

**Council Meeting: May 12, 2009****SUBJECT: Award of Bid No. F0803-57 for Pavement Rehabilitation of Various Streets Phase II****BACKGROUND**

This project will rehabilitate portions of four City roadways that have fallen below acceptable pavement condition standards. Roadway pavements at the project locations will deteriorate rapidly without rehabilitation, creating unsafe roadway conditions. These roadways are eligible for federal grant funding, and a Federal Surface Transportation Program (FSTP) grant has been secured through the Valley Transportation Authority (VTA). The FSTP grant will fund approximately 89% of the project cost, with the City providing the remaining monies. Project scope will include segments of Commercial Street, Ahwanee Avenue, Kifer Road and Washington Avenue receiving asphalt concrete overlay, and the storm drain system at Washington Avenue from Waverly Street to Mathilda Avenue will be constructed.

DISCUSSION

Bid specifications were prepared by Public works and purchasing staff. The Notice Inviting Bids was published in The Sun on March 25, 2009; and the bid package was distributed to Bay Area Builders Exchanges and broadcast to potential contractors through the Onvia Demandstar procurement network. Nineteen contractors requested bid documents.

Sealed bids were publicly opened on April 15, 2009. Eight responsive bids were received.

Bidder**Total Bid**

Engineer's Estimate	\$1,568,493
Top Grade Construction Inc., of Livermore	\$1,227,979
G. Bortolotto & Co. Inc., of San Carlos	\$1,251,745
Pavex Construction Division of San Jose	\$1,267,086
O'Grady Paving, Inc., of Mountain View	\$1,291,864
Joseph J. Albanese, Inc., of San Jose	\$1,313,307
C.F. Archibald Paving, Inc., of Redwood City	\$1,383,596
C.F. Archibald Paving, Inc., of Redwood City	\$1,383,596
Interstate Grading & Paving, Inc., of So. San Francisco	\$1,390,292
Granite Construction, Inc., of Watsonville	\$1,607,367

The low bid represents a savings of 22% from the Engineer's Estimate.

Staff recommends acceptance of the bid from Top Grade Construction, Inc. the lowest responsive and responsible bidder.

A determination was made that this project will have no significant effect on the environment in accordance with CEQA guidelines for categorically exempt projects.

A bid protest letter was received from G.Bortolotto & Co. as regards to the value of work listed on the subcontractor list by Top Grade for the underground/utility portion of their bid (Bid Items 44-48). The protest letter includes statements from Bortolotto's underground subcontractor that the bid price quoted by the low bidder is below material cost, and that the low bidder either made a mistake or unbalanced their bid. A review of these line items by the City's engineering design firm indicates the bid prices are at, or slightly below the engineer's estimates for these items. Additionally, the City has received a letter from Top Grade indicating the bid pricing is correct and there are no mistakes. It should be noted that Top Grade is a Class "A" (General Engineering) licensed contractor and is qualified to do underground work on its own and may well be doing some of the related work (traffic control, trench restoration, etc.) with its own personnel. This would help to keep the unit prices lower. After review, the City finds the protest from G. Bortolotto & Co. to be without merit.

FISCAL IMPACT

Project costs are as follows:

Construction	\$1,227,979
Contingency (15% of Construction)	<u>\$ 184,197</u>
Total cost	\$1,412,176

Funds are available in Capital Projects 825290 (Pavement Rehabilitation) and 825511 (Roadway Rehabilitation on Various Streets – Phase II).

As noted earlier, the bid price, not including contingency, is 22% below the Engineer's Estimate. When the contract is complete, savings from this project will be available to support additional **Sunnyvale Works!** capital projects.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

It is recommended that Council:

1. Award a contract, in substantially the same form as the attached draft and in the amount of \$1,227,979 to Top Grade Construction, Inc. for Pavement Rehabilitation of Various Streets Phase II; and
2. Approve a contingency in the amount of \$184,197.

