

DOCUMENT 00520

CONTRACT

THIS CONTRACT, dated this ____ day of _____, 2016, by and between O'GRADY PAVING, INC., whose place of business is located at 2513 Wyandotte Street, Mountain View, CA 94043, ("Contractor"), and the CITY OF CUPERTINO, a Municipal Corporation of the State of California ("City") acting under and by virtue of the authority vested in the City by the laws of the State of California.

WHEREAS, City, on the ____ day of _____, 2016 awarded to Contractor the following Project:

**PROJECT NUMBER 2016-13
PASADENA AVENUE PUBLIC IMPROVEMENTS**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and City agree as follows:

Article 1. Work

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

Article 2. Agency and Notices to City

- 2.1 City has designated John Raaymakers, to act as City's Authorized Representative(s), who will represent City in performing City's duties and responsibilities and exercising City's rights and authorities in Contract Documents. City may change the individual(s) acting as City's Authorized Representative(s), or delegate one or more specific functions to one or more specific City's Representatives, including without limitation engineering, architectural, inspection and general administrative functions, at any time with notice and without liability to Contractor. Each City's Representative is the beneficiary of all Contractor obligations to City, including without limitation, all releases and indemnities.
- 2.2 City has designated HMH Engineers, Inc. as the Design Consultant. City may change the identity of the Design Consultant at any time with notice and without liability to Contractor.
- 2.3 City has designated CSG Consultants, Inc. to act as Construction Managers. City may change the identity of the Construction Manager at any time with notice and without liability to Contractor.
- 2.4 All notices or demands to City under the Contract Documents shall be to City's Authorized Representative at: 10300 Torre Avenue, Cupertino, California 95014 or to such other person(s) and address(es) as City shall provide to Contractor.

Article 3. Contract Time and Liquidated Damages

- 3.1 Contract Time.

The Contract Time will commence to run on the date indicated in the Notice to Proceed. City may give a Notice to Proceed at any time within 30 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

Contractor shall achieve **Final Completion** of the entire Work and be ready for Final Payment in accordance with Section 00700 (General Conditions) by 90 calendar days following the effective date of the Notice to Proceed.

3.2 Liquidated Damages.

City and Contractor recognize that time is of the essence of this Contract and that City will suffer financial loss in the form of contract administration expenses (such as project management and consultant expenses), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Document 00700 (General Conditions), Contractor and City agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by City because of a delay in completion of all or any part of the Work. Accordingly, City and Contractor agree that as liquidated damages for delay Contractor shall pay City:

- 3.2.1 \$2,000 for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work as specified above.
- 3.2.2 \$3,000 for each occurrence of a violation of Document 00800, Section 1.7 WORK DAYS AND HOURS.
- 3.2.3 Three Months Salary for each Key Personnel named in Contractor's SOQ pursuant to Article 2.G of Document 00450 (Statement of Qualifications for Construction Work) who leaves the Project and/or Contractor replaces at any point before Final Completion, for any reason whatsoever, that Contractor can demonstrate to City's satisfaction is beyond Contractor's control.

Liquidated damages shall apply cumulatively and, except as provided below, shall be presumed to be the damages suffered by City resulting from delay in completion of the Work.

Contractor should be aware that California Department of Fish and Wildlife, and other State and Federal agencies, may also levy fines and penalties for the harming, harassing or killing of protected wildlife and endangered species. Contractor hereby agrees to become familiar with and adhere to wildlife and endangered species protection requirements.

- 3.3 Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by City as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from City (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

Article 4. Contract Sum

- 4.1 City shall pay Contractor the Contract Sum for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto: See Exhibit "A" attached

Article 5. Contractor's Representations

In order to induce City to enter into this Contract, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, which are identified in Document 00320 (Geotechnical Data, Hazardous Materials Surveys and Existing Conditions), or which may appear in the Drawings. Contractor

accepts the determination set forth in these Documents and Document 00700 (General Conditions) of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.

