

**Council Meeting: June 19, 2012****SUBJECT: Award of Contract for Morse Avenue Neighborhood Park Development – Remedial Soil Excavation (F1104-59)****BACKGROUND**

Approval is requested to award a contract in the amount of \$719,602 to Evans Brothers, Inc. of Livermore for remedial soil excavation at the Morse Avenue Neighborhood Park Development (now named Seven Seas Park). Approval is also requested for a 15% construction contingency in the amount of \$107,940.

DISCUSSION

Capital Project 808352 (Seven Seas Park Development) provides for the development of a 5.3 acre parcel on Morse Avenue as a neighborhood park. The property had been utilized for private industrial use as Fair Oaks Industrial Park. Earlier this year, the five single story buildings on site were demolished in the first of three phases of work towards creating the new neighborhood park.

The scope of work for this second phase will include demolishing the remaining concrete walkways and asphalt parking areas on the site and the loading, transportation and disposal of approximately 850 truckloads of non-hazardous debris and contaminated soil on the project site. The third phase will be the actual park construction, which is tentatively scheduled to begin in February 2013.

This project was bid as follows:

Bid Notice: Advertised in The Sun on May 4, 2012;
 19 bay area Builder's Exchanges;
 Onvia Demandstar public procurement network; and
 Published on the City's website

Bid Response: 25 contractors requested bid documents.

Bid Results: Sealed bids were publicly opened on May 30, 2012;
 Six responsive bids were received.

The lowest responsive and responsible bid was from Evans Brothers, Inc. of Livermore in the amount of \$719,602. The bid amount is approximately 45% below the engineer's estimate of \$1,315,000. The Bid Summary is attached. It should be noted that Evans Brothers was awarded the demolition contract for the first phase of the project with similar value pricing (RTC No. 11-257), satisfactorily completing the work without any contract change orders.

Staff recommends accepting the bid from Evans Brothers, Inc., the lowest responsive and responsible bidder. Staff also recommends the award of a 15% construction contingency on this project.

A California Environmental Quality Act (CEQA) Initial Study and Mitigated Negative Declaration were filed by the City on this project.

FISCAL IMPACT

Project costs are as follows:

Construction	\$719,602
Construction contingency (15%)	\$107,940
Total cost	\$827,542

Budgeted funds are available in Capital Project 808352 (Seven Seas Park Development), funded by the Park Dedication Fund.

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 format as the attached draft and in the amount of \$719,602, to Evans Brothers, Inc. for the subject project, and authorize the City Manager to execute the contract when all necessary conditions have been met; and
2. Approve a 15% construction contingency in the amount of \$107,940.

Reviewed by:



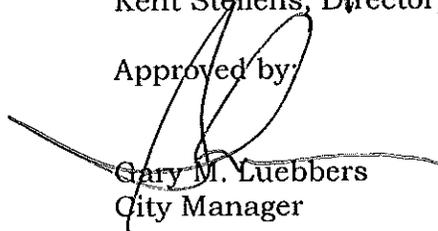
Grace K. Leung, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:



Kent Steffens, Director, Department of Public Works

Approved by:



Gary M. Luebbbers
City Manager

Attachments

- A. Bid Summary
- B. Draft General Construction Contract

**ATTACHMENT A
BID SUMMARY**

Invitation for Bids No. F1104-59
Morse Avenue Neighborhood Park Development
Remedial Soil Excavation
Public Works Project No. PR-11/03-12

Bidder	Evans Brothers, Inc.		O.C. Jones & Sons		Innovative Construction		Top Grade Construction		Pacific States		Magnus Pacific Corp.	
Address	7589 National Drive Livermore, CA 94550		1520 Fourth Street Berkeley, CA 94710		4721 Tidewater, Suite D Oakland, CA 94601		50 Contractors Street Livermore, CA 94551		11555 Dublin Blvd Dublin, CA 94568		3001 Lava Ridge Court Roseville, CA 95661	
Contact	Dan Evans		Greg Souder		Goodarz Seif		John Copriviza		Robert McCarrick		Mike Alfaro	
Pricing												
1. Workplans	Lump sum	\$18,900.00	Lump sum	\$15,500.00	Lump sum	\$10,176.00	Lump sum	\$25,000.00	Lump sum	\$63,600.00	Lump sum	\$8,880.00
2. Mobilization	Lump sum	\$20,710.00	Lump sum	\$35,000.00	Lump sum	\$23,860.00	Lump sum	\$43,000.00	Lump sum	\$40,000.00	Lump sum	\$56,000.00
3. Demo of Asphalt	Lump sum	\$57,900.00	Lump sum	\$20,000.00	Lump sum	\$14,882.00	Lump sum	\$35,000.00	Lump sum	\$25,000.00	Lump sum	\$18,750.00
4. Demo of Baserock	Lump sum	\$11,200.00	Lump sum	\$25,000.00	Lump sum	\$23,466.00	Lump sum	\$52,000.00	Lump sum	\$55,000.00	Lump sum	\$44,900.00
5. Excavation of Soil	\$29.74/Tn	\$2,974.00	\$53.00/Tn	\$5,300.00	\$10.00/Tn	\$1,000.00	\$30.00/Tn	\$3,000.00	\$27.00/Tn	\$2,700.00	\$160.00/Tn	\$16,000.00
6. Transport of AC	\$5.34/Tn	\$13,884.00	\$5.00/Tn	\$13,000.00	\$5.08/Tn	\$13,202.00	\$7.00/Tn	\$18,200.00	\$5.20/Tn	\$13,520.00	\$18.00/Tn	\$46,800.00
7. Excavation of Soil	Lump sum	\$81,200.00	Lump sum	\$141,100.00	Lump sum	\$108,225.00	Lump sum	\$224,500.00	Lump sum	\$130,000.00	Lump sum	\$196,000.00
8. Transport of Soil	\$25.13/Tn	\$452,340.00	\$24.00/Tn	\$432,000.00	\$26.50/Tn	\$477,000.00	\$25.00/Tn	\$450,000.00	\$27.60/Tn	\$496,800.00	\$38.00/Tn	\$680,940.00
9. Transport of Waste	\$103.04/Tn	\$10,304.00	\$170/Tn	\$17,000.00	\$112.75/Tn	\$11,275.00	\$110/Tn	\$11,000.00	\$131/Tn	\$13,100.00	\$308/Tn	\$30,800.00
10. Dripline Removal	Lump sum	\$10,500.00	Lump sum	\$8,000.00	Lump sum	\$19,713.00	Lump sum	\$13,000.00	Lump sum	\$20,000.00	Lump sum	\$17,500.00
11. Site Cleanup	Lump sum	\$39,640.00	Lump sum	\$20,000.00	Lump sum	\$32,267.00	Lump sum	\$35,000.00	Lump sum	\$60,000.00	Lump sum	\$51,300.00
TOTAL BID		\$719,602.00		\$731,900.00		\$736,066.00		\$909,700.00		\$919,720.00		\$1,170,470.00