Reviewed by:

Mary J. Bradley, Director of Finance
Prepared by: David Gakle, Principal Buyer

Reviewed by:

Marvin Rose
Director of Public Works

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Draft General Construction Contract
- B. Bid Protest Materials

**ATTACHMENT A
DRAFT**

GENERAL CONSTRUCTION CONTRACT

THIS CONTRACT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California ("Owner") and TOP GRADE CONSTRUCTION, INC., a California corporation ("Contractor").

RECITALS:

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

1. **The Contract Documents.** The complete Contract consists of the following documents: Notice Inviting Bids; Instructions to Bidders; Performance Bond and Payment Bond; Guaranty; City of Sunnyvale Standard Specifications for Public Works Construction, 2006 Edition; City of Sunnyvale Standard Details for Public Works Construction, 2006 Edition; Plans and Specifications, "Pavement Rehabilitation of Various Streets Phase II, Project No. ST-08/01-08, Invitation for Bids No. F0803-57", including two (2) Addenda; OSHA, and other standards and codes as outlined in the Specifications. These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the Contract Documents.

Any and all obligations of the Owner and the Contractor are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2. **The Work.** Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner, the work of removing existing asphalt concrete through milling, wedge and conform grinding; performing base repair, subgrade preparation, placement of new Rubberized Asphalt Concrete on Washington Avenue, Hot Mix Asphalt Concrete on Ahwanee Avenue, Commercial Street and Kifer Road, manhole and other utility cover adjustments, installation of new traffic signal detector loops, detector handholes, and connection to the existing traffic signal system, striping, marking and signage installation, replacement and construction of PCC curb ramps, and related work as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared by Nichols Consulting Engineers and adopted by the Owner. These Plans and Specifications are entitled respectively, Pavement Rehabilitation of Various Streets Phase II, Project No. ST-08/01-08.

It is understood and agreed that tools, equipment, apparatus, facilities, labor, transportation, and material shall be furnished and work performed and completed as required in the Plans and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the Owner, or its representatives. The Owner hereby designates as its representative for the purpose of this contract the Senior Civil Engineer for Construction or an employee of the Owner who will be designated in writing by the Director of Public Works.

3. **Contract Price.** The Owner agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the lump sum of One Million Two Hundred Twenty Seven Thousand Nine Hundred Seventy Nine and Thirty Four/100 Dollars (\$1,227,979.34) subject to final determination of work performed and materials furnished at unit prices per Exhibit "A" hereto and incorporated by this reference, and subject to additions and deductions as provided in the Contract Documents and in accordance with Contract Documents.

4. Permits; Compliance with Law. Contractor shall, at its expense, obtain all necessary permits and licenses, easements, etc., for the construction 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. Inspection by Owner. Contractor shall at all times maintain proper facilities and provide safe access for inspection by the Owner to all parts of the work, and to the shops wherein the work is in preparation. Where the Specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the Owner of its readiness for inspection and without the approval thereof or consent thereto by the latter. Should any such work be covered up without such notice, approval, or consent, it must, if required by Owner, be uncovered for examination at the Contractor's expense.

6. Extra or Additional Work and Changes. Should Owner at any time during the progress of the work request any alterations, deviations, additions or omissions from the Specifications or Plans or other Contract Documents it shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the contract price, as the case may be, by a fair and reasonable valuation, agreed to in writing between the parties hereto. No extra work shall be performed or change be made unless in pursuance of a written order from the Director of Public Works or authorized representative, stating that the extra work or change is authorized and no claim for an addition to the contract sum shall be valid unless so ordered.

7. Time for Completion. All work under this contract shall be completed before the expiration seventy (70) calendar days from the date specified in the Notice to Proceed.

If Contractor shall be delayed in the work by the acts or neglect of Owner, or its employees or those under it by contract or otherwise, or by changes ordered in the work, or by strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Owner, or by any cause which the Owner shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Owner may decide.

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

8. Inspection and Testing of Materials. Contractor shall notify Owner a sufficient time in advance of the manufacture or production of materials, to be supplied under this contract, in order that the Owner may arrange for mill or factory inspection and testing of same, if Owner requests such notice from Contractor.

