

DOCUMENT 00520

CONTRACT

THIS CONTRACT, dated this ____ day of _____, 2008 , by and between _____
[Name of Contractor] whose place of business is located at _____, _____ [Address of Contractor] (“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 _____, 2008 awarded to Contractor the following Project:

**PROJECT NUMBER 2008-9112
STEVENS CREEK CORRIDOR PARK –
PHASE 1B PARK AND TRAIL**

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 Terry Greene, City Architect, 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 Swinerton Management & Consulting, Inc. , to act as Construction Manager. City may assign all or part of the City Representative’s rights, responsibilities and duties to Construction Manager. City may change the identity of the Construction Manager at any time with notice and without liability to Contractor.
- 2.3 City has designated HNTB Corporation, to act as Consulting Civil Engineer. City may change the identity of the Consulting Engineer 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 Substantial Completion by May 1, 2009 and Final Completion by May 21, 2009, excluding minor Punch List Items and plant and tree maintenance. There will be no additional days allowed in the contract for rain days or holidays or normal delays. An extension of time for completion shall only be granted for acts of God, labor strikes or material delay that can be documented.

Restricted periods of Construction are as follows: Work must be completed by the date shown for each activity.

- Reinforced Grass Paving: Hydroseeding completed by April 1, 2009, with maintenance period to June 1, 2009
- Sod: Installation completed by April 1, 2009, with maintenance period to June 1, 2009
- Planting including trees: Install all plants and trees by April 15, 2009, with maintenance period to June 1, 2008

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 \$1,500 for each Calendar Day that expires after the time specified herein for Contractor to achieve Substantial Completion as specified above.
- 3.2.2 \$1,500 for each Calendar Day that expires after the time specified for the restricted period of work above.
- 3.2.3 \$1,500 for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work as specified above.

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 Game, 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 00340 (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 00460 Schedule of Major Equipment and Materials Suppliers
 Document 00481 Non-Collusion Affidavit

Document 00482 Bidder Certifications
Document 00505 Notice of Intent to Award
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 00821 Insurance
Document 00822 Apprenticeship Program
Technical Specification
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.
- 7.9 Contractor and all subcontractors shall comply with the Uniform Administrative Requirements for State and Local Governments set forth in the Code of Federal Regulations (CFR), Title 49, Part 18. In addition, the Contractor agrees to comply with the cost principles and procedures set forth in Office of Management and Budget Circular A-87. The Contractor agrees that a reference to either Office of Management and Budget (OMB) Circular A-87 of the Code of Federal Regulations, Title 49, Chapter 1, Part 31, whichever is applicable, and the Code of Federal Regulations, Title 49, Part 18, will be included in any subcontracts entered into as a result of this contract.

IN WITNESS WHEREOF the parties have executed this Contract in quadruplicate the day and year first above written.
STEVENS CREEK CORRIDOR PARK – PHASE 1B PARK AND TRAIL PROJECT

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

CONTRACTOR:
[Contractor's name]

By: _____
[Signature]

Attest:

[Please print name here]

City Clerk: Kimberly Smith

Approved as to form by City Attorney:

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

City Attorney: Charles Kilian

By: _____
[Signature]

I hereby certify, under penalty of perjury, that David W. Knapp, City Manager of the City of Cupertino was duly authorized to execute this document on behalf of the City of Cupertino by a majority vote of the City Council on:

[Please print name here]

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

Dated: _____

State Contractor's License No. Classification

David W. Knapp, City Manager of the City of Cupertino, a Municipal Corporation of the State of California

Expiration Date

Designated Representative:

Taxpayer ID No. _____

Name: Terry W. Greene, AIA

Name: _____

Title: City Architect

Title: _____

Address: 10300 Torre Ave., Cupertino, CA 95014

Address: _____

Phone: 408-777-3354

Phone: _____

Facsimile: 408-777-3333

Facsimile: _____

AMOUNT: \$
ACCOUNT NUMBER: 427-9112-9300
FILE NO.: 92,069

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

END OF DOCUMENT