

Office Use Only

MASTER CONTRACT NUMBER:

c2024-0036

## PURCHASE OF COMMODITIES CONTRACT

**THIS AGREEMENT** made and entered into this date \_\_\_\_\_, by and between the City of Branson, Missouri (the "City") and **Table Rock Asphalt Construction Company, Inc.** ("Seller").

WHEREAS, the City of Branson desires to purchase and the Seller agrees to sell to the City certain commodities more particularly described in **Exhibit A** (Scope of Work); and

WHEREAS, the Seller made certain representations and statements to the City with respect to the provision of such commodities and the City has accepted the Seller's proposal;

The City and the Seller agree as follows:

**1. Item(s) and dates of Purchase.** The City agrees to purchase and the Seller agrees to sell the following item(s): **base rock and hot-mix asphalt, from a date beginning on January 1, 2024 to a date ending December 31, 2024.**

**2. Quantities to be Purchased and Purchase Price.**

- a. The City agrees to purchase and the Seller agrees to sell the following quantities/amounts for the purchase price(s) listed: **See Exhibit B.**
- b. The City assumes no obligations for articles or materials shipped in excess in the quantity ordered. Any unauthorized quantity is subject to the City's rejection and may be returned at the Seller's expense.
- c. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Seller under the terms of this contract exceed the sum of **One Hundred Fifty-Six Thousand Four Hundred Forty-Five Dollars And Zero Cents (\$156,445.00), all of which is dependent upon budget appropriations.**

**3. Delivery and Shipment.**

- a. The Seller is responsible for the costs of shipment.
- b. Time is of the essence with respect to each shipment.
- c. If deliveries are not made **upon demand**, the City reserves the right to cancel this contract, purchase the commodities elsewhere, and hold the Seller liable for any re-procurement costs.
- d. Deliveries are to be made to: **601 Compton Drive, Branson, Missouri 65616.**

Table Rock Asphalt Construction Company, Inc.

Page 1 of 9

**4. Invoices.** An original and three copies of the invoice shall be submitted by the Seller to the City, showing the purchase order number or contract number and containing a full description of the commodities furnished.

**5. Inspection and Acceptance.**

- a. No goods received by the City pursuant to this contract shall be deemed accepted until the City has had reasonable opportunity to inspect said goods.
- b. All goods discovered to be defective (at any time) or which do not conform to any bid specifications or to any warranty of the Seller may be returned at the Seller's expense for full refund or replacement.
- c. The City's right to return defective and/or non-conforming goods does not bar any other legal, equitable or contractual remedies the City may have against the Seller.

**6. Warranty.**

- a. Seller expressly warrants that all articles, materials and work covered by this contract conform to each and every specification, drawing, sample or other description which is furnished to or is adopted by the City and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect.
- b. Such warranty shall not be deemed waived either by reason of the City's acceptance of said material or goods or by payment for them.
- c. Any implied warranties are not altered by this written contract.
- d. Additional terms: N/A.

**7. Patents.** Seller guarantees that the sale or use of the articles described herein will not infringe upon any U.S. or foreign patent and Seller covenants that he will, at his own expense, defend every suit which may be brought against the City, or those selling or using City's product for any alleged infringement of any patent by reason of the sale or use of such articles and Seller agrees that he will pay all costs, damages and profits recoverable in any such suit.

**8. Bankruptcy or Insolvency.** In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Seller, or in the event of breach of any of the terms hereof including in the warranties of the Seller, City may cancel this contract or affirm the contract and hold Seller responsible in damages.

**9. Compliance with Applicable Laws.** The Seller warrants it has complied with all Applicable laws, rules and ordinances of the United States, or any state, municipality or any other governmental authority or agency in the manufacture or sale of the items covered by this contract, including but not limited to all provisions of the Fair Labor Standard Act of 1938, as amended.