9. Termination for Breach, etc. If Contractor should file a bankruptcy petition and/or be adjudged to be bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Contractor or any subcontractors should violate any of the provisions of the Contract, Owner may serve written notice upon Contractor and its surety of Owner's intention to terminate the Contract. The notice shall contain the reasons for such intention to terminate the Contract, and, unless within ten days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten days, the Contract shall cease and terminate. In the event of any such termination, Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided, however that, if the surety within fifteen days after the serving upon it of notice of termination does not give Owner written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty days from the

date of the serving of such notice, Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to Owner for any excess cost occasioned Owner thereby, and in such event Owner may without liability for so doing take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Contractor as may be on the site of the work and necessary therefor.

10. Owner's Right to Withhold Certain Amounts and Make Application Thereof. In addition to the amount which Owner may retain under Paragraph 21 until the final completion and acceptance of all work covered by the Contract, Owner may withhold from payment to Contractor such amount or amounts as in its judgment may be necessary to pay just claims against Contractor or any subcontractors for labor and services rendered and materials furnished in and about the work. Owner may apply such withheld amount or amounts to the payment of such claims in its discretion. In so doing Owner shall be deemed the agent of Contractor and any payment so made by Owner shall be considered as a payment made under the Contract by Owner to the Contractor and Owner shall not be liable to Contractor for any such payment made in good faith. Such payment may be made without prior judicial determination of the claim or claims.

11. Notice and Service Thereof. All notices required pursuant to this Contract shall be communicated in writing, and shall be delivered in person, by commercial courier or by first class or priority mail delivered by the United States Postal Service. Transmission of notice by facsimile or by telephone may be deemed sufficient if the requirement for written notice is waived, in writing, by the receiving party. Notices delivered in person shall be deemed communicated as of actual receipt. Notices sent by mail or courier service shall be deemed communicated as of three days after mailing or dispatch, unless that date is a date on which there is no mail or delivery service, in which case communication shall be deemed to occur the next mail service or delivery day. The burden of proof of compliance with this requirement for written notice shall be on the sending party. All notices sent pursuant to this Contract shall be addressed as follows:

Owner: City of Sunnyvale
Department of Public Works
Construction Contract Administrator
P. O. Box 3707
Sunnyvale, CA 94088-3707

Contractor: Top Grade Construction, Inc.
Attn: Robert Fisher
50 Contractors Street
Livermore, CA 94551

12. Assignment of Contract. Neither the Contract, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Contractor without the prior written approval of Owner.

13. Compliance with Specifications of Materials. Whenever in the Specifications, any material or process is indicated or specified by patent or proprietary name, or by name of manufacturer, such Specifications must be met by Contractor, unless Owner agrees in writing to some other material, process or article offered by Contractor which is equal in all respects to the one specified.

14. Contract Security. Contractor shall furnish a surety bond in an amount at least equal to 100 per cent of the contract price as security for the faithful performance of this Contract. Contractor shall also furnish a separate surety bond in an amount at least equal to

100 percent of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond.

15. Insurance. Contractor shall not commence work under this Contract until all insurance required under this paragraph has been obtained and such insurance has been approved by the Owner, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish the Owner with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract and particularly paragraph 16 hereof. Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to the Owner of any pending change in the limits of liability or of any cancellation or modification of the policy. Insurance carrier shall be California-admitted.

(a) Compensation Insurance and Employer's Liability Insurance. Contractor shall take out and maintain during the life of this Contract Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor.

In signing this Contract, Contractor makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(b) General Liability Insurance. Contractor, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the period covered by the Contract in the amount of One Million Dollars (\$1,000,000.00) per occurrence. Such coverage shall include, but shall not be limited to, protection against claims arising therefrom, and damage to property resulting from activities contemplated under this Contract. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the Owner and shall provide that notice must be given to Owner at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement. Broad form property damage endorsement must be attached. Owner is to be named as an additional insured on any contracts of insurance under this paragraph (b). Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by Owner.