- 5.3 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document 00520) that pertain to the subsurface conditions, as-built conditions, underground facilities, and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00700 (General Conditions); and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 5.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.5 Contractor has given City prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by City is acceptable to Contractor.
- 5.6 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.
- 5.7 Contractor has duly authorized the execution, delivery and performance of this Contract, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, contract, order or decree binding on Contractor.
- 5.8 Contractor has listed Subcontractors pursuant to the Subcontractor Listing Law, California Public Contracting Code §4100 *et seq.* in document 00430 (Subcontractors List)

Article 6. Contract Documents

- 6.1 Contract Documents consist of the following documents, including all changes, addenda, and modifications thereto:

- Document 00400 Bid Form
- Document 00430 Subcontractors List
- Document 00450 Statement of Qualifications
- Document 00481 Non-Collusion Affidavit
- Document 00482 Bidder Certifications
- Document 00510 Notice of Award
- Document 00520 Contract
- Document 00530 Insurance Forms
- Document 00550 Notice to Proceed
- Document 00610 Construction Performance Bond
- Document 00620 Construction Labor and Material Payment Bond
- Document 00630 Guaranty
- Document 00650 Agreement and Release of Any and All Claims
- Document 00660 Substitution Request Form
- Document 00680 Escrow Agreement for Security Deposit in Lieu of Retention
- Document 00700 General Conditions
- Document 00800 Special Conditions
- Document 00820 Special Environmental Conditions
- Document 00821 Insurance

Document 00822 Apprenticeship Program
 Technical Specification/Special Provisions
 Addenda(s)
 Drawings/Plans

- 6.2 There are no Contract Documents other than those listed in this Document 00520, Article 6. Document 00320 (Geotechnical Data, Hazardous Material Surveys and Existing Conditions), and the information supplied therein, are not Contract Documents. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

Article 7. Miscellaneous

- 7.1 Terms used in this Contract are defined in Document 00700 (General Conditions) and will have the meaning indicated therein.
- 7.2 It is understood and agreed that in no instance are the persons signing this Contract for or on behalf of City or acting as an employee, agent, or representative of City, liable on this Contract or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the City is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.3 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contracting Code §4100 *et seq.*
- 7.4 The Contract Sum includes all allowances (if any).
- 7.5 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time City tenders final payment to Contractor, without further acknowledgment by the parties.
- 7.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at City's office, or may be obtained of the State of California web site <http://www.dir.ca.gov/DLSR/PWD/Northern.html> and shall be made available to any interested party on request. Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 7.7 Should any part, term or provision of this Contract or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Contract and the Contract Documents may be deemed valid and binding contracts, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).

- 7.8 This Contract and the Contract Documents shall be deemed to have been entered into in the County of Santa Clara, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Santa Clara County. Both parties hereby waive their rights under California Code of Civil Procedure Section 394 to file a motion to transfer any action or proceeding arising out of the Contract Documents to another venue. Contractor accepts the Claims Procedure in Document 00700, Article 12, established under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

IN WITNESS WHEREOF the parties have executed this Contract in quadruplicate the day and year first above written.

PASADENA AVENUE PUBLIC IMPROVEMENTS

CITY:
CITY OF CUPERTINO, a Municipal Corporation of the
State of California

CONTRACTOR:
O'GRADY PAVING, INC.

Attest:

By: _____
 [Signature]

 City Clerk: Grace Schmidt

 [Please print name here]

Approved as to form by City Attorney:

Title: _____
 [If Corporation: Chairman , President, or Vice President]

 City Attorney: Randolph Stevenson Hom

By: _____
 [Signature]

I hereby certify, under penalty of perjury, that David Brandt,
 City Manager of the City of Cupertino was duly authorized
 to execute this document on behalf of the City of Cupertino.

 [Please print name here]

Title: _____
 [If Corporation: Secretary, Assistant Secretary,
 Chief Financial Officer, or Assistant Treasurer]

Dated: _____

 State Contractor's License No. Classification

 David Brandt, City Manager of the City of Cupertino, a
 Municipal Corporation of the State of California

 Expiration Date

Designated Representative:

Taxpayer ID No. _____

Name: Timm Borden

Name: _____

Title: Director of Public Works

Title: _____

Address: 10300 Torre Ave., Cupertino, CA 95014

Address: _____

Phone: 408-777-3354

Phone: _____

Facsimile: 408-777-3333

Facsimile: _____

AMOUNT: \$373,100.00

ACCT. NUMBER: 420-99-027-900-905-ST 014-03-01

FILE NO.: 98,539.00

**NOTARY ACKNOWLEDGMENT IS REQUIRED. IF A
 CORPORATION, CORPORATE SEAL AND CORPORATE
 NOTARY ACKNOWLEDGMENT AND FEDERAL TAX ID ARE
 REQUIRED. IF NOT A CORPORATION SOCIAL SECURITY
 NO. IS REQUIRED**

END OF DOCUMENT

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City of Cupertino
 Pasadena Avenue
 Public Improvements

Contract

EXHIBIT A

Contractor's Name: O'Grady Paving, Inc.

