



**Council Meeting: July 17, 2012**

**SUBJECT: Award of Contract for Pavement Rehabilitation at Various Locations (F1106-66)**

**BACKGROUND**

Approval is requested to award a contract in the amount of \$2,309,785 to Top Grade Construction, Inc of Livermore for Pavement Rehabilitation at Various Locations. Approval is also requested for a 15% construction contingency in the amount of \$346,468.

**DISCUSSION**

Capital Project 829230 (Infrastructure Investment) provides approximately \$29 million through FY 2021/2022 for ongoing infrastructure rehabilitation. Project funding of \$2.55 million annually between FY 2011/2012 and FY 2015/2016 was programmed in order to accelerate street repairs to return the City's Pavement Condition Index (PCI), which measures the condition of City streets, to a level of 80. The Pavement Condition Index is measured on a scale of 0-100 and is based on a physical survey of street surfaces, assessing conditions like cracking, rutting, asphalt failures, etc.

Prior to 2006, the City's PCI was 85 and annual funding for rehabilitation and reconstruction was approximately \$3.85 million. Since then, the PCI has dropped to 75 and annual funding has decreased to approximately \$3.1 million. Even though the reduced funding has saved the City \$3.8 million over the past five years, the deterioration of City streets will require approximately \$12.5 million in asphalt improvements to return the pavement condition to a PCI of 80.

The scope of work for this project will include asphalt grinding and dig-outs followed by a new asphalt overlay. Additional work will include minor concrete work, sign relocation, traffic loop replacement, crack sealing and repair, traffic striping, adjusting utility boxes to finished grade, and traffic signal modifications. Project locations include:

- East Evelyn Avenue from Sunnyvale to Reed;
- Hollenbeck Avenue from Fremont to El Camino;
- Mathilda Avenue at Washington and at California; and
- Maria Lane

This project was bid as follows:

Bid Notice: Advertised in The Sun on June 15, 2012;  
19 bay area Builder's Exchanges;  
Onvia Demandstar public procurement network; and  
Published on the City's website.

Bid Response: 19 contractors requested bid documents.

Bid Results: Sealed bids were publicly opened on July 6, 2012;  
Five responsive bids were received.

The lowest responsive and responsible bid was from Top Grade Construction, Inc., of Livermore in the amount of \$2,309,785. The bid amount is approximately 3.4% above the engineer's estimate of \$2,234,118. The Bid Summary is attached.

Staff recommends accepting the bid from Top Grade Construction, Inc., the lowest responsive and responsible bidder. Staff also recommends the award of a 15% construction contingency in the amount of \$346,468.

This project is categorically exempt under CEQA Article 19 Section 15301 Class 1.c.

### **FISCAL IMPACT**

Project costs are as follows:

Construction	\$2,309,785
Construction contingency (15%)	<u>\$346,468</u>
Total cost	\$2,656,253

Budgeted funds, including unspent funds from FY 2011/2012 which will carry over into the current fiscal year, are available in Capital Project 829230 (Infrastructure Investment). This project is funded by the General 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 \$2,309,785, to Top Grade Construction, 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 \$346,468.

Reviewed by:



Grace K. Leung, Director of Finance

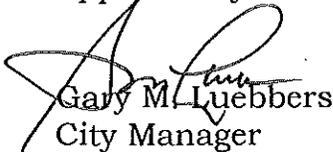
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:



Kent Steffens, Director of Public Works

Approved by:



Gary M. Luebbers  
City Manager

**Attachments**

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

**ATTACHMENT A  
BID SUMMARY**

**Invitation for Bids No. F1106-66  
Pavement Rehabilitation of Various Streets  
Public Works Project No. ST-09/11-10**

<b>Bidder Address</b>	<b>Top Grade Construction</b> 50 Contractors Street Livermore, CA 94551	<b>Granite Construction</b> 585 West Beach Street Watsonville, CA 95076	<b>O'Grady Paving, Inc.</b> 2513 Wyandotte Street Mountain View, CA 94043	<b>Interstate Grading &amp; Paving</b> 128 So. Maple Ave So. San Francisco, CA	<b>Synergy Project Management</b> 30 Grant St., Suite 300 San Francisco, CA 94108
<b>Contact</b>	John Copriviza	Jigisha Desai	Craig Young	H. Michael Pariani	Javad Mirsaidi

