

**Council Meeting: May 21, 2009****SUBJECT: Award of Bid No. F0804-63 for Historic Murphy Avenue Streetscape and Utilities Replacement****REPORT IN BRIEF**

The purpose of this staff report is to award a contract to make major infrastructure and aesthetic improvements around and on historic Murphy Avenue in conjunction with the **Sunnyvale Works!** Program. The low bid of \$3,167,000, which includes an Additive Alternate, represents a 37.6% savings from the estimated project cost of \$5,076,000.

**BACKGROUND**

This project will provide for the construction of the Murphy Avenue Streetscape Plan that was approved by Council on November 22, 2005 (RTC # 05-351). The project includes infrastructure upgrades (storm drain, sanitary sewer, water and lighting/power), and sidewalk/street improvements on Murphy Avenue between Washington Avenue and Evelyn Avenue. Also included are intersection improvements, including an In-Roadway Lighted Crosswalk, lighting, irrigation and tree planting improvements, decorative planters and trashcans, concrete pavers and decorative monuments on Murphy/Evelyn and Murphy/Washington.

For this project, the City has secured a total of \$1.69 million in Federal grant funds through the Metropolitan Transportation Commission (MTC) and the Valley Transportation Authority (VTA).

**DISCUSSION**

Bid specifications were prepared by Public Works and Purchasing staff. The bid was structured as a Base Bid, including all necessary work, and an Additive Alternate item of replacing asphalt paving in the parking bays with the more decorative concrete pavers, to be awarded if the City received favorable bid pricing. The Notice Inviting Bids was published in The Sun on April 22, 2009; and the bid package was distributed to Bay Area Builders Exchanges and broadcast to potential contractors through the Onvia Demandstar procurement network. Twenty seven contractors requested bid documents.

The project is included in the City's overall efforts known as **Sunnyvale Works!** **Sunnyvale Works!** accelerates getting projects out to bid to take advantage of the increased competition for construction projects. The promotion of these projects in the media, and other outlets has created interest from many prospective bidders and sub-bidders which, along with the current economic conditions, helps the City attract more competitive prime bidders, and helps prime bidders attract more competitive sub-bids. The **Sunnyvale Works!** Program also focuses resources to shorten the design, review, and processing time necessary to get projects into construction, so that positive economic effects can be realized in the community quickly. This collaborative approach to manage multiple priorities, optimize use of grant funds and lower bid prices, and to streamline processes is shared with Public Works, Finance, and other affected city departments.

Sealed bids were publicly opened on May 13, 2009. Three responsive bids were received.

| <u>Bidder</u>                           | <u>Base Bid</u> | <u>Add Alt</u> | <u>Total Bid</u> |
|-----------------------------------------|-----------------|----------------|------------------|
| Engineer's Estimate                     |                 |                | \$5,076,000      |
| Joseph J. Albanese, Inc. of Santa Clara | \$3,142,000     | \$25,000       | \$3,167,000      |
| McGuire & Hester, of Oakland            | \$3,538,000     | \$50,000       | \$3,588,000      |
| Synergy Project Management, of SF       | \$4,239,595     | \$57,960       | \$4,297,555      |

The low bid (Base Bid plus Additive Alternate) represents a savings of 37.6% from the Engineer's Estimate and is consistent with anticipated savings resulting from the economic climate.

Staff recommends acceptance of the Base Bid and Additive Alternate from Joseph J. Albanese, Inc. the lowest responsive and responsible bidder.

This project complies with National Environmental Policy Act (NEPA) requirements, with CalTrans as the lead agency. The project is also covered under the Sunnyvale Downtown Improvement Program EIR, including relevant Addenda.

### **FISCAL IMPACT**

Project costs are as follows:

|                                                 |             |
|-------------------------------------------------|-------------|
| Construction (Base Bid plus Additive Alternate) | \$3,167,000 |
| Contingency (15% of Construction)               | \$475,050   |
| Total Cost                                      | \$3,642,050 |

Funds are available in Capital Projects 826810 (Downtown Murphy Avenue Streetscape Revitalization), 827080 (Murphy/Evelyn Avenues Sewer Infrastructure Improvements), and 825451 (City-wide Water Line Replacement).

As previously noted, the bid price, not including contingency, is 37.6% below the Engineer's Estimate. Additional costs will be incurred for comprehensive construction management of these projects in the downtown business district. When the contract is complete, any 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 \$3,167,000 to Joseph J. Albanese, Inc. for Historic Murphy Avenue Streetscape and Utilities Replacement; and
2. Approve a contingency in the amount of \$475,050.