- 10. Conflicts.** Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Seller covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Seller further covenants that in the performance of this contract no person having such interest shall be employed.
- 11. Interpretation of Contract and Assignments.** The contract shall be construed according to the laws of the State of Missouri. Seller hereunder may not assign the contract, or any rights, obligations or duties without City's written consent or any attempted assignment without such consent shall be void.
- 12. Termination of Contract.** The City reserves the right to terminate the contract at any time for the City's convenience (without cause) or for cause if any of the provisions of the contract are violated by the Seller, in the sole judgment and discretion of the City. In the event of such termination for cause, the Seller shall be liable for any excess costs incurred by the City. If the contract is terminated, the City may purchase upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to the good identified in this contract; the Seller will be liable for any excess costs occasioned thereby (except that Seller will not be liable for such excess costs occasioned thereby in instances where this agreement is terminated by the City without cause or for City's convenience).
- 13. Non-discrimination in Employment.** In connection with the furnishing of supplies or performances or work under this contract, the Seller agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable federal and state laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder. The Seller agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Seller or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- 14. Provisions by Law Deemed Inserted.** Each and every provision of the law and clauses required by law to be inserted in this contract will be deemed to be inserted herein and will be read and enforced as though it were included herein, and if through mistake, or otherwise any such provision is not inserted, then upon the application of either party the contract will be physically amended to make such insertion or correction.
- 15. Tax-Exempt.** The City of Branson is exempt from Sales Tax and Federal Excise Tax.
- 16. Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.
- 17. Missouri Immigration Law Affidavit.** After January 1, 2009, the service provider takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political

Table Rock Asphalt Construction Company, Inc.

subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The service provider will provide with their bid specifications and bonding information a statement that the company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

☐ \_\_\_\_ If this box is checked, then the requirement for an Immigration Law Affidavit does not apply because the dollar value of the contract is less than the \$5,000 minimum.


**18. Anti-Discrimination Against Israel.** Contractor agrees to provide a certification if requested by the City of Branson, in accordance with Sec. 34.600, RSMo that they have not engaged in a boycott of: Goods or services from the State of Israel; Companies doing business in, or with, Israel; Companies authorized by, licensed by, or organized under, the laws of the State of Israel; or Persons or entities doing business in the State of Israel.

**19. Severability.** If any term or provision of this agreement is held invalid or unenforceable, the remainder of this agreement will be considered valid and enforceable to the fullest extent permitted by law.

**20. Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

**IN WITNESS WHEREOF,** the parties hereto have set their hands and seals on the day and year herein stated.

**SELLER:**

By:  372F95C98017406...  
(Signature) 11/17/2023  
Date

**CITY OF BRANSON, MISSOURI**

\_\_\_\_\_  
Larry D. Milton  
Mayor Date

**ATTEST:**

\_\_\_\_\_  
Hillary Briand  
City Clerk Date

**APPROVED AS TO FORM:**

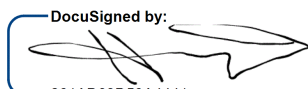
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City Attorney 11/16/2023  
Date

Table Rock Asphalt Construction Company, Inc.  
Page 4 of 9

## Exhibit A

Table Rock Asphalt Construction Co, Inc.  
 310 N Commercial  
 Branson MO 65616

### SCOPE OF WORK

1. Purpose: The seller, Table Rock Asphalt Construction Co, Inc. shall provide base rock and hot-mix asphalt for various construction projects
2. General Requirements:
  - 2.1 All products must be of acceptable quality. If, at any time, contractor fails to meet or correct problems involving the quality of the product, the City retains the right to cancel the contract.
  - 2.2 Pricing must be a delivered price to the City job site located in Branson, MO.
  - 2.3 Hot-Mix asphalt pickup location must be less than fifteen (15) miles from Branson City center so that the mixture remains in workable condition upon arrival. Delivered hot-mix asphalt materials may be outside a fifteen (15) mile radius so long as the temperature of the hot-mix asphalt remains in workable condition upon delivery.
  - 2.4 The items on this bid will be awarded line by line or as all or none, whichever is deemed to be in the best interest of the City.

Product	Estimated Usage
1" Base Rock	5,100 ton
1" Clean Rock	1,500 ton
1" Pug Base (must be run through a pug mill)	75 ton
0-6 Rock	300 ton
3/8" Chips (clean*)	250 ton
2" Rock (clean*)	700 ton
Rock Ditch Liner (Rip-Rap)	100 ton
2-6" Rock (clean*)	100 ton

1" Black Base	100 ton
Hot mix Asphalt	500 ton
Cold Mix Asphalt	40 ton

\* Clean rock shall not have dirt, mist colored rock, or mud.