**BID ITEMS**

1. Mobilization	Lump sum	\$144,468.51	Lump sum	\$203,000.00	Lump sum	\$30,000.00	Lump sum	\$76,400.00	Lump sum	\$122,000.00
2. Traffic Control	Lump sum	\$100,000.00	Lump sum	\$90,000.00	Lump sum	\$50,000.00	Lump sum	\$70,000.00	Lump sum	\$82,000.00
3. PCC Sidewalk	\$14.00/SF	\$8,106.00	\$12.00/SF	\$6,948.00	\$20.00/SF	\$11,580.00	\$11.40/SF	\$6,600.00	\$6.50/SF	\$3,763.00
4. PCC Baserock	\$12.00/SF	\$31,968.00	\$15.00/SF	\$39,960.00	\$12.00/SF	\$31,968.00	\$10.60/SF	\$28,238.40	\$4.50/SF	\$11,988.00
5. PCC Driveway	\$16.00/SF	\$30,736.00	\$12.00/SF	\$23,052.00	\$16.00/SF	\$30,736.00	\$12.50/SF	\$24,012.50	\$5.00/SF	\$9,605.00
6. PCC Curb/Gutter	\$54.00/LF	\$48,600.00	\$20.00/LF	\$18,000.00	\$60.00/LF	\$54,000.00	\$61.00/LF	\$54,900.00	\$38.00/LF	\$34,200.00
7. PCC Curb New	\$46.00/LF	\$41,446.00	\$26.00/LF	\$23,426.00	\$50.00/LF	\$45,050.00	\$59.00/LF	\$53,159.00	\$25.00/LF	\$22,525.00
8. PCC Ramp	\$2,800/Ea	\$11,200.00	\$3,500/Ea	\$14,000.00	\$3,000/Ea	\$12,000.00	\$2,600/Ea	\$10,400.00	\$2,200/Ea	\$8,800.00
9. Electrolier	\$5,000/Ea	\$10,000.00	\$5,000/Ea	\$10,000.00	\$5,500/Ea	\$11,000.00	\$7,400/ea	\$14,800.00	\$5,100/Ea	\$10,200.00
10. Sign Relocation	\$325.00/Ea	\$975.00	\$800.00/Ea	\$2,400.00	\$500.00/Ea	\$1,500.00	\$300.00/Ea	\$900.00	\$500.00/Ea	\$1,500.00
11. 2" Asphalt Grind	\$1.10/SY	\$52,360.00	\$2.20/SY	\$104,720.00	\$2.20/SY	\$104,720.00	\$2.85/SY	\$135,660.00	\$0.62/SY	\$29,512.00
12. 3" Asphalt Grind	\$1.85/SY	\$17,575.00	\$2.20/SY	\$20,900.00	\$3.30/SY	\$31,350.00	\$3.60/SY	\$34,200.00	\$0.88/SY	\$8,360.00
13. 6" Asphalt Grind	\$7.00/SY	\$14,700.00	\$5.50/SY	\$11,550.00	\$7.00/SY	\$14,700.00	\$8.00/SY	\$16,800.00	\$0.70/SY	\$1,470.00
