



Council Meeting: August 13, 2013

SUBJECT: Award of Bid No. PW13-21 for Seven Seas Neighborhood Park and Authorization to Amend an Existing Contract for Design and Construction Support Services

BACKGROUND

In association with the design and construction of the Seven Seas Neighborhood Park, Council approval is recommended to award a construction contract in the amount of \$4,887,624 to Robert A. Bothman, Inc. of San Jose, and for a 10% construction contingency in the amount of \$488,762. Approval is also recommended to modify an existing contract with SSA Landscape Architects, Inc. of Santa Cruz for construction support services in the amount of \$109,878.

DISCUSSION

This project provides for the development of a 5.3 acre parcel on Morse Avenue as a neighborhood park. The parcel was originally purchased to provide a park for this neighborhood and was previously leased for private industrial use as Fair Oaks Industrial Park. Completion of the project will provide additional park land/play areas to residents north of Highway 101 and between Mathilda and Fair Oaks Avenues. The scope of work for construction includes both youth and tot lot play areas, a splash park, tennis court, half basketball court, picnic and seating areas, open play space, restrooms, a small dog park and installation of new trees and landscaping throughout the site.

Demolition of the Fair Oaks Industrial site was completed in FY 2011/2012. Soil remediation of the site was completed in FY 2012/2013. The contract for park design was awarded to SSA Landscape Architects, Inc. in 2010.

This project was bid as follows:

- Bid Noticing: Advertised in The Sun on May 31, 2013;
 17 Bay Area Builder's Exchanges;
 Onvia DemandStar procurement network; and
 Published on the City's web site.
- Bid Response: 31 contractors requested bid documents.
- Bid Results: Sealed bids were publicly opened on June 26, 2013;
 One responsive bid was received.

The one bid in the amount of \$4,887,624 was received from Robert A. Bothman, Inc., of San Jose. The bid amount was approximately 8% over the engineer's estimate of \$4,494,666. The Bid Summary is attached.

Customarily, two options would be considered when only one construction bid is received: Awarding the contract if the bidder is both responsive and responsible, or rejecting the bid and rebidding the project. Rejecting and rebidding the project would likely delay the start of project construction until Spring 2014 due to the onset of the rainy season, and there is no guarantee of more or better bids if the project was re-bid. Additionally, as the economy continues to rebound, bids have been coming in higher than estimated amounts, and in fact bids within 10% *above or below* estimates are fairly typical for public works construction projects. For these reasons, staff recommends awarding the contract to Bothman.

Construction Support Services

The contract to design the park, in the amount of \$339,235 (plus a 10% contingency), was awarded to SSA Landscape Architects in 2010 (RTC No. 10-080). Construction support was not included in the 2010 contract because staff felt it was too early in the park development to be able to determine the appropriate level of construction support services for the project during construction. Now that the plans and design of the new park are finalized, and given the unique character of the park's design elements, construction support services by the park designer are particularly important to include in the contract at this time.

The attached Amendment to Consultant Services Agreement details the cost and the services to be provided, which include interpretation of plans and specifications, and the review of project submittals and shop drawings to verify compliance with specifications. In addition, the designer will review Requests for Information (RFI's) and substitutions from the construction contractor, and review punch list items and as-built information during project completion. Additionally, the designer will be required to make changes to the final project drawings resulting from minor scope changes during construction.

CEQA REVIEW

The CEQA determination for this project is a Mitigated Negative Declaration, as adopted by City Council on October 18, 2011 (RTC No. 11-226).

FISCAL IMPACT

Project costs are as follows:

| | |
|---|-------------|
| Construction | \$4,887,624 |
| Construction contingency (10%) | \$488,762 |
| Total Construction Cost | \$5,376,386 |
| Construction support services by designer | \$109,878 |
| Total Project Cost | \$5,486,264 |

Approximately \$7 million in budgeted funds is 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.

ALTERNATIVES

1. Award a contract, in substantially the same format as the attached draft and in the amount of \$4,887,624, to Robert A. Bothman, Inc., for the subject project, and authorize the City Manager to execute the contract when all the necessary conditions have been met;
2. Approve a 10% construction contingency in the amount of \$488,762; and
3. Approve an amendment to an existing contract with SSA Landscape Architects, Inc., in substantially the same format as the attached draft and in the amount of \$109,878, for construction support services for the subject project; or
4. Reject the one bid received from Robert A. Bothman, Inc.