(c) Automobile Liability. Contractor, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million Dollars (\$1,000,000.00) combined single limit coverage.

16. Hold Harmless. Contractor agrees to defend, save, indemnify and hold harmless Owner and all its officers, employees, and agents, against any and all liability, claims, judgments, or demands, including demands arising from injuries or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation arising through the active negligence or willful misconduct of Owner, or of Owner's officials, agents, employees, servants, or independent contractors who are directly responsible to Owner. Contractor shall make good and reimburse Owner for any expenditures, including reasonable attorneys' fees, Owner may make by reason of such claim or litigation, and, if requested by Owner, Contractor shall defend any such suits at the sole cost and expense of Contractor.

17. Hours of Work. Eight hours of labor during any one calendar day and forty hours of labor during any one calendar week shall constitute the maximum hours of service upon all work done hereunder, and it is expressly stipulated that no laborer, worker, or mechanic employed at any time by the Contractor or by any subcontractor or subcontractors under this Contract, upon the work or upon any part of the work contemplated by this Contract, shall be required or permitted to work thereon more than eight hours during any one calendar day and forty hours during any one calendar week, except, as provided by Section 1815 of the Labor Code of the State of California, work performed by employees of contractors in excess of eight hours per day and forty hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein, Contractor shall forfeit, as a penalty to Owner, fifty dollars (\$50.00) for each laborer, worker, or mechanic employed in the execution of this Contract by Contractor, or by any subcontractor under this Contract, for each calendar day during which the laborer, worker, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of the Sections of the Labor Code.

Contractor, and each subcontractor, shall, in accordance with California Labor Code Section 1776 or as the same may be later amended, keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with work under this agreement. Each payroll record shall contain or be verified by a written declaration under penalty of perjury, in accordance with Labor Code Section 1776(a). Such payroll records shall be made available at all reasonable times at the Contractor's principal office to the persons authorized to inspect such records pursuant to Labor Code Section 1776. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, as well as to the Owner's representative. In the event the Contractor or a Subcontractor fails to comply in a timely manner within ten days to a written notice requesting the records, such contractor or subcontractor shall forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, in accordance with Labor Code Section 1776(g).

18. Wage Rates. Pursuant to the Labor Code of the State of California, or any applicable local law, Owner has ascertained the general prevailing rate per diem wages and rates for holidays, and overtime work in the city, for each craft, classification or type of laborer, worker, or mechanic needed to execute this Contract. Owner 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, to which reference is hereby made for a full and detailed description. A copy of the prevailing wage rates may be reviewed in the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California. Wage rates can also be obtained through the City's Website at www.ci.sunnyvale.ca.us/purchasing/prevailingwages.htm. Neither the notice inviting bids nor this Contract shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against Owner.

It shall be mandatory upon Contractor and upon any subcontractor to pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the Contract. It is further expressly stipulated that Contractor shall, as a penalty to Owner, forfeit fifty dollars (\$50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic paid less than the stipulated prevailing rates for any work done under this Contract by Contractor or by any subcontractor; and Contractor agrees to comply with all provisions of Section 1775 of the Labor Code.

In case it becomes necessary for Contractor or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, Contractor shall immediately notify Owner who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

19. Accident Prevention. Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

20. Contractor's Guarantee. Owner 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 Plans and Specifications, in which event Contractor unqualifiedly guarantees such lesser quality; and that the work as performed by Contractor will conform with the Plans and Specifications or any written authorized deviations therefrom. In case of any defect in work, materials, apparatus or equipment, whether latent or patent, revealed to Owner within one year of the date of acceptance of completion of this Contract by Owner, Contractor will forthwith remedy such defect or defects without cost to Owner.

21. 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 mentioned and described and contracted to be done and performed, Contractor shall become liable to Owner for liquidated damages in the sum of one thousand dollars (\$1,000.00), 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 Owner since it would be impracticable or extremely difficult to fix the actual damage; and the amount of liquidated damages may be deducted by Owner from moneys due Contractor hereunder, or its assigns and successors at the time of completion, and Contractor, or its assigns and successors at the time of completion, and its sureties shall be liable to Owner for any excess.