14. Conform Grind	\$2.00/LF	\$1,600.00	\$10.00/LF	\$8,000.00	\$7.00/LF	\$5,600.00	\$23.00/LF	\$18,400.00	\$9.00/LF	\$7,200.00
15. Wedge Grind	\$1.00/LF	\$13,500.00	\$0.65/LF	\$8,775.00	\$1.50/LF	\$20,250.00	\$2.00/LF	\$27,000.00	\$2.00/LF	\$27,000.00
16. Digouts	\$4.00/SF	\$32,000.00	\$6.50/SF	\$52,000.00	\$4.00/SF	\$32,000.00	\$4.45/SF	\$35,600.00	\$5.00/SF	\$40,000.00
17. Type A Loops	\$275.00/Ea	\$8,800.00	\$300.00/Ea	\$9,600.00	\$600.00/Ea	\$19,200.00	\$285.00/Ea	\$9,120.00	\$325.00/Ea	\$10,400.00
18. Type D Loops	\$275.00/Ea	\$1,375.00	\$300.00/Ea	\$1,500.00	\$600.00/Ea	\$3,000.00	\$285.00/Ea	\$1,425.00	\$325.00/Ea	\$1,625.00
19. Type E Loops	\$275.00/Ea	\$825.00	\$300.00/Ea	\$900.00	\$600.00/Ea	\$1,800.00	\$285.00/Ea	\$855.00	\$325.00/Ea	\$975.00
20. Detector Handhole	\$395/Ea	\$1,185.00	\$400/Ea	\$1,200.00	\$600/Ea	\$1,800.00	\$400/Ea	\$1,200.00	\$450/Ea	\$1,350.00
21. Crack Sealing	Lump sum	\$25,000.00	Lump sum	\$15,000.00	Lump sum	\$30,000.00	Lump sum	\$27,000.00	Lump sum	\$5,000.00
22. Crack Repair	\$5.50/LF	\$24,750.00	\$5.00/LF	\$22,500.00	\$7.00/LF	\$31,500.00	\$5.60/LF	\$25,200.00	\$1.00/LF	\$4,500.00
23. Fabric	\$2.20/SY	\$81,400.00	\$1.96/SY	\$72,520.00	\$2.20/SY	\$81,400.00	\$2.10/SY	\$77,700.00	\$1.00/SY	\$37,000.00
24. 2" Overlay	\$77.00/Tn	\$854,700.00	\$77.00/Tn	\$854,700.00	\$88.00/Tn	\$976,800.00	\$85.00/Tn	\$943,500.00	\$104.00/Tn	\$1,154,400.00
25. 3" Overlay	\$87.00/Tn	\$152,250.00	\$78.00/Tn	\$136,500.00	\$88.00/Tn	\$154,000.00	\$85.00/Tn	\$148,750.00	\$106.00/Tn	\$185,500.00
26. 6" Overlay	\$93.00/Tn	\$69,750.00	\$79.00/Tn	\$59,250.00	\$88.00/Tn	\$66,000.00	\$85.00/Tn	\$63,750.00	\$108.00/Tn	\$81,000.00
27. Detail 9 Striping	\$0.45/LF	\$1,432.35	\$0.60/LF	\$1,909.80	\$0.50/LF	\$1,591.50	\$0.52/LF	\$1,655.16	\$0.75/LF	\$2,387.25

