

**Council Meeting: May 10, 2011****SUBJECT: Amend an Existing Contract for Pavement Rehabilitation of Various Streets Phase II and Approval of Budget Modification No. 32 (F1004-109)****BACKGROUND**

Approval is requested to amend an existing contract with Top Grade Construction, Inc. of Livermore for pavement and storm drain rehabilitation at various street locations to increase the total contract value by \$95,000 to compensate for a contractor claim submitted during the course of construction on the project. Approval is also requested for Budget Modification No. 32 to provide additional funding for the project.

DISCUSSION

On May 12, 2009 Council awarded a contract (RTC #09-122) to Top Grade Construction for the rehabilitation of pavement sections of four City roadways, including sections of Commercial Street, Ahwanee Avenue, Kifer Road and Washington Avenue, and the installation of a storm drain system at Washington Avenue from Waverly Street to Mathilda Avenue. Top Grade was the lowest responsive and responsible bidder of the eight construction bids received for the project, and a construction contract was awarded in the amount of \$1,227,949, plus a contract contingency of \$184,197.

Construction commenced on July 9, 2009. Rehabilitation of Commercial Street, Ahwanee and Kifer Road was completed in Fall 2009, but construction of the new storm drain system on Washington Avenue was delayed by unforeseen underground conditions. On January 26, 2010, the City temporarily suspended the project to allow for advertising and subsequent award of two public works construction contracts to replace deteriorated water and sewer lines on Washington Avenue. Construction of the new utility lines was completed in August 2010 and Top Grade was requested to remobilize to complete the remaining work on Washington Avenue. The contract work was finally completed on November 23, 2010.

During construction, the contractor submitted notices of potential claims for unforeseen and changed conditions on the storm drain portion of the work. Upon completion of the work, the contractor filed a claim for \$642,682 for compensation for impact costs resulting from trench failures of existing underground utilities that were not shown on the contract plans,

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remobilization costs, delay-related costs, and for costs related to additional consultant fees. Public Works Construction Engineering initially rejected the contractor's claim. Subsequently, the contractor elevated the claim for review to the Director of Public Works as required by the dispute resolution provisions of the construction contract.

The Public Works Department reevaluated the contractor's claim and consulted with the City Attorney's Office. Public Works determined that the contractor's claim had merit and subsequently negotiated a settlement with the contractor for a reduced amount of \$95,000. This amount constitutes full settlement and final release of all claims by the contractor.

The entire construction budget awarded for the project has been expended and only \$465 of the original contingency remains. In order to pay for the negotiated settlement, the value of the contract must be increased, and a budget modification must be approved for additional funding.

FISCAL IMPACT

Staff recommends approval of Budget Modification No. 32 to appropriate \$95,000 from the Wastewater Management Fund Rate Stabilization Reserve to project 822822 to fund the payment of the claim.

Through cost savings achieved through the favorable bidding climate, and the slower than planned implementation of wastewater projects due to their complex nature, the Wastewater Management Fund has sufficient reserves to absorb payment of this claim without impact to wastewater rates.

**Budget Modification No. 32
Fiscal Year 2010/2011**

	Current	Increase (Decrease)	Revised
Wastewater Management Fund			
<u>Expenditures:</u>			
Project 822822 – Storm Sewer Extension – Washington Ave.	224,819	95,000	\$319,819
<u>Reserves:</u>			
Rate Stabilization Reserve	\$8,008,075	(\$95,000)	\$7,913,075

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. Approve an amendment to an existing contract, in substantially the same form as the attached draft, with Top Grade Construction, Inc. by increasing the not-to-exceed amount by \$95,000, from \$1,227,949 to \$1,322,949, to compensate for the negotiated settlement of a contractor claim submitted during the course of project construction; and
2. Approve Budget Modification No. 32 to provide additional funding for the project.

Reviewed by:

Grace K. Leung, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

Marvin Rose, Director of Public Works

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Draft Amendment to General Construction Contract

**ATTACHMENT A
DRAFT**

**AMENDMENT TO GENERAL CONSTRUCTION CONTRACT
BETWEEN THE CITY OF SUNNYVALE AND TOP GRADE CONSTRUCTION,
INC. FOR PAVEMENT REHABILITATION OF VARIOUS STREETS PHASE II**

This Amendment to Consultant Services Agreement, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY") and TOP GRADE CONSTRUCTION, INC. ("CONTRACTOR").

WHEREAS, on June 4, 2009, CITY and CONTRACTOR entered into a General Construction Contract whereby CONTRACTOR would perform construction services necessary for a project known as Pavement Rehabilitation of Various Streets Phase II (Project No. ST-08/01-08) consisting of asphalt rehabilitation of various city streets; and

WHEREAS, the parties now agree that an Amendment to said Contract is advisable;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AMENDMENT TO GENERAL CONSTRUCTION CONTRACT:

Section 3. Contract Price – replace existing with the following:

3. Contract Price. The CITY 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 Three Hundred Twenty Two Thousand Nine Hundred Forty Nine and 34/100 Dollars (\$1,322,949.34) 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 the Contract Documents.

All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement Amendment.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

TOP GRADE CONSTRUCTION, INC.
("CONTRACTOR")

By _____
City Attorney

By _____

Name and Title