22. Additional Provisions.

None.

IN WITNESS WHEREOF, two identical counterparts of this contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties.

CITY OF SUNNYVALE
a Municipal Corporation, Owner

Top Grade Construction, Inc.
Contractor

License No. 592597

By _____
City Manager

By _____

Title

Attest:
City Clerk

By _____

Title

By _____
City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

(Notice: The signatures of the Contractor's officers on this contract must be acknowledged before a notary.)

ACKNOWLEDGMENT

State of California)
County of)

On _____ before me, _____
personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(SEAL)

**“EXHIBIT A”
PAY ITEMS AND UNIT PRICE SCHEDULE**

ITEM	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE
1	Maintaining Traffic / Traffic Control	LS	1	\$38,000.00
2	Mobilization	LS	1	\$60,000.00
3	Full Depth Base Repair - 6"	SF	1,318	\$5.60
4	Full Depth Base Repair - 8"	SF	6,237	\$5.00
5	Full Depth Base Repair - 9"	SF	14,894	\$5.90
6	PCC Curb Ramps (including detectable warning surface)	EA	50	\$1,950.00
7	PCC Curb and Gutter	LF	385	\$37.50
8	PCC Driveway	SF	760	\$9.70
9	6' Wedge Grind	LF	8,794	\$1.80
10	15' Conform Grind	LF	941	\$4.45
11	Crack Sealing	LS	1	\$12,700.00
12	2.0" Milling	SY	11,364	\$2.05
13	2.25" Milling	SY	19,614	\$1.60
14	2.0" Hot Mix Asphalt Overlay (Type A)	TON	2,939	\$78.00
15	2.25" Hot Mix Asphalt Overlay (Type A)	TON	2,694	\$78.75
16	2.5" Rubberized Hot Mix Asphalt Overlay (RHMA-G)	TON	796	\$144.00
17	Adjust Survey Monument Box (Overlay Area)	EA	4	\$295.00
18	Adjust Water Valve Box (Overlay Area)	EA	45	\$235.00
19	Adjust Sanitary Sewer Manhole Cover (Overlay Area)	EA	29	\$470.00
20	Adjust Storm Drain Manhole Cover (Overlay Area)	EA	4	\$470.00
24	Adjust Survey Monument Box (Mill and Fill Area)	EA	6	\$420.00
25	Adjust Water Valve Box (Mill and Fill Area)	EA	35	\$365.00
26	Adjust Sanitary Sewer Manhole Cover (Mill and Fill Area)	EA	31	\$700.00
27	Adjust Storm Drain Manhole Cover (Mill and Fill Area)	EA	17	\$700.00
29	Thermoplastic Traffic Stripe - Detail 9 - Dashed Laneline	LF	5,456	\$0.35
30	Thermoplastic Traffic Stripe - Detail 22 - Yellow Double Stripe	LF	7,066	\$0.72

31	Thermoplastic Traffic Stripe - Detail 27B - White Edgeline	LF	33	\$0.30
32	Thermoplastic Traffic Stripe - Detail 29 - Median Island	LF	194	\$1.95
33	Thermoplastic Traffic Stripe - Detail 32 - 2-Way Left Turn Lane	LF	1,843	\$0.67
34	Thermoplastic Traffic Stripe - Detail 38 - Channelizing Line	LF	537	\$0.95
35	Thermoplastic Traffic Stripe - Detail 39 - Bike Lane	LF	6,443	\$0.57
36	Thermoplastic Traffic Stripe - Detail 39A - Bike Lane Intersection	LF	1,333	\$0.50
37	Thermoplastic 12" Crosswalk/Stop Bars (White or Yellow)	LF	1,276	\$1.95
38	Thermoplastic Pavement Markings (Arrows, Words and Numerals)	SF	1,812	\$2.60
39	Blue Fire Hydrant Pavement Markers	EA	30	\$13.50
40	Traffic Detector Loops - Type A	EA	42	\$440.00
41	Traffic Detector Loops - Type D	EA	13	\$470.00
42	Bicycle Detector Loops	EA	4	\$475.00
43	Pedestrian Push Button	EA	1	\$3,000.00
44	48" Storm Drain Manhole	EA	3	\$5,000.00
45	24" Curb Drop Inlet	EA	16	\$2,200.00
46	18" Storm Drain Pipe	LF	844	\$43.00
47	12" Storm Drain Pipe	LF	475	\$46.00
48	6" Storm Drain Pipe	LF	46	\$125.00