**ATTACHMENT B
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 EVANS BROTHERS, 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, "Morse Avenue Neighborhood Park Development - Remedial Soil Excavation, Project No. PR-11/03-12, Invitation for Bids No. F1104-59", 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 work together 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 the project in a good and workmanlike manner. The work consist(s) of excavation and disposal of arsenic and lead containing soils in preparation for construction of new neighborhood park. Soils to be removed in accordance to plans and specifications prepared for the City of Sunnyvale and the Removal Action Workplan approved by California Department of Toxic Substances Control dated January 18, 2012 as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared by Eler & Kalinowski, Inc. and adopted by the Owner. These Plans and Specifications are entitled respectively, Morse Avenue Neighborhood Park Development - Remedial Soil Excavation, Project No. PR-11/03-12.

It is understood and agreed that the work will be 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 sum of Seven Hundred Nineteen Thousand Six Hundred Two and No/100 Dollars (\$719,602.00) subject to final determination of work performed and materials furnished at unit prices per Exhibit "A" attached hereto and incorporated by this reference and subject to additions and deductions, as provided in the 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 One Hundred Sixty (160) working 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 judged 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: Evans Brothers, Inc.
Attn: Dan Evans
7589 National Drive
Livermore, CA 94550

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 percent 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. Bonds shall be issued by an admitted surety insurer authorized to operate in the state of California.

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 requires 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 and Automobile 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 and \$2,000,000 annual aggregate combined single limit coverage. 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, use of owned automobiles, products and completed operations, including U, C and X. 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) Environmental Insurance. Automotive Liability coverage shall include MCSGO endorsement for contracts requiring the transportation of hazardous materials/wastes. Contractor shall procure and maintain for the duration of this contract Contractors Pollution Liability insurance with \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate for bodily injury, personal injury property damage and cleanup costs both on and offsite

(d) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

(e) Other Insurance Provisions. The contractors' pollution liability policy shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

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 <http://sunnyvale.ca.gov/Departments/Finance/Purchasing/prevailingwage.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 Two Hundred and No/100 Dollars (\$1,200.00) 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

Evans Brothers, Inc.
Contractor

License No. 443018

By _____ / /
City Manager

By _____

_____ / /
Title Date

Attest:
City Clerk

By _____

_____ / /
Title Date

By _____ / /
City Clerk Date

(SEAL)

APPROVED AS TO FORM:

_____ / /
City Attorney Date

(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
BID SCHEDULE**

Item No.	Description	Estimated Quantity	Unit	Unit Cost
1.	WORKPLANS AND SUBMITTALS	1	LS	<u>\$18,900.00</u>
2.	MOBILIZATION	1	LS	<u>\$20,760.00</u>
3.	DEMOLITION AND LOADING OF ASPHALT AND CONCRETE	1	LS	<u>\$57,900.00</u>
4.	DEMOLITION AND STOCKPILING OF BASEROCK OVERBURDEN	1	LS	<u>\$11,200.00</u>
5.	EXCAVATION AND STOCKPILING OF AFFECTED AREA SOIL	100	TON	<u>\$29.74/ton</u>
6.	TRANSPORTATION AND DISPOSAL OF ASPHALT AND CONCRETE	2,600	TON	<u>\$5.34/ton</u>
7.	EXCAVATION AND LOADING OF IMPACTED SOIL	1	LS	<u>\$81,200.00</u>
8.	TRANSPORTATION AND DISPOSAL OF IMPACTED SOIL THAT IS NON-HAZARDOUS	18,000	TON	<u>\$25.13/ton</u>
9.	TRANSPORTATION AND DISPOSAL OF IMPACTED SOIL THAT IS NON-RCRA HAZARDOUS WASTE	100	TON	<u>\$103.04/ton</u>
10.	ASPHALT, BASEROCK AND SOIL REMOVAL UNDER THE DRIP LINE OF TREES	1	LS	<u>\$10,500.00</u>
11.	DEMOBILIZATION AND SITE CLEANUP	1	LS	<u>\$39,640.00</u>