DRAFT

CONTRACT BETWEEN CITY OF SUNNYVALE AND SHELTON ROOFING CO., INC. FOR COMPLETION OF THE PROJECT ENTITLED LAKEWOOD PARK/MURPHY PARK ROOF REPLACEMENT

THIS CONTRACT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California ("CITY"), and Shelton Roofing Co., Inc., a California corporation ("CONTRACTOR").

RECITALS:

The parties to this Contract have mutually covenanted and agreed, as follows:

1. Contract Documents. The complete Contract consists of the following documents which are incorporated by reference: Invitation for Bids No. F0508-09, including one Addendum; a Bid Form completed by CONTRACTOR; and a Performance Bond and Payment Bond. The documents comprising the complete contract are collectively referred to as the Contract Documents. Any and all obligations of CITY and CONTRACTOR are fully set forth and described in the Contract Documents.

2. The Work. CONTRACTOR agrees to furnish all tools, equipment, materials, apparatus, facilities, labor, transportation, supervision and management necessary to complete the project entitled Lakewood Park/Murphy Park Roof Replacement in a good and workmanlike manner and in strict conformity with the Contract Documents.

3. Contract Price. CITY agrees to pay and CONTRACTOR agrees to accept in full payment for the work above agreed to be done, the lump sum of One Hundred Thirty Thousand Nine Hundred Sixty Three and no/100 dollars ($130,963.00).

4. Permits; Compliance with Law. CONTRACTOR shall, at its own expense, obtain all necessary permits and licenses for the completion of the project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health and safety.

5. Extra or Additional Work and Changes. At any time during the progress of the work, CITY shall have the right at any time to request alterations or additions to, or deviations or omissions from the Contract Documents; and the contract price shall be adjusted by a fair and reasonable valuation, agreed to in writing by CITY and CONTRACTOR. Contractor shall perform no extra or additional work or alter or deviate from the work specified herein unless agreed in writing by City. Extra work to which City has not agreed in advance in writing will not be compensated by City.

1. Time for Completion. All work under this contract shall be completed before the expiration of thirty (30) calendar days from the date specified in the Notice to Proceed.

The time of completion shall be extended for such reasonable time as CITY may decide if CITY authorizes the delay or if the delay is caused by the acts or neglect of CITY or its employees or those under it by contract or otherwise; by changes ordered in the work; by strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties or any causes beyond CONTRACTOR's control; or by any cause which CITY decides justifies the delay.

This provision does not exclude the recovery of damages for delay by either party under other provisions.

7. Termination. CITY may provide written notice to CONTRACTOR and its surety of CITY's intention to terminate the contract under one or more of the following conditions:

A. CONTRACTOR is adjudged a bankrupt;
B. CONTRACTOR makes a general assignment for the benefit of creditors;
C. A receiver is appointed on account of insolvency;
D. CONTRACTOR or any subcontractors violate any of the provisions of the Contract.

The notice shall contain the reason(s) for CITY's intention to terminate the Contract. CONTRACTOR shall be given ten (10) days after serving such notice to cease the violation described in the notice or to make satisfactory arrangements for correction of the violation. Otherwise, the Contract shall cease and terminate at the end of the ten (10) day period.

In the event of any such termination, CITY shall immediately serve written notice thereof upon surety and CONTRACTOR; and the surety shall have the right to take over and perform the contract, provided that the surety informs CITY, in writing, of its intent to do so within fifteen (15) days after it was served the notice of termination or that the surety commences performance of the contract within thirty (30) days after it was served the notice of termination. Should the surety fail to take one or both of these actions, CITY may take over and complete the work by contract or by any other method it deems advisable, for the account and at the expense of CONTRACTOR. CONTRACTOR and its surety shall be liable to CITY for any cost incurred in the completion of the work which exceeds the original contract price. In such event, CITY may, without liability for so doing, take possession of and use such materials, equipment and other property belonging to CONTRACTOR as may be on the site and necessary for the performance of the work.

8. Notices

All notices required by the Contract shall be in writing, and shall be personally delivered or sent by first class mail, postage prepaid or by commercial courier, addressed as follows:

To CITY:
Larry Iaquinto
P&R/Facilities Management Division
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONTRACTOR:
Shelton Roofing Co., Inc.
Attn: Robert Savceda
1988 Leghorn Street
Mountain View, CA 94043

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered.

Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

9. Assignment. Neither party shall assign or sublet any portion of the Contract without the prior written consent of the other party.