ATTACHMENT B - BID PROTEST MATERIALS

G. BORTOLOTTO & COMPANY, INC.

580 BRAGATO ROAD
SAN CARLOS, CALIFORNIA 94070-6227
(650) 595-2591 - Fax (650) 595-0718
State License #397341 A

April 27, 2009

City of Sunnyvale
Office of the Purchasing Division
Sunnyvale City Hall Annex
650 West Olive Avenue
Sunnyvale, CA 94088-3707

Attention: David Gakle, Buyer

408-730-7710 (Fax)

Re: Pavement Rehabilitation of Various Streets Phase II
BID PROTEST

This letter is in response to the bid summary we recently received from the City in regards to the referenced project. G. Bortolotto & Company is the apparent second low bidder in this project. By reviewing the apparent low bidder, Top Grade Construction company's bid summary we have the following concerns about their bid.

I. Bid items 44,45,46,47 and 48, for underground portion Top Grade listed Silvestri as a sub contractor with a value of **\$114,092.00**. For the same items G. Bortolotto & Company listed Soloski & Gonzalez as well as 3rd Lowest Bidder (Pavex Construction) 4th Lowest Bidder (O'Grady Paving Inc) & 5th Lowest Bidder (Joseph J. Albanese Inc) for the same scope of work outlined in the underground work (Items 44,45,46,47 &48) with a value of **\$236,000.00**.

Attached please find the bid protest we received from Stoloski & Gonzalez the listed sub contractor in our bid. We sincerely request your attention in this matter and look forward to hear from the City.

Sincerely,



Robert Bortolotto, President
(650) 222-4745
G. Bortolotto & Company

pavement Rehab Phase II BTL



STOLOSKI & GONZALEZ

General Engineering Contractors
License #489175

April 27, 2009

Attention: John Matthews
G. Bortolotto & Company, Inc.
582 Bragato Road
San Carlos CA 94070
Fax: (650) 595-0718 Phone: (650) 595-2591

Re: Pavement Rehabilitation of Various Streets Phase II
City of Sunnyvale
Public Works Project No. ST-08/01-08
Bid Date: Wednesday, April 22 at 3:00 p.m.
Bid Protest

Dear John

The apparent low bidder for the above referenced project listed Silvestri Construction for Bid Item #46 at an extremely low price that is well below cost. The contractor had to have made a mistake or unbalanced their bid.

Stoloski and Gonzalez, Inc. is a DBE Certified Business with the State of California. We have worked on various projects for the City of Sunnyvale as both a prime and sub contractor. We are very familiar with their specs and standards.

As you are aware, our price was used by the second, third, fourth and fifth bidders. We urge the City of Sunnyvale to review this bid closely, as the underground work for bid Item #46 can not be done for that dollar amount.

Following is a rough breakdown for the cost for Item #46:

Saw Cut Street	\$ 4.00 / LF
Excavate for Pipe	\$ 44.00 / LF
Back Fill	\$ 60.00 / LF
Pipe Cost	\$ 14.00 / LF
Rough Cost	\$122.00 / LF

Respectfully Submitted,


Mark Stoloski
MS: mcr



May 4, 2009

G. Bortolotto & Company, Inc
Mr. Robert Bortolotto
580 Bragato Road
San Carlos, CA 94070

Re: Pavement Rehabilitation of Various Streets Phase II (F0803-57)

Dear Mr. Bortolotto:

Thank you for your letter dated April 27, 2009, regarding your protest to the above referenced project. The appropriate City staff has reviewed the issue and concluded that Top Grade Construction, Inc. is a responsive bidder pursuant to Invitation for Bids No. F0803-57.