RECOMMENDATION

It is recommended that Council approve Alternatives 1, 2 and 3 to award the construction contract and contingency to Robert A. Bothman, and to amend the existing contract with SSA Landscape Architects for construction support services. Should Council choose to approve Alternative 4 and reject the bid received from Bothman, there is no guarantee that a better bid or bids will be received when the project is re-bid, and substantial project delays would occur. Should Council decide to reject the bid, it is recommended that Alternative 3 be approved so that construction support services can be included in the landscape architect's contract.

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
- C. Amendment to Consultant Services Agreement between City and SSA Landscape Architects, Inc. for Design and Construction Support Services for Morse Neighborhood Park Development

**Attachment A
Bid Summary**

**Invitation for Bids No. PW13-21
Seven Seas Neighborhood Park
Public Works Project No. PR-11/04-13**

**Bidder: Robert A. Bothman, Inc.
Address: 650 Quinn Avenue
San Jose, CA 95112**

Contact: James C. Moore

| Bid Item | Item Description | Qty. | Unit | Cost |
|-----------------|--|-------------|-------------|--------------|
| 1 | MOBILIZATION/TEMPORARY FACILITIES (includes bonds and insurance) | 1 | ls | \$239,490.00 |
| 2 | SWPPP MANAGEMENT AND IMPLEMENTATION | 1 | ls | \$38,600.00 |
| 3 | CONSTRUCTION SURVEY STAKING | 1 | ls | \$11,000.00 |
| 4 | SELECTIVE DEMOLITION | 1 | ls | \$134,397.00 |
| 5 | TUBE STEEL FENCE, GATES AND HANDRAIL | 1 | ls | \$23,400.00 |
| 6 | COMPOSITE DOCKS (includes footings and wood framing) | 1 | ls | \$41,000.00 |
| 7 | SHADE SAILS (includes footings and rebar) | 1 | ls | \$109,000.00 |
| 8 | PLAYGROUND EQUIPMENT | 1 | ls | \$377,300.00 |
| 9 | GFRC FAUX ROCK OUTCROPPINGS | 1 | allow | \$150,000.00 |
| 10 | SPLASH PAD EQUIPMENT | 1 | ls | \$175,000.00 |
| 11 | SITE FURNITURE (seating/park sign/drinking ftn./court equipment) | 1 | ls | \$197,300.00 |
| 12 | PRE-FABRICATED RESTROOM | 1 | ls | \$127,300.00 |
| 13 | WATER UTILITIES | 1 | ls | \$18,100.00 |
| 14 | SANITARY SEWER UTILITIES | 1 | ls | \$23,500.00 |
| 15 | STORM DRAIN UTILITIES | 1 | ls | \$68,640.00 |
| 16 | ELECTRICAL | 1 | ls | \$368,000.00 |
| 17 | TREE PROTECTION | 1 | ls | \$3,500.00 |
| 18 | EARTH WORK | 1 | ls | \$829,000.00 |
| 19 | ASPHALT PAVING AT PARKING (includes signage and striping) | 1 | ls | \$33,500.00 |
| 20 | HOT-MIX ASPHALT AT COURTS | 1 | ls | \$23,000.00 |
| 21 | CONCRETE FLATWORK (non decorative) | 1 | ls | \$174,147.00 |