Reviewed by:

Mary J. Bradley, Director of Finance

Prepared by: Pete Gonda, Senior Management Analyst, Finance

Reviewed by:

Marvin Rose

Director of Public Works

Approved by:

Gary M. Luebbers  
City Manager

**Attachments**

A. Draft General Construction Contract

**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 Joseph J. Albanese, 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, "Historic Murphy Avenue Streetscape & Utilities Replacement, Project No. TR-08/02-09, Federal Aid Project No. CML-5213(028), Invitation for Bids No. F0804-63", including Three (3) 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 work as follows:

**Base Bid Work:**

Furnishing all labor, materials, and equipment and performing all work necessary and incidental to the completion of the project known as "Historic Murphy Avenue Streetscape & Utilities Replacement, Project No. TR-08/02-09, Federal Aid Project No. CML-5213(028)" consisting of furnishing all labor, materials, equipment, tools and services necessary to install street and sidewalk improvements on Murphy Ave. between Washington Ave. and Evelyn Ave. including storm, sanitary, water and lighting/power utilities and paving treatments and site appurtenances; intersection improvements of Murphy Ave./ Evelyn Ave. including IRWL pedestrian crossing; intersection improvements of Evelyn Ave./ Frances Ave.; sanitary utility improvements on Evelyn between Murphy Ave. and Sunnyvale Ave.; sanitary improvements of main lateral stub on Sunnyvale Ave. between Evelyn and Washington; sidewalk, lighting and tree planting improvements on north side of Washington Ave. between Frances Ave. and Sunnyvale Ave.; sidewalk, lighting and tree planting improvements on south side of Evelyn between Frances Ave. and Sunnyvale Ave.; and pedestrian crossing

improvements within parking lot between Murphy Ave. and Frances Ave. east of Plaza Del Sol, ready for use according to the Plans and Specifications prepared by ROYSTON HANAMOTO ALLEY & ABEY and adopted by the Owner. These Plans and Specifications are entitled respectively, "Historic Murphy Avenue Streetscape & Utilities Replacement, Project No. TR-08/02-09, Federal Aid Project No. CML-5213(028)."

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 Three Million One Hundred Sixty Seven Thousand and No/100 Dollars (\$3,167,000.00) subject to additions and deductions as provided in the Contract Documents and in accordance with Contract Documents. The sum includes Base Bid and accepted Additive Alternate No. 1.

**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 and Work Requirements/Restrictions.** All work under this contract shall be completed before the expiration of two hundred and forty nine (249) calendar days from the date specified in the Notice to Proceed, and as further delineated below.

Total calendar days for the project beginning July 6, 2009 and completed by March 12, 2010 is 249 calendar days. All milestones listed below will have project liquidated damages assigned.

Murphy Avenue between Washington Avenue and Evelyn Avenue is closed to all construction until August 31, 2009.

All Evelyn Avenue and Sunnyvale Avenue work begins July 6, 2009 with 70 calendar days for substantial completion plus 15 calendar days for punchlist items. Total of 85 calendar days with a final date of September 29, 2009.

All Washington Avenue work is to be completed before (2009 Holiday Season) by November 20, 2009.

Murphy Avenue work is to be completed in a total of 189 calendar days starting on August 31, 2009 and ending on March 12, 2010 with the following substantial completion milestones:

1. Stage 1 (See plans sheet C15.1) 70 calendar days or substantial completion by November 9, 2009.
2. Stage 2 (See plan sheet C15.2) 70 calendar days or substantial completion by January 18, 2010.
3. Stage 3 (See plan sheet C15.3) 28 calendar days or substantial completion by February 17, 2010.
4. Final punchlist items of 21 calendar days or project completion by March 12, 2010.
5. Pedestrian Crossing with Frances Parking Lot, 40 calendar days to complete. Completion before November 20, 2009, or begin after January 10, 2010.

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 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 therefore.

**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: Joseph J. Albanese, Inc.  
 Attn: John Albanese  
 986 Walsh Avenue  
 Santa Clara, CA 95050

**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) Workers' 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, or independent contractors who are directly responsible to the Owner, 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 Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov>. The Federal minimum wage rates for this project as predetermined by the United States Secretary of Labor are set forth in this document, and in copies of this book that may be examined at the offices described above where project plans, special provisions, and proposal forms may be seen. Addenda to modify the Federal minimum wage rates, if necessary, will be issued to holders of this document. Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

Attention is directed to the Federal minimum wage rate requirements in the "special provisions." If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The Department will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors shall pay not less than the Federal minimum wage rate, which most closely approximates the duties of the employees in question.

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

then 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 Two Thousand Five Hundred Dollars (\$2,500.00), 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.** In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Bid Proposal. Signing the Bid Proposal shall also constitute signature of the Noncollusion Affidavit.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR (Code of Federal Regulations) part 26 in the award and administration of US DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.

Failure of the bidder to fulfill the requirements of the Special Provisions for submittals required to be furnished after bid opening, including but not limited to escrowed bid documents, where applicable, may subject the bidder to a determination of the bidder's responsibility in the event it is the apparent low bidder on a future public works contracts.

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

Joseph J. Albanese, Inc.  
Contractor

License No. 299880

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)