

Council Meeting of  
September 9, 2008

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

**Members of the Council:**

**SUBJECT: Public Works – Award of Public Works Agreement for the Torrance Boulevard Rehabilitation, T-43/44. Expenditure: \$6,167,980.35**

**RECOMMENDATION**

Recommendation of the Public Works Director that City Council:

1. Approve a budget transfer in the amount of \$416,725 of Surface Transportation Program-Local (“STP-L”) federal funds from the Hawthorne Boulevard Rehabilitation (PCH to south City limit), T-45 to the Torrance Boulevard Rehabilitation, T-43/44; and
2. Approve a budget transfer in the amount of \$2,871,000 of Gas Tax funds from the Residential Street Rehabilitation, I-94 to the Torrance Boulevard Rehabilitation, T-43/44; and
3. Approve a budget transfer in the amount of \$90,000 of Gas Tax funds from the Rolling Hills Road Traffic Signals & Rolling Hills Way Median/Striping Improvements, S-34 to the Torrance Boulevard Rehabilitation, T-43/44; and
4. Approve the plans and specifications for the Torrance Boulevard Rehabilitation, T-43/44 (B2008-33); and
5. Award a two-year Public Works Agreement to Sully Miller Contracting Co. in the amount of \$5,874,267 and authorize a 5% contingency in the amount of \$293,713.35 for the Torrance Boulevard Rehabilitation, T-43/44.

Funding

Funding for the Public Works Agreement and 5% contingency is available from the recommended budget transfers and from CIP project T-43/44.

**BACKGROUND AND ANALYSIS**

The Torrance Boulevard Rehabilitation is included in the adopted capital budget as project T-43/44 (“T-43/44 Project”). The limits are from Sartori Avenue to the west city limit (Attachment A). Improvements include pavement reconstruction and overlay and the

replacement of displaced concrete curb, gutter and sidewalk. Construction of this 3.5 mile roadway segment will be ongoing for approximately 14 months.

### **Budget Transfers**

The T-43/44 project was first included in the adopted capital budget in 2005. At that time, the construction cost was estimated on current market pricing and recent construction bids. Subsequently, construction costs and materials have significantly increased, including higher fuel, operating and transportation costs, as well as increased prices for asphalt and other construction materials. For many construction-related items and materials, the price increases range from 150% to 200%. Additionally, the roadway has further deteriorated and it now requires more extensive repairs. As anticipated, the cost to construct and manage the T-43/44 project has increased from an estimated \$3.3 million to approximately \$6.6 million, an increase of 185%. Therefore, additional funds are needed for the construction phase. Staff has identified three funding sources to cover the budget deficit.

#### **Funding Source #1: Surface Transportation Program-Local**

A portion of the T-43/44 project is funded by Surface Transportation Program-Local ("STP-L") federal funds in the amount of \$1,296,000 from METRO. Additional STP-L funds in the amount of \$416,725 are currently available from METRO; however, those STP-L funds were previously appropriated to the Hawthorne Boulevard Rehabilitation (PCH to south City limit), T-45 ("T-45 Project"). The \$416,725 of STP-L funds can still be used on either project and because staff anticipated a budget deficit for the T-43/44 project, we deferred the start of the T-45 project. As such, the \$416,725 of STP-L funds previously appropriated to the T-45 project is currently available and it is recommended that the funds be transferred to the T-43/44 project. The recommended budget transfer of STP-L funds will increase the total STP-L federal funding appropriation for the T-43/44 project from \$1,296,000 to \$1,712,725. It is further recommended that the T-45 project continue to be deferred until its funding can be replenished. The City will receive future allocations of STP-L funds on a yearly basis (approximately \$435,000 annually) and can appropriate those funds to the T-45 Project. Also, as part of the upcoming consideration of the proposed FY2009-13 Capital budget, other funding may become available based on the prioritization of all Capital projects.

#### **Funding Source #2: Gas Tax funds from the Residential Street Rehabilitation, I-94**

The Residential Street Rehabilitation, I-94 ("I-94 Program") has been deferred since July 2006. FY2006-07 and FY2007-08 programs were deferred because it was anticipated that its previously appropriated Gas Tax funds would be needed for higher priority Capital projects. Now the FY2008-09 I-94 Program that is funded by \$900,000 of Gas Tax funds and \$600,000 of Prop 42 funds is currently deferred because the State has not yet adopted a budget and it has not paid the City its FY2008-09 Gas Tax or Prop 42 funds. Therefore, the I-94 Program has a remaining balance of Gas Tax funds that can be used for other priorities or to subsidize other Capital projects.