28. Detail 12 Striping	\$0.45/LF	\$2,078.10	\$0.55/LF	\$2,539.90	\$0.50/LF	\$2,309.00	\$0.52/LF	\$2,401.56	\$0.75/LF	\$3,463.50
29. Detail 19 Striping	\$0.90/LF	\$1,149.30	\$1.10/LF	\$1,404.70	\$1.00/LF	\$1,277.00	\$1.05/LF	\$1,340.85	\$1.20/LF	\$1,532.40
30. Detail 22 Striping	\$1.05/LF	\$7,856.10	\$1.30/LF	\$9,726.60	\$1.20/LF	\$8,978.40	\$1.25/LF	\$9,352.50	\$1.40/LF	\$10,474.80
31. Detail 25 Striping	\$0.77/LF	\$1,791.79	\$1.00/LF	\$2,327.00	\$1.00/LF	\$2,327.00	\$0.90/LF	\$2,094.30	\$1.00/LF	\$2,327.00
32. Detail 27B Stripe	\$0.60/LF	\$962.40	\$0.70/LF	\$1,122.80	\$0.65/LF	\$1,042.60	\$0.70/LF	\$1,122.80	\$0.85/LF	\$1,363.40
33. Detail 32 Striping	\$1.40/LF	\$16,151.80	\$1.70/LF	\$19,612.90	\$1.60/LF	\$18,459.20	\$1.65/LF	\$19,036.05	\$1.80/LF	\$20,766.60
34. Detail 36 Striping	\$1.05/LF	\$232.05	\$1.30/LF	\$287.30	\$1.20/LF	\$265.20	\$1.25/LF	\$276.25	\$1.40/LF	\$309.40
35. Detail 36A Stripe	\$0.90/LF	\$227.70	\$1.10/LF	\$278.30	\$1.00/LF	\$253.00	\$1.05/LF	\$265.65	\$1.20/LF	\$303.60
36. Detail 37B Stripe	\$1.05/LF	\$246.75	\$1.30/LF	\$305.50	\$1.20/LF	\$282.00	\$1.25/LF	\$293.75	\$1.40/LF	\$329.00
37. Detail 38 Striping	\$1.05/LF	\$3,256.05	\$1.30/LF	\$4,031.30	\$1.20/LF	\$3,721.20	\$1.25/LF	\$3,876.25	\$1.40/LF	\$4,341.40
38. Detail 39 Striping	\$0.60/LF	\$13,594.20	\$0.70/LF	\$15,859.90	\$0.70/LF	\$15,859.90	\$0.70/LF	\$15,859.90	\$0.85/LF	\$19,258.45
39. Detail 39A Stripe	\$0.55/LF	\$2,433.20	\$0.75/LF	\$3,318.00	\$0.60/LF	\$2,654.40	\$0.65/LF	\$2,875.60	\$0.80/LF	\$3,539.20
40. 12" White Stripe	\$2.70/LF	\$11,645.10	\$3.25/LF	\$14,017.25	\$3.00/LF	\$12,939.00	\$3.10/LF	\$13,370.30	\$3.20/LF	\$13,801.60
41. Legend & Arrows	\$2.90/SF	\$18,861.60	\$3.50/SF	\$22,764.00	\$3.50/SF	\$22,764.00	\$3.75/SF	\$21,788.40	\$3.50/LF	\$22,764.00
42. Blue Markers	\$13.50/Ea	\$567.00	\$16.00/Ea	\$672.00	\$20.00/Ea	\$840.00	\$15.50/EA	\$651.00	\$16.00/Ea	\$672.00
43. Painted Curb	\$3.50/LF	\$210.00	\$5.00/LF	\$300.00	\$4.00/LF	\$240.00	\$4.00/LF	\$240.00	\$6.00/LF	\$360.00
44. Sandblast Curb	\$10.00/LF	\$1,000.00	\$13.00/LF	\$1,300.00	\$15.00/LF	\$1,500.00	\$13.00/LF	\$1,300.00	\$14.00/LF	\$1,400.00
45. Manhole Adjusts	\$400.00/Ea	\$22,000.00	\$400.00/Ea	\$22,000.00	\$350.00/Ea	\$19,250.00	\$410.00/EA	\$22,550.00	\$315.00/Ea	\$17,325.00