| | | | | |
|----|--|---|----|-----------------------|
| 22 | CONCRETE FLATWORK (decorative: stained/stamped/seeded) | 1 | ls | \$57,000.00 |
| 23 | CONCRETE CURBS (at parking lot & courts) | 1 | ls | \$117,000.00 |
| 24 | CONCRETE UNDER RUBBER PLAY SURFACING | 1 | ls | \$34,000.00 |
| 25 | CONCRETE WALLS (includes skate-stoppers) | 1 | ls | \$140,000.00 |
| 26 | GRANITE FINES/CRUSHED ROCK | 1 | ls | \$254,000.00 |
| 27 | PLAYGROUND PROTECTIVE SURFACING AND SPLASH PAD SURFACING | 1 | ls | \$131,400.00 |
| 28 | SPORTS COURT SURFACING | 1 | ls | \$16,500.00 |
| 29 | CHAIN LINK FENCE AND GATES | 1 | ls | \$60,000.00 |
| 30 | WELDED WIRE GABIONS (includes rock infill) | 1 | ls | \$83,600.00 |
| 31 | IRRIGATION WORK | 1 | ls | \$243,000.00 |
| 32 | IRRIGATION BOOSTER PUMP | 1 | ls | \$13,250.00 |
| 33 | PLANTING WORK | 1 | ls | \$288,000.00 |
| 34 | LANDSCAPE EDGE (metal header and concrete mow band) | 1 | ls | \$55,100.00 |
| 35 | TREE GRATES | 1 | ls | \$48,200.00 |
| 36 | PRE-CAST CONCRETE BANDS WITH METAL LETTERS | 1 | ls | \$19,500.00 |
| 37 | BOULDERS AND ROCKS | 1 | ls | \$152,200.00 |
| 38 | TOT LOT SAND PIT | 1 | ls | \$2,500.00 |
| 39 | CUSTOM COMPOSITE BENCH ON GABION | 1 | ls | \$7,200.00 |
| | Total Bid Amount | | | \$4,887,624.00 |

Surety: 10% Bid Bond
License: Class A

Subs: Duran & Venables
Beltramo Electrical
Crusader Fence, Inc.
Restroom Facilities, Inc.
King Khan Construction, Inc.
Robertson Industries, Inc.
Ortiz Construction

**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 ROBERT A. BOTHMAN, 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, "Seven Seas Neighborhood Park, Project No. PR-11/04-13, Invitation for Bids No. PW13-21", including Five (5) 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 provide all labor, materials, equipment and services to construct a new 5 acre neighborhood park and related amenities as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared by SSA Landscape Architects and adopted by the Owner. These Plans and Specifications are entitled respectively, Seven Seas Neighborhood Park, Project No. PR-11/04-13.

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 Four Million Eight Hundred Eighty Seven Thousand Six Hundred Twenty Four and No/100 Dollars (\$4,887,624.00) subject to final determination of the work performed and materials furnished at unit prices per "Exhibit A" attached hereto and incorporated by this reference, and subject to additions and deductions in accordance, 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 Two Hundred Fifty (250) calendar days from the date specified in the Notice to Proceed.

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

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

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

9. Termination for Breach, etc. If Contractor should file a bankruptcy petition and/or be 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: Robert A. Bothman, Inc.
Attn: James C. Moore
650 Quinn Avenue
San Jose, CA 95112

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 California Department of Industrial Relations website at:

<http://www.dir.ca.gov/OPRL/DPreWageDetermination.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

Robert A. Bothman, Inc.
Contractor

License No. 440332

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)

