Memorandum

To: DEPUTY DISTRICT DIRECTORS, Construction
CONSTRUCTION MANAGERS
SENIOR CONSTRUCTION ENGINEERS
RESIDENT ENGINEERS, Construction

Date: August 23, 2002

File: Division of Construction
Directive CPD 02-03

From: **DEPARTMENT OF TRANSPORTATION**
DIVISION OF CONSTRUCTION - MS 44

Subject: Damage Claim Standard Special Provision (SSP) Revision

Since our last approval of the Damage Claim Standard Special Provision (SSP), multiple changes have been requested due to concerns from the California Chip Seal Association (CCSA) regarding inconsistencies in the interpretation of the specification language from project to project and from district to district. The attached, revised specification clarifies the contractor's and the Department of Transportation's (Department) responsibilities and is now being used as a statewide standard to ensure consistency between projects and districts.

Provided the contractor's operations and work comply with the plans and specifications, the contractor's responsibility for payment of claims for physical damages caused by screenings or bituminous binder will be limited to no more than 10 percent of the total contract bid price. Funds in an amount not to exceed 5 percent of the total contract bid price will be deducted from the contractor's payments. This deduction will be retained by the Department for a maximum period of 60 days after the last spreading of screenings on the project to allow the Department sufficient time to settle most claims that may remain unresolved by the contractor or which have been presented to the state directly. At the end of this 60-day period, any funds remaining in the retention that are not allocated by the Department to pay unsettled claims will be returned to the contractor.

The resident engineers shall:

1. Ensure that the contractor is following the requirements of the Damage Claim SSP;
2. Monitor and ensure that the contractor is acting in good faith to resolve any claims arising from his work; and
3. If any questions arise regarding the good faith effort by the contractor or if questioned by the district claims office, be required to obtain reimbursement from the contractor through an administrative offset, before or after the preparation of the proposed final estimate.

Application of these standards meets the requirements of Section 7, "Legal Relations and Responsibility," of the Standard Specifications (under Section 7-1.12A, "Indemnification").

ROBERT PIEPLOW
Chief
Division of Construction

Attachment

5-1.__ DAMAGE CLAIMS

Attention is directed to Section 7, "Legal Relations and Responsibility," of the Standard Specifications.

Provided the Contractor's operations and work comply with the plans and specifications, the Contractor's responsibility for payment of claims for physical damages caused by screenings or bituminous binder will be limited to no more than 10 percent of the total contract bid price.

For each seal coat location within the project, only those claims for physical damages caused by screenings or bituminous binder that occurred within the period extending from the first day screenings were applied to the binder to 4 days following the last day screenings were applied to the binder, shall be considered for resolution.

Claims reported or submitted by the public directly to the Contractor within 30 days from the last spreading of screenings on the project shall be processed and resolved by the Contractor in conformance with the following:

A. Within 3 working days after receipt of a claim from the public, the Contractor shall submit to the Department a copy of the claim together with a determination of whether or not the claim will be paid. If the claim is to be rejected, the Contractor shall explain in writing the basis for rejecting the claim.
B. If the claimant becomes dissatisfied with the Contractor's handling of their claim, the Contractor shall immediately refer the dissatisfied claimant to the local District Claims Office for assistance in resolving the claim.
C. Within 30 days from the last spreading of screenings on the project, the Contractor shall submit evidence to the Department of those claims paid by the Contractor.

Claims presented by the public directly to the Department or State Board of Control, as set forth in Government Code Section 900, et seq., will be processed and resolved by the Department in conformance with the following:

A. These claims will be processed as formal government claims against the State, subject to all applicable statutes, regulations, and departmental policies. The Department reserves the right to adjust and settle any formal government claim directly with the claimant, or it may refer the claim to the Contractor for investigation and disposition.
B. If the Department or State Board of Control approves settlement of a formal government claim or the Department is ordered to pay the claim pursuant to a court order, the claim will be paid by the Department from the funds retained.
C. Within 3 working days of determination by the local District Claims Office that the Contractor is responsible for resolving the formal government claim, the local District Claims Office will either send a copy of the claim to the Contractor for handling and disposition, or notify the Contractor of the Department's decision to settle and pay the claim directly with the claimant.

Funds in an amount not to exceed 5 percent of the total contract bid price will be retained from the Contractor's payments. This retention by the Department will be for a maximum period of 60 days after the last spreading of screenings on the project to allow the Department sufficient time to settle claims that remain unresolved by the Contractor. At the end of this 60 day period, funds remaining in the retention, that are not allocated by the Department to pay unsettled claims, will be returned to the Contractor. This 5 percent retention shall be in addition to any

retention provided for in Section 7-1.12A, "Indemnification," of the Standard Specifications, or any other deduction or retention specified elsewhere in the specifications.

If no retained funds remain, or if the retention has been returned to the Contractor, the Department may elect to pay a formal government claim from public funds. If the Department determines the Contractor is responsible for the claim, the Department will then seek reimbursement from the Contractor for any public funds used to pay the claim, subject to the 10 percent limitation. The Department may use any legal remedy available to obtain reimbursement from the Contractor including administration of an offset as provided for in Section 12419.5 of the Government Code.

Except for the limitation of responsibility for damage claims specified above, nothing in this section shall be construed as decreasing the Contractor's obligation to defend and indemnify the State from all claims in conformance with the provisions of Section 7, "Legal Relations and Responsibility," of the Standard Specifications.