Your letter questioned the value of work listed on Top Grade's subcontractor list for the underground utility portion of the bid (i.e., bid items 44-48). The letter includes statements from your underground subcontractor that the bid price quoted by the low bidder is below material cost and that the low bidder either made a mistake or unbalanced their bid.

A review of these line items by the City's engineering design firm indicates that the bid prices are at, or slightly below, the engineer's estimates. Additionally, the City received a letter from Top Grade indicating that the bid pricing is correct and there are no mistakes. Top Grade is a Class "A" General Engineering licensed contractor and is qualified to do underground work on its own. Furthermore, Top Grade may well be doing some of the related work (i.e., traffic control, trench restoration, etc.) with its own personnel which may result in lower unit prices.

Therefore, the City finds the protest from G. Bortolotto & Co. to be without merit. Although we cannot agree with your position relative to this particular bid, we appreciate your input and encourage your submission of future bids.

Best regards,

David Gakle
Principal Buyer, Purchasing Division

Cc: Pete Gonda, Acting Purchasing Officer
Chuck Neumayer, Senior Engineer
Rob Boco, Assistant City Attorney
Top Grade Construction, Inc.

**ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707
TDD (408) 730-7501**



April 29, 2009

SENT VIA FAX: 408/730-7710

Mr. David Gakle
Buyer, Purchasing Division
City of Sunnyvale
650 W. Olive Avenue
Sunnyvale, CA 94088

Re: Response to Bid Protest Letter from G. Bortolotto & Company, Inc.
Pavement Rehabilitation of Various Streets Phase II
Bid No. F0803-57
Public Works Project No. ST-08/01-08
Federal Project No. STPL-5213 (030)
Bid Date: April 22, 2009 at 3:00pm

Dear Mr. Gakle,

This letter is in response to G. Bortolotto's protest letter, dated April 27th, 2009, for the above referenced project.

As requested per our phone conversation, attached is the proposal submitted by Silvestri Construction, Inc. for the aforementioned project. Please feel free to call if you have any questions. We have zero concerns regarding an error in their proposal and there is by no means any form of unbalancing of the bid items.

In addition, G. Bortolotto & Company, Inc. failed to properly follow the instructions to protest a bid as provided by Instruction #27 in the City of Sunnyvale's Instructions to Bidders. Section a. states the following, "The protest must refer to the specific portion of the document that forms the basis for the protest." No such reference has been made. Section d. states the following, "The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest." The Instructions also states, "The procedure and time limits set forth in the paragraph are mandatory and are Bidder's sole and exclusive remedy in the event of a Bid protest. Bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings." Based on the provided instructions, G. Bortolotto & Company, Inc. failed to, "concurrently transmit a copy of the initial protest document and any attached documentation", to Top Grade Construction, Inc. The initial Bid Protest letter was sent to the City of Sunnyvale on Monday, April 27, 2009; Top Grade Construction, Inc. did not

Mr. David Gakle, Buyer, Purchasing Division
City of Sunnyvale
April 30, 2009
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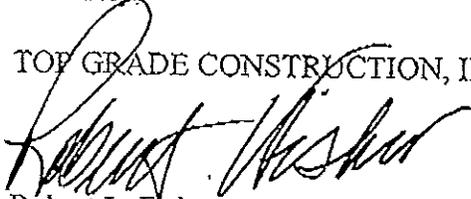
receive a copy until today, Wednesday, April 29, 2008. Therefore, the Bid Protest in question should be found noncompliant.

On the grounds that G. Bortolotto & Company, Inc.'s failure to comply with the Bid Protest instructions and failure to find any grounds to protest Top Grade Construction Inc.'s bid, Top Grade Construction, Inc. requests that this Bid Protest letter be rejected.

Please accept this letter as our official letter of response to the Bid Protest letter from G. Bortolotto & Company, Inc.