10. Compliance with Specifications of Materials. CONTRACTOR shall provide only those materials, processes or articles specified in the Contract Documents unless CITY agrees in writing to some other material, process or article offered by CONTRACTOR which is equal in all respects to the one specified.

11. Contract Security. CONTRACTOR shall furnish a surety bond in an amount equal to 100 percent of the contract price as security for the faithful performance of the Contract. CONTRACTOR shall also furnish a separate surety bond in an amount equal to 100 percent of the contract price as security for the payment of all persons furnishing materials used in the performance of work in connection with the Contract, for the payment of amounts due under the Unemployment Insurance Code with respect to work or labor in connection with the Contract, and for the payment of reasonable attorney's fees to be fixed by the court should suit be brought upon the bond.

12. Insurance. CONTRACTOR shall take out and maintain throughout the life of the Contract, at its own expense and from an admitted insurer authorized to operate in California, Workers' Compensation and Employer's Liability Insurance for its employees. The amount of insurance shall not be less than $1,000,000 per accident for bodily injury or disease.

CONTRACTOR shall take out and maintain throughout the life of the Contract, at its own expense and from an admitted insurer authorized to operate in California, such Commercial General Liability Insurance as shall protect CONTRACTOR, CITY, its officials, officers, directors, employees, and agents from claims which may arise from work performed under the Contract, whether such work is performed by CONTRACTOR, by CITY, its officials, officers, directors, employees, or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single limit coverage applying to bodily and personal injury liability and property damage - $1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONTRACTOR's or CITY's operations, and use of owned or non-owned automobiles.
- Coverage on an "occurrence" basis.

- Broad form property damage liability. Deductible shall not exceed $5000 without prior written approval of the CITY.
- Notice of cancellation to City at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy:

- The policy shall cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage shall be eliminated.
- CITY shall be named as additional named insured with respect to the work to be performed under the Contract.
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.

13. Indemnification. CONTRACTOR shall indemnify, defend and hold harmless CITY and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described in the Contract Documents, caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of CITY.

14. Wage Rates. Pursuant to the Labor Code of the State of California or any applicable local law, CITY has ascertained the general prevailing rate per diem wages and rates for holidays and overtime work in CITY for each craft, classification or type of worker needed to execute the Contract. CITY has adopted by reference the general prevailing rate of wages applicable to the work to be done under the Contract as adopted and published by the Division of Labor Standards Enforcement and Labor Statistics and Research of the State of California Department of Industrial Relations.

It shall be mandatory upon CONTRACTOR and upon any subcontractor to pay not less than the specified rates to all workers employed in the execution of the Contract. CONTRACTOR agrees to comply with all provisions of Section 1775 of the Labor Code of the State of California.

15. CONTRACTOR's Guarantee. CITY shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to the building, work, or equipment or any part thereof or in, on or about the same during its construction and before acceptance.

CONTRACTOR unqualifiedly guarantees the first-class quality of all workmanship and of all materials, apparatus and equipment used or installed by CONTRACTOR, or by any subcontractor or supplier, in the project which is the subject of this Contract unless a lesser quality is expressly authorized in the Contract Documents in which event CONTRACTOR unqualifiedly guarantees such lesser quality. CONTRACTOR also unqualifiedly guarantees that the work performed by CONTRACTOR will conform with the Contract Documents and any written authorized deviations therefrom. In case of any defect in work, materials, apparatus or equipment, whether latent or patent, revealed to CITY within one year of the date of acceptance of completion of this Contract by CITY, CONTRACTOR will forthwith remedy such defect or defects without cost to CITY.

16. Liquidated Damages. Time shall be the essence of this contract. If CONTRACTOR fails to complete, within the time fixed for such completion, the entire work described in the Contract Documents, CONTRACTOR shall become liable to CITY for liquidated damages in the sum of Two Hundred Fifty and No/100 Dollars ($250.00) for each and every calendar day during which work shall remain uncompleted beyond such time fixed for completion or any lawful extension thereof. The amount specified as liquidated damages is presumed to be the amount of damage sustained by CITY since it would be impracticable or extremely difficult to fix the actual damage. The amount of liquidated damages may be deducted by CITY from moneys due CONTRACTOR at the time of completion of the work; and CONTRACTOR and its sureties shall be liable to CITY for any excess.

IN WITNESS WHEREOF, the parties have executed this contract.

ATTEST:

By_____
City Clerk

CITY OF SUNNYVALE ("CITY")

By_____
City Manager

APPROVED AS TO FORM:

By _____
City Attorney

Shelton Roofing Co., Inc.
("CONTRACTOR")

By _____

_____
Title and Date

By _____

_____
Title and Date