Project No.2016-13

DOCUMENT 00400

BID FORM

To be submitted as part of Envelope "A" by the time and date specified in Document 00200 (Instructions to Bidders).

TO THE HONORABLE CITY COUNCIL OF THE CITY OF CUPERTINO

THIS BID IS SUBMITTED BY:

O'Grady Paving, Inc.
(Firm/Company Name)

**Re: PROJECT NUMBER 2016-13
PASADENA AVENUE PUBLIC IMPROVEMENTS**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a contract with the City of Cupertino ("City") in the form included in the Contract Documents, Document 00520 (Contract), to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid and in accordance with all other terms and conditions of the Contract Documents. All portions of this Bid Form must be completed and signed before the bid is submitted. Failure to do so will result in the bid being rejected as non-responsive.
2. Bidder accepts all of the terms and conditions of the Contract Documents, Document 00100 (Advertisement for Bids), and Document 00200 (Instructions to Bidders), including, without limitation, those dealing with the disposition of Bid Security. **This Bid will remain subject to acceptance for 90 Days after the day of Bid opening.**
3. Bidder has visited the Site and performed all tasks, research, investigation, reviews, examinations, and analysis and given notices, regarding the Project and the Site, as set forth in Document 00520 (Contract), Article 5.
4. Bidder has given City prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by City is acceptable to Contractor.
5. Bidder attended the non-mandatory Pre-Bid Meeting.

YES _____ NO X
6. Subcontractors for work included in all Bid items, in accordance with the criteria in the Public Contract Code, are listed on the attached Document 00430 (Subcontractors List).
7. The undersigned Bidder understands that City reserves the right to reject this Bid.
8. If written notice of the acceptance of this Bid, hereinafter referred to as Notice of Award, is mailed or delivered to the undersigned Bidder within the time described in paragraph 2 of this Document 00400 or at any other time thereafter before it is withdrawn, the undersigned Bidder will execute and deliver the documents required by Document 00200 (Instructions to Bidders) within the times specified therein. These documents include, but are not limited to, Document 00520 (Contract), Document 00610 (Construction Performance Bond), and Document 00620 (Construction Labor and Material Payment Bond).
9. Notice of Award or request for additional information may be addressed to the undersigned Bidder at the address set forth below on the signature page.

EXHIBIT A

Contractor's Name: O'Grady Paving, Inc.

Project No.2016-13

10. The undersigned Bidder herewith encloses cash, a cashier's check, or certified check of or on a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do a surety business in the State of California, in form specified in Document 00200 (Instructions to Bidders), in the amount of ten percent (10%) of the total of Base Bid and made payable to the "City of Cupertino".
11. The undersigned Bidder agrees to commence Work under the Contract Documents on the date established in Document 00700 (General Conditions) and to complete all work within the time specified in Document 00520 (Contract). The undersigned Bidder acknowledges that City has reserved the right to delay or modify the commencement date. The undersigned Bidder further acknowledges City has reserved the right to perform independent work at the Site, the extent of such work may not be determined until after the opening of the Bids, and that the undersigned Bidder will be required to cooperate with such other work in accordance with the requirements of the Contract Documents.
12. The undersigned Bidder agrees that, in accordance with Document 00700 (General Conditions), liquidated damages for failure to complete all Work in the Contract within the time specified in Document 00520 (Contract) shall be as set forth in Document 00520 (Contract).

EXHIBIT A

Contractor's Name: O'Grady Paving, Inc.

Project No. 2016-13

SCHEDULE OF BID PRICES

All Bid items, including lump sums and unit prices, must be filled in completely. Allowances and Alternative Bid items are described in Document 00800 (Special Conditions). Quote in figures only, unless words are specifically requested.

Please Note that time extensions will NOT be permitted with the acceptance of any or all of the Alternative Bid Items listed below.