Two such projects that have been subsidized by the I-94 Program are the Residential Slurry Seal Program, I-6 (\$250,000 subsidy) and the Sidewalk Ramping and

Grinding Program, I-55 (\$450,000 subsidy). Those two projects also have not yet received their FY2008-09 Gas Tax funds from the State and are considered a priority. Once funds are received from the State, they will be used for the I-94 Program. Accordingly, the I-94 Program now has a remaining Gas Tax fund balance of approximately \$2,871,000. The \$2,871,000 is now needed for the T-43/44 Project. Therefore, it is recommended that Gas Tax funds in the amount of \$2,871,000 be transferred from the I-94 Program to the T-43/44 Project.

It should be noted that although the I-94 Program will continue to be deferred, that repairs on residential streets will continue by way of the Residential Curb, Gutter and Sidewalk Program, I-93 and the Residential Slurry Seal Program, I-6. Also, Public Works maintenance crews continue to perform minor repairs on residential streets throughout the city as needed.

**Funding Source #3: Gas Tax funds from the Rolling Hills Road Traffic Signals & Rolling Hills Way Median/Striping Improvements, S-34**

The Rolling Hills Road Traffic Signals & Rolling Hills Way Median/Striping Improvements, S-34 ("S-34 Program") has a construction budget of \$810,000. Construction bids were opened on July 24, 2008 and the lowest 5 bids are all less than \$615,000. Considering a 5% contingency, construction management and inspection, staff estimates the total remaining project cost to be \$700,000. Accordingly, \$110,000 is available and a portion can be transferred to the T-43/44 Project. Therefore, the Public Works Director recommends the budget transfer of \$90,000 from the S-34 Program to the T-43/44 Project.

To summarize, the T-43/44 project will be funded by its remaining balances of previously appropriated funding, the budget transfer of \$415,006 of STP-L funds from the T-45 Program, the budget transfer of \$2,871,000 of Gas Tax funds from the I-94 Program and the budget transfer of \$90,000 of Gas Tax funds from the Rolling Hills Road Traffic Signals & Rolling Hills Way Median/Striping Improvements, S-34.

### **Award of Public Works Agreement**

The T-43/44 Project was advertised for bid in July 2008 as B2008-33. Five bids were received and opened on August 13, 2008 with the following results:

<b><u>BIDDER</u></b>	<b><u>TOTAL BID</u></b>
1. Sully-Miller Contracting Co.	\$5,874,267.00
2. All American Asphalt	\$5,888,888.00
3. Sequel Contractors, Inc.	\$5,987,470.00
4. Excel Paving Co.	\$6,058,937.50
5. Shawnan	\$6,262,680.00

The Engineer's estimate in 2008 for the Bid was between \$5,500,000 and \$6,000,000. Sully-Miller Contracting Co. was the apparent lowest, responsible bidder.

Sully-Miller Contracting Co. has successfully completed projects of similar type. The firm's references and contractor's license have been checked and found to be in order. Therefore, the Public Works Director recommends that Council award the Public Works Agreement (Attachment B) to Sully-Miller Contracting Co.

It is anticipated that construction will commence in October 2008 and be completed by December 2009. It should be noted that construction of the first segment will begin at Sartori Avenue and progress westerly towards Madrona Avenue. Construction of this segment will be ongoing through the holiday season and completed by April 2009 so as not to impact the 2009 Armed Forces Day Parade.

Respectfully submitted,

ROBERT J. BESTE  
Public Works Director



By Elizabeth Overstreet  
Engineering Manager

CONCUR:



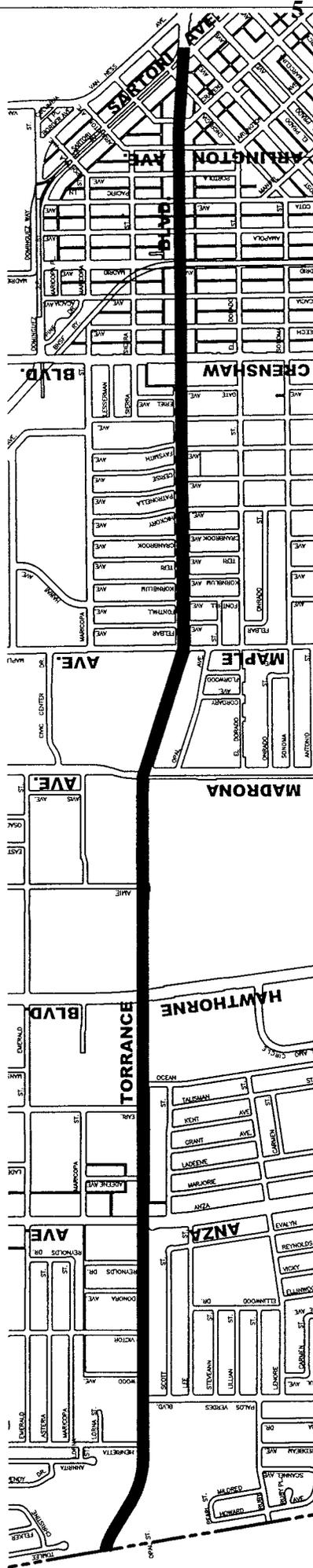
Robert J. Beste  
Public Works Director



LeRoy J. Jackson  
City Manager

Attachments: A. Project Location Map  
B. Public Works Agreement-Sully-Miller Contracting Co.

# TORRANCE BLVD REHABILITATION, T-43/44



**SEGMENT 2**

**MAY 2009 - OCT 2009**

**SEGMENT 3**

**NOV 2009**

**SEGMENT 1**

**OCT 2008 - APRIL 2009**

## LEGEND

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NOT SCALE

PUBLIC WORKS DEPARTMENT  
 ROBERT J. BESTE  
 PUBLIC WORKS DIRECTOR



## PUBLIC WORKS AGREEMENT

This PUBLIC WORKS AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2008 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Sully-Miller Contracting Co. ("CONTRACTOR").

### RECITALS:

- A. The CITY wishes to retain the services of an experienced and qualified CONTRACTOR to construct the **Torrance Boulevard Rehabilitation, T-43/44**;
- B. In order to obtain the desired services, The CITY has circulated a Notice Inviting Bids for the construction of **Torrance Boulevard Rehabilitation, T-43/44**, Notice Inviting Bids No. B2008-33 (the "NIB"); and
- C. CONTRACTOR has submitted a Bid (the "Bid") in response to the NIB. CONTRACTOR represents that it is qualified to perform those services requested in the Plans and Specifications. Based upon its review of all Bids submitted in response to the NIB, The CITY is willing to award the contract to CONTRACTOR.

### AGREEMENT:

#### 1. SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR will provide the services and install those materials listed in the Plans and Specifications, which are on file in the Public Works Department. The NIB and the Plans and Specifications are made a part of this Agreement. A copy of the Bid is attached as Exhibit A.

#### 2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect for two years from the Effective Date.

#### 3. COMPENSATION

##### A. CONTRACTOR's Fee.

For services rendered pursuant to this Agreement, CONTRACTOR will be paid in accordance with CONTRACTOR's Bid; provided, however, that in no event will the total amount of money paid the CONTRACTOR, for services initially contemplated by this Agreement, exceed the sum of \$5,874,267 ("Agreement Sum"), unless otherwise first approved in writing by the CITY.

B. Schedule of Payment.

Provided that the CONTRACTOR is not in default under the terms of this Agreement, upon presentation of an invoice, CONTRACTOR will be paid monthly, within 30 days after the date of the monthly invoice.

4. **TERMINATION OF AGREEMENT**

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.
2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONTRACTOR will:
  - a) cease operations as directed by CITY in the notice;
  - b) take actions necessary, or that CITY may direct, for the protection preservation of the work; and
  - c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
3. In case of such termination for CITY's convenience, CONTRACTOR will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.
2. In the event this Agreement is terminated for cause by the default of the CONTRACTOR, the CITY may, at the expense of the CONTRACTOR and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONTRACTOR under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONTRACTOR and its surety from liability for the default. Under these circumstances, however, the CONTRACTOR and its surety will be credited with the amount of money

retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONTRACTOR or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONTRACTOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONTRACTOR's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONTRACTOR has been given notice and an opportunity to present evidence in mitigation.

5. **FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

**6. RETENTION OF FUNDS**

CONTRACTOR authorizes the CITY to deduct from any amount payable to CONTRACTOR (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate the CITY for any losses, costs, liabilities, or damages suffered by the CITY, and all amounts for which the CITY may be liable to third parties, by reason of CONTRACTOR's negligent acts or omissions or willful misconduct in performing or failing to perform CONTRACTOR's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONTRACTOR, or any indebtedness exists that appears to be the basis for a claim of lien, the CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of the CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONTRACTOR to insure, indemnify, and protect the CITY as elsewhere provided in this Agreement.

