference, represents the entire understanding of the CITY and the MATERIALS SUPPLIER as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the CITY and the MATERIALS SUPPLIER.
- H. **Conflict with Law:** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.

- I. **Attorney's Fees:** In the event either party commences any action, arbitration or legal proceedings for the enforcement of this Agreement, the prevailing party, as determined by the court or arbitrator shall be entitled to recovery of its attorney's fees and court costs incurred in the action brought thereon.
- J. **Construction:** This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654 that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.
- K. **Authority:** Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the party to which its signature represent.
- L. **Headings:** Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.
- M. **Firearms Prohibited:** Guns may not be carried by contractors/vendors/Material Suppliers while working on City of Tulare premises without the expressed written approval of a City of Tulare Department Head, or an exemption in the contract. If a contractor/vendor/Material Supplier is caught carrying a gun, without City permission, their contract will be terminated.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

MATERIALS SUPPLIER

By: _____
Authorized Signature

Title

Licensed in accordance with an act providing for the registration
of Contractors,

Number _____
Federal Employer Identification

CITY OF TULARE, A Municipal Corporation
Charter Law City of the State of California

By: _____
Joseph V. Carlini, City Manager,
City of Tulare

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

Attachments:

- Exhibit "A": Scope of Work
- Exhibit "B": Chip Seal Emulsion Oil Costs Summary
- Exhibit "C": Certificates of Insurance