

CONTRACT

31063

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3 THIS CONTRACT is made and entered, in duplicate, as of December 3,
4 2008 for reference purposes only, pursuant to a minute order adopted by the City Council
5 of the City of Long Beach at its meeting held on October 14, 2008, by and between
6 SULLY-MILLER CONTRACTING COMPANY, a Delaware corporation ("Contractor"),
7 whose address is 1100 E. Orangethorpe, Suite 200, Anaheim, California 92801, and the
8 CITY OF LONG BEACH, a municipal corporation ("City").

9 WHEREAS, an invitation to bid to furnish and deliver asphalt concrete to
10 repair potholes, streets and miscellaneous construction projects throughout the City was
11 advertised on July 14, 2008 and July 25, 2008; and

12 WHEREAS, 121 potential bidders were notified of the bid opportunity; and

13 WHEREAS, the bid document was made available from the Purchasing
14 Division and a bid announcement was also included in the Purchasing Division's weekly
15 update of Open Bid Opportunities; and

16 WHEREAS, the Purchasing division did not receive any bids and therefore
17 entered negotiations directly with Contractor; and

18 WHEREAS, the City Council authorized the City Manager to enter a
19 contract with Contractor for the materials listed on Exhibit "A";

20 NOW, THEREFORE, in consideration of the mutual terms and conditions
21 herein contained, the parties agree as follows:

22 1. Contractor shall sell, furnish and deliver to City materials listed on
23 Exhibit "A", the notice inviting bids, and Contractor's Bid, all of which are on file in the
24 office of the City Engineer.

25 2. The notice inviting bids and Contractor's Bid are incorporated by this
26 reference. The documents together with this Contract constitute the entire contract
27 between the parties.

28 3. City shall pay to Contractor for the materials the prices set forth on

1 Exhibit "A" attached to this Contract and incorporated by this reference.

2 The foregoing prices do not include federal excise tax from which
3 municipalities are exempt, and none shall be charged to the City. California sales or use
4 taxes, or any municipal or county sales taxes shall be added where applicable.

5 The prices in Exhibit "A" shall be firm and no price adjustment shall be
6 made.

7 4. Payment shall be made in due course of payments of the City after
8 delivery of the materials and receipt of an invoice from Contractor.

9 5. Any notice shall be in writing and personally delivered or deposited in
10 the U.S. Postal Service, first class, postage prepaid, to Contractor at the address first
11 stated above, and to the City at 333 West Ocean Boulevard, Long Beach, California
12 90802 Attn: City Manager. Notice shall be deemed given on the date deposited in the
13 mail or on the date personal delivery is made, whichever occurs first.

14 6. Neither this Contract nor any of the moneys which may become due
15 to Contractor under it may be assigned by Contractor without the prior written consent of
16 the City.

17 7. The acceptance of materials by the City or the payment of any
18 money by the City shall not operate as a waiver of any provision of this Contract, or of
19 any power of the City, or of any right to damages. The waiver of any breach or default
20 shall not be held to be a waiver of any other or subsequent breach or default.

21 8. This Contract shall commence on October 22, 2008 and shall
22 terminate at midnight on October 21, 2009.

23 9. This Contract may be extended by mutual agreement for one (1)
24 additional one (1) year period. If the City intends to extend the Contract for the additional
25 one (1) year term, the City shall so notify the Contractor ninety (90) days prior to the
26 expiration date. Contractor shall submit any proposed price adjustment to the City
27 Purchasing Agent for approval at least sixty (60) days prior to the expiration of the
28 Contract. The City reserves the right to accept or reject any price increase and to cancel

1 the extension notice if price increases are not acceptable. Any notice of price adjustment
2 shall show item number, price, contract number and purchase order number.

3 IN WITNESS WHEREOF, the parties have caused this document to be duly
4 executed with all formalities required by law as of the date first written above.