**Bid Schedule
EXHIBIT A**

| Bid Item | Item Description | Qty. | Unit | Cost |
|-----------------|--|-------------|-------------|--------------|
| 1 | MOBILIZATION/TEMPORARY FACILITIES (includes bonds and insurance) | 1 | ls | \$239,490.00 |
| 2 | SWPPP MANAGEMENT AND IMPLEMENTATION | 1 | ls | \$38,600.00 |
| 3 | CONSTRUCTION SURVEY STAKING | 1 | ls | \$11,000.00 |
| 4 | SELECTIVE DEMOLITION | 1 | ls | \$134,397.00 |
| 5 | TUBE STEEL FENCE, GATES AND HANDRAIL | 1 | ls | \$23,400.00 |
| 6 | COMPOSITE DOCKS (includes footings and wood framing) | 1 | ls | \$41,000.00 |
| 7 | SHADE SAILS (includes footings and rebar) | 1 | ls | \$109,000.00 |
| 8 | PLAYGROUND EQUIPMENT | 1 | ls | \$377,300.00 |
| 9 | GFRC FAUX ROCK OUTCROPPINGS | 1 | allow | \$150,000.00 |
| 10 | SPLASH PAD EQUIPMENT | 1 | ls | \$175,000.00 |
| 11 | SITE FURNITURE (seating/park sign/drinking ftn./court equipment) | 1 | ls | \$197,300.00 |
| 12 | PRE-FABRICATED RESTROOM | 1 | ls | \$127,300.00 |
| 13 | WATER UTILITIES | 1 | ls | \$18,100.00 |
| 14 | SANITARY SEWER UTILITIES | 1 | ls | \$23,500.00 |
| 15 | STORM DRAIN UTILITIES | 1 | ls | \$68,640.00 |
| 16 | ELECTRICAL | 1 | ls | \$368,000.00 |
| 17 | TREE PROTECTION | 1 | ls | \$3,500.00 |
| 18 | EARTH WORK | 1 | ls | \$829,000.00 |
| 19 | ASPHALT PAVING AT PARKING (includes signage and striping) | 1 | ls | \$33,500.00 |
| 20 | HOT-MIX ASPHALT AT COURTS | 1 | ls | \$23,000.00 |
| 21 | CONCRETE FLATWORK (non decorative) | 1 | ls | \$174,147.00 |
| 22 | CONCRETE FLATWORK (decorative: stained/stamped/seeded) | 1 | ls | \$57,000.00 |
| 23 | CONCRETE CURBS (at parking lot & courts) | 1 | ls | \$117,000.00 |
| 24 | CONCRETE UNDER RUBBER PLAY SURFACING | 1 | ls | \$34,000.00 |
| 25 | CONCRETE WALLS (includes skate-stoppers) | 1 | ls | \$140,000.00 |
| 26 | GRANITE FINES/CRUSHED ROCK | 1 | ls | \$254,000.00 |
| 27 | PLAYGROUND PROTECTIVE SURFACING AND SPLASH PAD SURFACING | 1 | ls | \$131,400.00 |

| | | | | |
|----|---|---|----|----------------|
| 28 | SPORTS COURT SURFACING | 1 | ls | \$16,500.00 |
| 29 | CHAIN LINK FENCE AND GATES | 1 | ls | \$60,000.00 |
| 30 | WELDED WIRE GABIONS (includes rock infill) | 1 | ls | \$83,600.00 |
| 31 | IRRIGATION WORK | 1 | ls | \$243,000.00 |
| 32 | IRRIGATION BOOSTER PUMP | 1 | ls | \$13,250.00 |
| 33 | PLANTING WORK | 1 | ls | \$288,000.00 |
| 34 | LANDSCAPE EDGE (metal header and concrete mow band) | 1 | ls | \$55,100.00 |
| 35 | TREE GRATES | 1 | ls | \$48,200.00 |
| 36 | PRE-CAST CONCRETE BANDS WITH METAL LETTERS | 1 | ls | \$19,500.00 |
| 37 | BOULDERS AND ROCKS | 1 | ls | \$152,200.00 |
| 38 | TOT LOT SAND PIT | 1 | ls | \$2,500.00 |
| 39 | CUSTOM COMPOSITE BENCH ON GABION | 1 | ls | \$7,200.00 |
| | Total Bid Amount | | | \$4,887,624.00 |

ATTACHMENT C

AMENDMENT TO CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND SSA LANDSCAPE ARCHITECTS, INC. FOR DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR MORSE AVENUE NEIGHBORHOOD PARK DEVELOPMENT

This Amendment to Consultant Services Agreement, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY") and SSA LANDSCAPE ARCHITECTS, INC. ("CONSULTANT").

WHEREAS, on April 8, 2010, CITY and CONSULTANT entered into a Consultant Services Agreement whereby CONSULTANT would perform professional services necessary for investigation, analysis, design, preparation of construction drawings and contract specifications, consultation, services during construction and other services for a project known as Morse Avenue Neighborhood Park Development; and

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

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AMENDMENT TO CONSULTANT SERVICES AGREEMENT:

1. Services by CONSULTANT – Replace first paragraph with the following:

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work" and Exhibit "A-2" entitled "Amendment for Construction Phase Services for Seven Seas Neighborhood Park". All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Steve Sutherland to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

2. Notice to Proceed/Completion of Services – Replace Paragraph (b) with the following:

2. (b) When CITY determines that CONSULTANT has satisfactorily completed the services defined in Exhibit "A" and Exhibit "A-2", CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion When, in its opinion, it has satisfactorily completed the Scope of Work (Exhibit "A") and Amendment for Construction Phase Services For Seven Seas Neighborhood Park (Exhibit A-2), and if requested, CITY shall make this determination within fourteen (14) days of such request.