46. Valve Adjusts	\$220.00/Ea	\$18,480.00	\$220.00/Ea	\$18,480.00	\$250.00/Ea	\$21,000.00	\$225.00/Ea	\$18,900.00	\$220.00/Ea	\$18,480.00
47. Manhole Adjusts	\$595.00/Ea	\$49,980.00	\$600.00/Ea	\$50,400.00	\$550.00/Ea	\$46,200.00	\$600.00/Ea	\$50,400.00	\$315.00/Ea	\$26,460.00
48. Valve Adjusts	\$335.00/Ea	\$38,860.00	\$340.00/Ea	\$39,440.00	\$350.00/Ea	\$40,600.00	\$340.00/Ea	\$39,440.00	\$250.00/Ea	\$29,000.00
49. Storm Drain Adj.	\$2,500/Ea	\$7,500.00	\$3,000/Ea	\$9,000.00	\$2,500/Ea	\$7,500.00	\$2,600/Ea	\$7,800.00	\$650.00/Ea	\$6,500.00
50. IRWL Mods	Lump sum	\$45,000.00	Lump sum	\$35,400.00	Lump sum	\$36,000.00	Lump sum	\$47,300.00	Lump sum	\$37,500.00
51. Traffic Signal	Lump sum	\$15,000.00	Lump sum	\$18,700.00	Lump sum	\$19,000.00	Lump sum	\$15,500.00	Lump sum	\$21,000.00
52. Traffic Signal	Lump sum	\$20,000.00	Lump sum	\$25,300.00	Lump sum	\$26,000.00	Lump sum	\$21,750.00	Lump sum	\$27,500.00
53. Traffic signal	Lump sum	\$20,000.00	Lump sum	\$25,300.00	Lump sum	\$26,000.00	Lump sum	\$21,750.00	Lump sum	\$27,500.00
54. Traffic Signal	Lump sum	\$15,000.00	Lump sum	\$18,700.00	Lump sum	\$19,000.00	Lump sum	\$15,300.00	Lump sum	\$21,000.00
55. Traffic signal	Lump sum	\$15,000.00	Lump sum	\$18,700.00	Lump sum	\$19,000.00	Lump sum	\$15,300.00	Lump sum	\$21,000.00
56. Traffic Signal	Lump sum	\$20,000.00	Lump sum	\$25,300.00	Lump sum	\$26,000.00	Lump sum	\$21,750.00	Lump sum	\$27,500.00
57. Traffic Signal	Lump sum	\$20,000.00	Lump sum	\$25,300.00	Lump sum	\$26,000.00	Lump sum	\$21,750.00	Lump sum	\$27,500.00
58. Traffic Signal	Lump sum	\$20,000.00	Lump sum	\$25,300.00	Lump sum	\$26,000.00	Lump sum	\$21,750.00	Lump sum	\$27,500.00
59. Traffic Signal	Lump sum	\$15,000.00	Lump sum	\$18,700.00	Lump sum	\$19,000.00	Lump sum	\$15,300.00	Lump sum	\$21,000.00
60. Traffic Signal	Lump sum	\$90,000.00	Lump sum	\$101,000.00	Lump sum	\$80,000.00	Lump sum	\$95,800.00	Lump sum	\$110,000.00
61. Traffic Signal	Lump sum	\$15,000.00	Lump sum	\$18,000.00	Lump sum	\$19,000.00	Lump sum	\$15,300.00	Lump sum	\$21,000.00
<b>BID TOTAL</b>		<b>\$2,309,785.00</b>		<b>\$2,407,198.25</b>		<b>\$2,424,807.00</b>		<b>\$2,471,010.62</b>		<b>\$2,499,032.10</b>