## Material Specifications

### AGGREGATE:

#### 1" Base Rock – MoDOT Type 1

Sieve Size	Percentage Passing by Weight
Passing 1-inch	100
Passing 1/2-inch	60-90
Passing No. 4	35-60
Passing No. 30	10-35

#### 1" Clean Rock – MoDOT Grade B

Gradation B Sieve Size	Percentage Passing by Weight
1-inch	100
3/4-inch	90-100
3/8-inch	20-55
No. 4	0-10
No. 8	0-5

#### 1" Pug Base – MoDOT Type 1 base rock run through a pug mill.

(Base 1 material shall have a standard dry density ran and base material mixed to optimum moisture content)

#### 3/8" Chips (clean) – MoDOT Grade C

Sieve Size	Percentage Passing by Weight
Passing 1/2	100
Passing 3/8	95-100
Passing No. 4	0-35
Passing No. 200	0-2

#### 2" Rock (clean) – MoDOT Grade A

Sieve Size	Percentage Passing by Weight
2-inch	100
1 1/2-inch	90-100
1-inch	50-65
1/2-inch	25-35

No. 4	0-10
No. 8	0-5

#### 0-6" Rock

Sieve Size	Percentage Passing by Weight
6-inch	100
Passing No. 40	0-60
Passing No. 10	1-10

#### Rock Ditch Liner (Rip-Rap) – MoDOT Type 3

(Type 3 Rock Ditch liner shall consist of material with predominant rock size 19", a maximum rock size of 20" and a gradation such that no more than 15 percent will be less than 4" in diameter)

#### 2-6" Rock (clean)

### ASPHALTIC CONCRETE PAVEMENT

#### 1" Black base – MoDOT Bituminous Black Base

Sieve Size	Percentage Passing by Weight
1-inch	100
3/4-inch	85-100
1/2-inch	60-90
3/8-inch	-----
No. 4	35-65
No. 8	25-50
No. 16	-----
No. 30	10-35
No. 200	4-12

#### Hot Mix Asphalt – BP-1 MoDOT Bituminous Pavement

Sieve Size	Percentage Passing by Weight
1-inch	100
3/4-inch	100
1/2-inch	85-100
3/8-inch	-----
No. 4	50-70
No. 8	30-55
No. 16	-----
No. 30	10-30
No. 200	5-12

#### Cold Mix Asphalt

All material shall conform to the latest version of the Missouri Standard

Specification for Highway Construction.

The maximum load limits must not exceed the legal maximum gross weight allowed by MoDot Bridge weight limits.

3. The City reserves the right to reject all bids. It is the intent and purpose of the City that this Request for Bid provide fair and equal opportunity for each bidder to submit competitive bids. It is the bidder's responsibility to furnish as many details as possible for consideration if offering a substitute product.



Exhibit B

**PRICING PAGE**

	Product	Estimated Quantity	Price per ton picked up	Price per ton delivered
001.	1" Base rock	5,100 ton	\$ 6.95	\$ 11.65
002.	1" Clean rock	1,500 ton	\$ 11.95	\$ 16.62
003.	1" Pug Base	75 ton	\$ 7.75	\$ 12.45
004.	0-6" Rock	300 ton	\$ 6.95	\$ 11.65
005.	3/8" Chips (clean)	250 ton	\$ 16.95	\$ 21.65
006.	2" Rock (clean)	700 ton	\$ 8.95	\$ 13.65
007.	Rock Ditch Liner (Rip Rap)	100 ton	\$ 23.00	\$ 27.90
008.	2-6" Rock (clean)	100 ton	\$ 8.95	\$ 13.65
009.	1" Black base	100 ton	\$ 69.00	\$ 74.00
010.	Hot mix asphalt	500 ton	\$ 71.00	\$ 76.00
011.	Cold Mix Asphalt	40 ton	\$ 78.00	\$ 83.00