Sincerely,

TOP GRADE CONSTRUCTION, INC.



Robert L. Fisher
Executive Vice President

cc: G. Bortolotto & Company, Inc. 650-595-0718

Attachments



SILVESTRI

CONSTRUCTION, INC.

CA CONTRACTORS LTD. #759470

April 22, 2009

Topgrade Construction
50 Contractors Street
Livermore, CA. 94551

Attention: Dan Benavidez
Reference: Pavement Rehabilitation of Various Streets Phase II – Invitation #F0803-57
City of Sunnyvale, CA
Project No. ST-08/01-08, Federal Project No. STPL-5213 (030)
Bid Date/Time: 04.22.09, 3 pm
Partial Storm Drain Items

Dear Dan:

Thank you for the opportunity to provide a quotation on the above referenced project. Silvestri Construction, Inc. shall provide all labor, materials, equipment, and supervision necessary to perform the following work - addendums 1 and 2 have been reviewed and are incorporated into this proposal.

Per your request we are providing labor, equipment, and pipe only! Topgrade shall furnish saw cut, traffic control, trucking, controlled low strength material (CSLM) and other backfill materials, and concrete. Topgrade shall also furnish and perform trench restoration: asphalt and agg base.

BID ITEM	DESCRIPTION	UNIT	UNIT COST	EXTENSION
44	48" Storm Drain Manhole	3 EA	\$ 5,000.00	\$ 15,000.00
45	24" Curb Drop Inlet	16 EA	\$ 2,200.00	\$ 35,200.00
46	18" Storm Drain Pipe	844 LF	\$ 43.00	\$ 36,292.00
47	12" Storm Drain Pipe	475 LF	\$ 46.00	\$ 21,850.00
48	6" Storm Drain Pipe	46 LF	\$ 125.00	\$ 5,750.00

TOTAL LUMP SUM COST FOR PARTIAL STORM DRAIN ITEMS ... \$ 114,092.00

Exclusions:

- engineering, staking, survey, bond premiums, fees, permits, inspection, or testing costs
- handling/disposal of any type of hazardous/toxic material
- reworking unsuitable or saturated soils and dewatering
- handling and/or disposal of spoils generated by others
- temporary and/or permanent fencing
- traffic control
- saw cut
- removal, relocation, and/or replacement of underground obstructions – including, but not limited to, sewer pipe, gas lines, and water lines, cable TV, telephone/data lines
- soil sterilant
- trench restoration (hot asphalt and/or agg base work)
- all landscape/irrigation work
- furnish and/or placement of topsoil
- electrical work
- pavement markings and signage
- site specific storm water pollution prevention plan (SWPPP)
- erosion control/administrative operations related to SWPPP

2100 Garden Rd, Ste B-10 • Monterey, CA. 93940 • (831) 657-1808 • FAX (831) 657-1810

LOCATION:

RX TIME 04/30 '09 10:57

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Topgrade Construction
Attn: Dan Benavidez
Re: Pavement Rehabilitation of Various Streets Phase II
City of Sunnyvale, CA
Project No. ST-08/01-08, Federal Project No. STPL-5213 (030)
Bid Date/Time: 04.22.09, 3 pm
Partial Storm Drain Items
April 22, 2009

Clarifications:

- we shall provide dust control for our work only ! We shall not provide dust control and cleaning of paved surfaces due to other trades construction
- one move-in per phase of work and continuous operation per move-in
- no more than five (5) percent retention shall be held from progress payments.
- this proposal assumes mutually agreeable contract terms shall be reached between Topgrade Construction and Silvestri Construction, Inc. Should mutually acceptable contract terms not be reached within thirty calendar days from the date of this proposal (April 22, 2009), Silvestri Construction, Inc. reserves the right to withdraw this proposal.
- this proposal is valid for thirty calendar days, commencing April 22, 2009

We look forward to working with you. Please contact us should you have any questions.

Sincerely,
Silvestri Construction, Inc.

Bret P Silvestri

Bret P Silvestri