**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 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 at Various Locations, Project No. ST-09/11-10, Invitation for Bids No. F1106-66", 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 removal of PCC curb, gutter, sidewalk, asphalt concrete pavement and striping; maintaining traffic and furnishing traffic control throughout construction; replacement of traffic signal detector loops and related facilities; placement of Hot Mix Asphalt Concrete; adjusting utility facilities; installation of curb, gutter, sidewalk, median paving, thermoplastic traffic stripes, pavement markings, and traffic signs as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared by CSG Consultants and adopted by the Owner. These Plans and Specifications are entitled respectively, Pavement Rehabilitation at Various Locations, Project No. ST-09/11-10.

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, an amount not to exceed Two Million Three Hundred Nine Thousand Seven Hundred Eighty Five and No/100 Dollars (\$2,309,785.00) subject to the 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. The sum includes base bid and accepted Additive Alternate(s) No. Number(s). All other Additive Alternate(s) are rejected by Owner, and are not included in this contract.

**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-five (75) 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: Top Grade Construction, Inc.  
Attn: John A. Copriviza, VP  
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 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 Two Million Dollars (\$2,000,000.00) per occurrence and \$4,000,000 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.

**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 Five Hundred and No/100 Dollars (\$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.**

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 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 #	Approx. Quantity	Units	Description	Unit Price
1	1	LS	Mobilization	\$144,468.51
2	1	LS	Traffic Control	\$100,000.00
3	579	SF	PCC Sidewalk Replacement	\$14.00
4	2,664	SF	PCC Sidewalk New with Baserock	\$12.00
5	1,921	SF	PCC Driveway	\$16.00
6	900	LF	PCC Curb & Gutter Replacement	\$54.00
7	901	LF	PCC Curb & Gutter New	\$46.00
8	4	EA	PCC Access Ramp Replacement	\$2,800.00
9	2	EA	Electrolier Removal & Replacement	\$5,000.00
10	3	EA	Sign Relocation	\$325.00
11	47,600	SY	Asphalt Grinding - 2" Full Grind	\$1.10
12	9,500	SY	Asphalt Grinding - 3" Full Grind	\$1.85
13	2,100	SY	Asphalt Grinding - 6" Full Grind	\$7.00
14	800	LF	Asphalt Grinding - Conform Grind	\$2.00
15	13,500	LF	Asphalt Grinding - Wedge Grind	\$1.00
16	8,000	SF	Pavement Repair (Digouts)	\$4.00
17	32	EA	Traffic Loop Replacement - Type A	\$275.00
18	5	EA	Traffic Loop Replacement - Type D	\$275.00
19	3	EA	Traffic Loop Replacement - Type E	\$275.00
20	3	EA	Detector Handhole	\$395.00
21	1	LS	Crack Sealing	\$25,000.00
22	4,500	LF	Lateral Crack Repair	\$5.50
23	37,000	SY	Pavement Reinforcing Fabric	\$2.20
24	11,100	TON	AC Overlay - 2" Thick	\$77.00
25	1,750	TON	AC Overlay - 3" Thick	\$87.00
26	750	TON	AC Overlay - 6" Thick	\$93.00
27	3,183	LF	Striping - Detail 9	\$0.45
28	4,618	LF	Striping - Detail 12	\$0.45
29	1,277	LF	Striping - Detail 19	\$0.90
30	7,482	LF	Striping - Detail 22	\$1.05
31	2,327	LF	Striping - Detail 25	\$0.77
32	1,604	LF	Striping - Detail 27B	\$0.60
33	11,537	LF	Striping - Detail 32	\$1.40
34	221	LF	Striping - Detail 36	\$1.05
35	253	LF	Striping - Detail 36A	\$0.90
36	235	LF	Striping - Detail 37B	\$1.05
37	3,101	LF	Striping - Detail 38	\$1.05
38	22,657	LF	Striping - Detail 39	\$0.60
39	4,424	LF	Striping - Detail 39A	\$0.55
40	4,313	LF	Striping - 12" White Crosswalk/Limit Line	\$2.70
41	6,504	SF	Striping - Legends and Arrows	\$2.90

42	42	EA	Blue Pavement Marker	\$13.50
43	60	LF	Painted Curb	\$3.50
44	100	LF	Sandblast Existing Painted Curb	\$10.00
45	55	EA	Manhole Adjustments in Overlay Area	\$400.00
46	84	EA	Valve & Monument Adjustments in Overlay Area	\$220.00
47	84	EA	Manhole Adjustments in Mill & Fill Area	\$595.00
48	116	EA	Valve & Monument Adjustments in Mill & Fill Area	\$335.00
49	3	EA	Storm Drain Inlet Grate and Frame Adjustment	\$2,500.00
50	1	LS	In-Road Warning Light (IRWL) Modifications	\$45,000.00
51	1	LS	Traffic Signal Modification - Evelyn Ave at Fair Oaks Ave	\$15,000.00
52	1	LS	Traffic Signal Modification - Evelyn Ave at Wolfe Rd	\$20,000.00
53	1	LS	Traffic Signal Modification - Evelyn Ave at Aster Ave	\$20,000.00
54	1	LS	Traffic Signal Modification - Evelyn Ave at Reed Ave	\$15,000.00
55	1	LS	Traffic Signal Modification - Hollenbeck Ave at Fremont Ave	\$15,000.00
56	1	LS	Traffic Signal Modification - Hollenbeck Ave at Torrington Dr	\$20,000.00
57	1	LS	Traffic Signal Modification - Hollenbeck Ave at Remington Dr	\$20,000.00
58	1	LS	Traffic Signal Modification - Hollenbeck Ave at Danforth Dr	\$20,000.00
59	1	LS	Traffic Signal Modification - Maria Ln at Wolfe Rd	\$15,000.00
60	1	LS	Traffic Signal Modification - Mathilda Ave at Washington Ave	\$90,000.00
61	1	LS	Traffic Signal Modification - Mathilda Ave at California Ave	\$15,000.00