5 SULLY-MILLER CONTRACTING
6 COMPANY, a Delaware corporation

7 _____, 200_

By [Signature]

8 Scott Bottomley General Manager-Asst. Secretary
9 Type or Print Name

10 _____, 200_

By [Signature]

11 Gary Downey-Assistant Secretary
12 Type or Print Name

13 "Contractor"

14 CITY OF LONG BEACH, a municipal
15 corporation Assistant City Manager

16 March 18, 2009

By [Signature]

17 City Manager **APPROVED PURSUANT
18 TO SECTION 301 OF
19 THE CITY CHARTER.**

20 "City"

21 This Contract is approved as to form on 3-3, 2009.

22 ROBERT E. SHANNON, City Attorney

23 By [Signature]
24 Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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EXHIBIT “A”



CITY OF LONG BEACH

DEPARTMENT OF FINANCIAL MANAGEMENT

333 W. OCEAN BLVD., LONG BEACH, CA 90802

562-570-6200

FAX 562-570-5099

PURCHASING DIVISION

The City of Long Beach is seeking pricing for the purchase of asphalt concrete for the Department of Public Works on an "as needed" basis.

PRICING AND DELIVERY

The materials included in this Invitation to Bid will be picked up at the successful bidder's plant and discharged into City-owned trucks within 30 minutes of arrival at facility.

Prices bid shall be at "picked up" prices.

PLANT LOCATION

Convenience of the plant location is an important factor to the City and will be considered in addition to price when determining lowest, responsive bidder(s).

BID AWARD

The City may award a contract to one or more bidders, as the City determines in its sole discretion to be in the City's best interests.

NO OBLIGATION TO BUY

The City's purchase of items hereunder is based on actual needs and requirements. The City is obligated under this contract to purchase and pay for only those items that the City needs and requires, and that the City actually orders and receives.

PRODUCTION AND DOWNTIME

Please describe production schedule and availability of materials listed above, including equipment downtime:

INGLEWOOD PLANT 7:00 A.M. TO 3:00 P.M. MONDAY - FRIDAY
SOUTH GATE PLANT 7:00 A.M. TO 3:00 P.M. MONDAY - FRIDAY
"CLOSED DURING INCLEMENT WEATHER"

Will plant stay open for City pickup when we give 4 hours advance notice? Yes No

OVERTIME PLANT PREMIUMS WILL APPLY.

WARRANTY

Warranty Policies and Procedures:

ONE YEAR FROM DATE OF PURCHASE.

PRICES VALID FROM 9-11-08 TO 6-30-09

This contract is subject to extension for up to two (2) years from the date of expiration of this contract, at the option of the City, in accordance with the option granted in your bid.

PRICING

Item No.	Item Code	Item	Unit of measure	Price
1	43	Type B or equivalent	TON	\$ 79.00
2	44	Type C-1 or equivalent	TON	\$ 79.00
3	45	Type C-2 or equivalent	TON	\$ 79.00
4	46	Type D-1 or equivalent	TON	\$ 80.00
5	47	Type D-2 or equivalent	TON	\$ 80.00
6	48	Type E or equivalent	TON	\$ 82.00
7	49	Type F or equivalent	TON	\$ 85.00
8	9	SC800 Asphalt Concrete or equivalent	TON	\$ 490.00

Please list available facilities for discharge of product.

1. Facility location address: INGLEWOOD PLANT - 441 MILLWOOD PLACE 90352

Please state if "Item Codes" are available at this facility. State YES or NO

43 YES 44 YES 45 YES 46 YES 47 YES 48 YES 49 YES 9 YES EW ?

2. Facility location address: SOUTHGATE PLANT - 5625 SOUTHWAY AVE 90280

Please state if "Item Codes" are available at this facility. State YES or NO

43 YES 44 YES 45 YES 46 YES 47 YES 48 NO 49 NO 9 NO EW ?

VENDOR INFORMATION

Name: BLUE DIAMOND MATERIALS Phone #: (714) 578-9634

A Division of SULLY-MILNER CONTRACTING Co.
Address:

1100 E. ORANGE THORPE AVE. SUITE 200-250 ANAHEIM, CA 92801

Person authorized to submit pricing:

Name: RICH STAON Signature: [Signature] Date: 9-10-08

ANY QUESTIONS PLEASE CONTACT MICHELLE KING, PURCHASING DIVISION
562-570-6020 OR VIA EMAIL AT MICHELLE_KING@LONGBEACH.GOV