4. Payment of Fees and Expenses – Replace with the following:

4. Payment of Fees and Expenses

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule": and the attached Exhibit "A-2" "Fee Proposal". All compensation will be based on monthly billings as provided in Exhibit "B". Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the various categories of the services shall be furnished by CONSULTANT with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit "B" and Exhibit "A-2" for each phase. In no event shall the total amount of compensation payable under this Agreement exceed the sum of Four Hundred Forty Nine Thousand One Hundred Thirteen and No/100 Dollars (\$449,113.00) unless upon written modification of this Agreement. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707.

8. Standard of Workmanship – Replace second paragraph with the following:

8. Standard of Workmanship

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under the Scope of Work (Exhibit "A") and Amendment for Construction Phase Services for Seven Seas Neighborhood Park (Exhibit "A-2") shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.

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:

SSA LANDSCAPE ARCHITECTS, INC.
("CONSULTANT")

By _____
City Attorney

By _____

Name and Title



Amendment for Construction Phase Services
for Seven Seas Neighborhood Park

(Formerly Morse Ave. Neighborhood Park)

Exhibit A: SCOPE OF WORK

Phase Five – Construction Phase Services

- a. Provide plan revisions as needed to reflect scope of work changes made during the construction phase.
- b. Coordinate and correspond via phone and email.
- c. Issue revised value engineered **electronic** CD set to the CITY for construction.
- d. Attend one hand-off meeting with City.
- e. Attend (1) one pre-construction meeting led by CITY. CITY to provide agenda and meeting minutes.
- f. Coordinate import topsoil, testing, placement and amending approvals and submittals.
- g. Attend construction meetings on site facilitated and managed by CITY. Provide insight and opinions regarding issues related to plans and specifications, existing site conditions, schedule and the overall progress and quality of work. CITY will provide all agenda, meetings, schedule, and RFI and CO tracking documents based on 12 month construction duration. An allowance of (8) eight meetings is included.
- h. Visit the site an additional 10 times as needed and/or requested by CITY for observation and verification of compliance with the Plans and Specifications during the construction based on an estimated twelve month construction period. Additional site visits required by the CITY will be an additional service.
- i. Review meeting minutes prepared and distributed by CITY.
- j. In coordination with CITY, review and respond to Project Submittals, Shop Drawings, and verify compliance with specifications. Provide review response to CITY in predetermined spreadsheet or system managed and tracked by the CITY. Submittals requiring more than (1) one re-submittal review based on contractor non-responsiveness to initial submittal review will be an additional service.
- k. Respond to and coordinate with team on RFI's and RFC's (request for information or request for clarifications). Provide written response for communication with contractor to the CITY. CITY will be responsible for all correspondence with contractor.
- l. Prepare change orders related to changes required due to clarification of plans and specification. Change orders related to CITY requested project additions or changes will be considered an additional service. Change orders related to SSA errors or omissions will be provided at no cost.

- m. Upon notification from CITY that the contractor is substantially complete, attend a punch-list walk-through to verify completion of the park is in compliance with the plans and specifications. Coordinate with CITY on the development of the punchlist during the walk. CITY will be responsible for preparing the punchlist and distributing it to the contractor.
- n. Verify with one site visit that the contractor has completed all punchlist items.
- o. Review As-built information provided by contractor and CITY. Incorporate this information into the AUTOCAD files, and deliver electronic copies in PDF and DWG formats to the CITY.
- p. Attend a final turnover walk-through of the site at the end of the 90-day landscape maintenance establishment period with CITY, City maintenance staff and Contractor.
- q. Coordinate and manage sub-consultant team during this phase.
- r. Coordinate and liaise with the CITY during this phase.

Reimbursable Expenses

Printing reproduction, shipping and incidental expenses related to Phase Five.

Fee Proposal

The fees for the above scope of work tasks are as follows:

| | |
|-----------------------------|---------------------|
| Phase Five - SSA | \$73,373.00 |
| Ifland Civil Engineers | \$21,263.00 |
| Aurum Electrical Engineers | \$4,218.00 |
| Treadwell & Rollo | \$10,500.00 |
| <u>Reimbursable Expense</u> | <u>\$525.00</u> |
| Total Proposed Fees | \$109,878.00 |

These services are proposed to be provided on a not to exceed hourly basis based on the hours and rates on the attached estimated fee spreadsheet. Fees will be billed monthly based on the actual effort in each task. Should it be determined that some tasks, subconsultant efforts or reimbursable expenses are not required or may be performed by SSA or do not require the estimated effort, fees for that phase, task or subconsultant or reimbursable expense may be used for other tasks that require more effort than estimated.