ITEM	SPEC REF	DESCRIPTION	UNIT	EST QTY	UNIT PRICE	TOTAL
1		MOBILIZATION	LS	1	7,000	7,000
2	013600	FIELD ENGINEERING AND SURVEY WORK	LS	1	10,000	10,000
3	015526	TRAFFIC CONTROL AND CONSTRUCTION AREA SIGNS	LS	1	10,000	10,000
4	015639	TREE PROTECTION	LS	1	500	500
5	015750	TEMPORARY WATER POLLUTION CONTROL	LS	1	5000	5000
6	017133	UTILITY LOCATION	LS	1	2000	2000
7	024119	REMOVE CONCRETE DRIVEWAY	SF	125	5	625
8	024119	REMOVE AC DIKE	LF	20	10	200
9	024119	REMOVE CURB AND GUTTER	LF	150	20	3000
10	024119	REMOVE DRAINAGE INLET (AND PIPE)	EA	2	1000	2000
11	024119	REMOVE FENCE	LF	100	10	1000
12	024119	REMOVE PCC SIDEWALK AND WALKWAY	SF	1,025	5	5125
13	024119	REMOVE COBBLESTONE SURFACING	SF	100	5	500
14	024119	REMOVE ROADSIDE SIGN	EA	2	150	300
15	028200	RELOCATE MAILBOX	EA	2	750	1500
16	028300	ADJUST MANHOLE TO GRADE	EA	1	1000	1000
17	028300	ADJUST WATER METER BOX TO GRADE	EA	6	500	3000
18	028300	ADJUST WATER VALVE BOX TO GRADE	EA	1	500	500
19	028300	ADJUST CLEANOUT TO GRADE	EA	1	500	500
20	101453	RELOCATE ROADSIDE SIGN	EA	4	350	1400
21	101453	INSTALL ROADSIDE SIGN	EA	2	500	1000
22	311000	SITE CLEARING	LS	1	10,000	10,000
23	311313	REMOVE TREE	EA	4	1000	4000
24	312000	EARTHWORK (Final Pay Item)	CY	650	110	71,500
25	320190	PRUNE EXISTING TREES	LS	1	1000	1000
26	321123	CLASS 2 AGGREGATE BASE	CY	300	130	39,000
27	321216	HMA (TYPE A)	TONS	180	167	30,060
28	321313	CONSTRUCT SIDEWALK, WALKWAY AND DRIVEWAY CONFORM	SF	5,700	9	51,300
29	321313	CONSTRUCT TYPE A2-6 CURB AND GUTTER	LF	930	48	44,640
30	321313	CONSTRUCT CURB RAMP	EA	6	4000	24,000
31	321313	CONSTRUCT DRIVEWAY	SF	1,100	13	14,300
32	321313	CONSTRUCT VALLEY GUTTER	SF	410	15	6,150

EXHIBIT A

Contractor's Name: O'Grady Paving, Inc.

Project No. 2016-13

ITEM	SPEC REF	DESCRIPTION	UNIT	EST QTY	UNIT PRICE	TOTAL
33	321723	STRIPING AND PAVEMENT MARKINGS	LS	1	4000	4000
34	329100	TOPSOIL	CY	120	50	6000
35	330513	CALTRANS G5 INLET	EA	1	5000	5000
36	330513	DROP INLET - CURB OPENING	EA	1	1000	1000
37	334100	12" RCP	LF	10	500	500
TOTAL BASE BID					373,100	

Total Base Bid in Words Three hundred Seventy three thousand
One hundred dollars

Unit Legend

LS = Lump Sum
EA = Each
LF = Linear Feet
TON = Ton or 2,000 Pounds
CY = Cubic Yards
LB = Pounds

AL = Allowance
SF = Square Feet

EXHIBIT A

Contractor's Name: O'Grady Paving, Inc.

Project No. 2016-13

ACKNOWLEDGEMENT OF RECEIPT OF ADDENDUMS

Bidder hereby acknowledges receipt and examination of all Contract Documents and the following Addenda:

Addendum No.	Addendum Date

Bidder proposes and agrees to fully perform the Work within the time stated and in strict accordance with the Contract Documents for the sums of money listed in this Bid Form.

NAME OF BIDDER: O'Grady Paving, Inc.

licensed in accordance with an act for the registration of Contractors, and with license number: 201696

Expiration Date: 12/31/17

DIR Registration No.: 1000003381

California
Where incorporated, if applicable

Craig E. Young
Tom O'Grady
Celine O. Duran
Principals

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Craig E. Young
Signature of Bidder

NOTE: If Bidder is a corporation, set forth the legal name of the corporation, state where incorporated, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business Address:

2513 Wyandotte St.
Mountain View, CA 94043

Officers authorized to sign contracts:

Craig E. Young
Tom O'Grady
Celine O. Duran

Telephone Number(s):

Typed Full Name:
(650) 966-1926

Fax Number(s):

(650) 966-1946

E-Mail Address:

craig@ogradypaving.com

END OF DOCUMENT