**7. THE CITY'S REPRESENTATIVE**

The Public Works Director is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by the CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONTRACTOR.

**8. CONTRACTOR REPRESENTATIVE(S)**

The following principal(s) of CONTRACTOR are designated as being the principal(s) and representative(s) of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Dave Martinez, President  
Mike Edwards, Vice President  
Gary Downey, Secretary

**9. INDEPENDENT CONTRACTOR**

The CONTRACTOR is, and at all times will remain as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents will have control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees, except as otherwise set forth in this Agreement. The CONTRACTOR may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the CITY.

**10. BUSINESS LICENSE**

The CONTRACTOR must obtain a City business license prior to the start of work under this Agreement, unless CONTRACTOR is qualified for an exemption.

**11. OTHER LICENSES AND PERMITS**

CONTRACTOR warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

**12. FAMILIARITY WITH WORK**

By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONTRACTOR discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONTRACTOR must immediately inform the CITY of that fact and may not proceed except at CONTRACTOR's risk until written instructions are received from the CITY.

**13. CARE OF WORK**

CONTRACTOR must adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the CITY, except those losses or damages as may be caused by the CITY's own negligence.

**14. CONTRACTOR'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS**

Records of the CONTRACTOR's time pertaining to the project, and records of accounts between the CITY and the CONTRACTOR, will be kept on a generally recognized accounting basis. CONTRACTOR will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to the CITY during normal working hours. CONTRACTOR will maintain these records for three years after final payment.

**15. INDEMNIFICATION**

CONTRACTOR will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONTRACTOR, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONTRACTOR's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONTRACTOR and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONTRACTOR will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONTRACTOR will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

**16. NON-LIABILITY OF THE CITY'S OFFICERS AND EMPLOYEES**

No officer or employee of the CITY will be personally liable to CONTRACTOR, in the event of any default or breach by the CITY or for any amount that may become due to CONTRACTOR.

**17. INSURANCE**

- A. CONTRACTOR must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:
1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
    - a. Combined single limits of \$2,000,000 per occurrence.
  2. General Liability including coverage for premises, products and completed operations, independent contractors, personal injury and contractual obligations with combined single limits of coverage of at least \$3,000,000 per occurrence, with an annual aggregate of no less than \$5,000,000.

3. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.
- B. The insurance provided by CONTRACTOR will be primary and non-contributory.
  - C. The CITY of Torrance, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insureds under the automobile and general liability policies.
  - D. CONTRACTOR must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.
  - E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to the CITY.
  - F. CONTRACTOR must include all subcontractors as insureds under its policies or must furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the requirements of this Paragraph 17.

**18. SUFFICIENCY OF INSURERS**

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of the CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the CITY, the CONTRACTOR agrees that the minimum limits of any insurance policies and/or the performance bond required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONTRACTOR will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of the CITY within 10 days of receipt of notice from the Risk Manager.

**19. CONFLICT OF INTEREST**

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.
- B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

**20. NOTICE**

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
  - 1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
  - 2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
  - 3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
  - 4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
  - 5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONTRACTOR: Sully-Miller Contracting Co.  
1100 E. Orangethorpe Avenue  
Suite 200  
Anaheim, CA 92801  
Fax: (714) 578-9672

CITY: City Clerk  
City of Torrance  
3031 Torrance Boulevard  
Torrance, CA 90509-2970  
Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

**21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either the CITY or CONTRACTOR without the prior written consent of the other.

**22. INTEGRATION; AMENDMENT**

This Agreement represents the entire understanding of the CITY and CONTRACTOR as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

**23. INTERPRETATION**

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

**24. SEVERABILITY**

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

**25. TIME OF ESSENCE**

Time is of the essence in the performance of this Agreement.

**26. GOVERNING LAW; JURISDICTION**

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

**27. COMPLIANCE WITH STATUTES AND REGULATIONS**

CONTRACTOR will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

**28. WAIVER OF BREACH**

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

**29. ATTORNEY'S FEES**

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

**30. EXHIBITS**

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

**31. CONTRACTOR'S AUTHORITY TO EXECUTE**

The persons executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.

CITY OF TORRANCE,  
a Municipal Corporation

Sully-Miller Contracting Co.  
a Delaware Corporation

\_\_\_\_\_  
Frank Scotto, Mayor

By: \_\_\_\_\_  
Dave Martinez  
President

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

Attachments: Exhibit A: Bid *(... - E) Disbursement*