Services to be Provided by the CITY

1. Procurement of services of consultants listed under project understanding to be contracted directly with the CITY.
2. Procurement of a SWPPP QSP (Qualified SWPPP Practitioner) during construction for SWPPP monitoring and reporting.
3. CITY review, comment and directives as requested by SSA.
4. Coordination and administration of reviews and approvals by jurisdictional agencies.

Detailed Breakdown of Landscape Architectural Services

for Amendment for Construction Phase Services

for
Seven Seas Park
City of Sunnyvale
Project No. 100003.00
Revised 7-30-2013

| BASIC SERVICES | Principal | Senior Project Manager | Project Manager | Landscape Architect | AutoCAD Technician | Admin. Assistant | | |
|---|---|------------------------------|--------------------|------------------------|-----------------------|---------------------|------------------|-----------------|
| Phase Five: Construction Phase Services | | | | | | | | |
| 5.a | Revise drawings to reflect Scope of Work changes | | 8 | | 12 | | \$2,636 | |
| 5.b | Coordination | | 4 | | | | \$616 | |
| 5.c | Issue revised electronic CD set to City | | 1 | 1 | | | \$271 | |
| 5.d | Attend hand off meeting with City | | 6 | | | | \$924 | |
| 5.e | Attend one Pre-Construction Meeting | | 6 | | | | \$924 | |
| 5.f | Attend construction meetings (8 meetings) | 6 | 48 | | | | \$8,454 | |
| 5.g | Visit the site an additional 10 times | 10 | 50 | | | | \$9,470 | |
| 5.h | Review meeting minutes | | 12 | | | | \$1,848 | |
| 5.i | Review submittals | | 24 | 32 | 40 | | \$12,408 | |
| 5.j | Respond to RFI's & RFC's | | 32 | 44 | 40 | | \$15,152 | |
| 5.k | Prepare Change Order drawings and notes | | 8 | | 16 | | \$3,104 | |
| 5.l | Conduct Punch List walk | | 8 | | | | \$1,232 | |
| 5.m | Verify completion of punch list | | 8 | | | | \$1,232 | |
| 5.n | Review As-Built information | | 6 | | 18 | | \$3,030 | |
| 5.o | Visit site at end of warranty period/provide report | | 6 | | | 4 | \$1,292 | |
| 5.p | Coordinate & manage subconsultant team | | 30 | | | | \$4,620 | |
| 5.q | Coordinate and Liaise with CITY | | 40 | | | | \$6,160 | |
| Phase Five SSA Total | | 16 | 297 | 76 | 127 | 0 | 4 | \$73,373 |
| Phase Five Subconsultant & Reimbursable Expenses | | | | | | | | |
| | Reimbursable Expense Allowance | \$500 | | Multiplier | 1.05 | | \$525.00 | |
| | Treadwell & Rollo | \$10,000 | | Multiplier | 1.05 | | \$10,500.00 | |
| | Ifland Engineers | \$20,250 | | Multiplier | 1.05 | | \$21,263 | |
| | Aurum Engineers | \$4,017 | | Multiplier | 1.05 | | \$4,218 | |
| Phase Five Total | | | | | | | \$109,878 | |
| Project Totals for In-house Staff | | | | | | | | |
| | Hours: | 16 | 297 | 76 | 127 | 0 | 4 | |
| | Rate: | \$177 | \$154 | \$126 | \$117 | \$102 | \$92 | |
| | Extension: | \$2,832 | \$45,738 | \$9,576 | \$14,859 | \$0 | \$368 | |
| Total Project Phase Services Fees | | | | | | | \$109,878 | |

The above breakdown represents our best estimate at this time and may change subject to future developments during the project. It is possible that some of the estimated manpower requirements for specific task items may increase, while others may not require the entire anticipated effort. This provides us a greater degree of confidence in the overall project estimate, rather than in any given task.