



Report Type: Consent Calendar Meeting Date: 10/3/2011

Summary Title: Award of Contract for San Antonio - Phase II

Title: Adoption of a Budget Amendment Ordinance in the amount of \$205,400 to Capital Improvement Program Project PE-00104 and Approval of Contract with Del Conte's Landscaping, Inc. in the total amount of \$754,977 for San Antonio Landscaping Improvement Project – Phase II

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that Council:

- Adopt a Budget Amendment Ordinance (BAO) to add funding from the Infrastructure Reserve in the amount of \$205,400 (Attachment A) for the San Antonio Landscaping Improvement Project Capital Improvement Program Project PE-00104;
- 2. Approve and authorize the City Manager or his designee to execute the attached contract with Del Conte's Landscaping, Inc. (Attachment B) in an amount not to exceed \$754,977 for the San Antonio Landscaping Improvement Project Capital Improvement Program Project PE-00104; and
- 3. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Del Conte's Landscaping, Inc for related, additional but unforeseen work which may develop during the project, the total value of which shall not exceed \$113,247.

Background

The project addresses the deteriorating condition of roadside planting areas and median islands on San Antonio Avenue between Highway 101 and Middlefield Road. The planting areas and medians are not irrigated and support only sporadic patches of vegetation along with several mature Italian Stone Pine trees. City staff and a consulting arborist initially evaluated the option of retaining the Italian Stone Pines while landscaping the medians and repairing the curbs and road. Different methods of installing irrigation lines with the existing trees protected in place were researched and it was determined that each was potentially destabilizing to the trees. The pines are currently at the end of their useful lifecycle and require significant ongoing maintenance

including branch removal, surface root grinding and extensive sidewalk and road repair. The subsurface roots continue to cause significant damage to the roadway and median curbs, gutters, sidewalk and pavement.

The San Antonio Landscaping and Median Project, Phase I, from Middlefield Road to Briarwood Way – 1,900 linear feet, was completed in 2009. The project included removal of Italian Stone Pines, installation of irrigation and landscaping; and construction of medians. The San Antonio Landscaping Improvement Project, Phase II will implement much needed improvements to a highly traveled corridor at the City's southern gateway including removal of 101 deteriorating trees and installation of irrigation and replacement landscaping. This project will complete the entire corridor by implementing improvements for the portion between Highway 101 and Middlefield Road – 2,600 linear feet.

Funding to reconstruct the medians and to resurface the roadway on San Antonio from Middlefield to Highway 101 will come from the 2009 maximum grant award of \$900,000 from the Highway Safety Improvement Program (HSIP). In FY 2010, the City Council adopted the San Antonio Landscaping Improvement Project with the intent to complete the landscaping of the San Antonio corridor before the roadway reconstruction using HSIP funds.

Discussion

Project Description

The work to be performed under the contract includes removal of existing trees and replacement with a mix of 120 trees of sustainable deciduous and evergreen plant varieties and installation of understory planting and an automatic irrigation system on San Antonio Avenue between Highway 101 and Middlefield Road. Similar to Phase I, the new trees are sized in 24-inch boxes and will grow quickly in the streetscape environment. The removal of 101 trees include 69 Stone Pines, 2 Aleppo Pines, 1 Canary Island Pine, 2 Silver Dollar Gums, 2 Japanese Black Pine, 2 Carob, 5 Bottlebrush, 1 Camphor, 1 Red Iron Bark, 3 Sycamores, 3 Ash, 3 Holly Oaks, 1 Honey Locust, 1 Brazilian Pepper, 3 Chinese Pistache, 1 Karo and 1 Chinese Elm. The plans were reviewed by the City arborists as well as by Canopy. This project also includes repair of street lighting conduit due to damage from tree roots and removal of contaminated soil due to lead deposited from vehicle exhaust.

The project construction is proposed to begin in Fall 2011 and includes the following mitigation measures:

- § At least one traffic lane must remain open in each direction during the construction hours of 9:00 a.m. to 4:00 p.m.;
- § All trees must be removed and replaced in conformance with the City's Tree Technical Manual:
- § Tree removal must take place between the raptor's non-nesting season between September and March; and

§ Number and density of trees planted will be maximized to ensure adequate and sustainable canopy growth over time.

Public Outreach and Review

Two community meetings were held to discuss this second phase of San Antonio Avenue. A conceptual plan showing proposed landscape improvements were discussed at the first community meeting in April 2010. Initially 87 trees were proposed to be removed with 14 trees in good condition of various species to remain. Based on public input from the meeting, they preferred a new and uniform street tree palette. The plans were revised to remove 101 trees along San Antonio from Highway 101 to Middlefield Road. The second community meeting was held in February 2011 to present the final landscaping plans and to discuss the proposed widening at San Antonio and Middlefield to improve the service level of the intersection and proposed striping and signage changes along San Antonio. The reaction among those in attendance was positive. In June 2010, this project received Architectural Review Board approval and an extension was granted in June 2011.

A public outreach plan has been prepared for this project and includes a press release prior to construction, monthly email updates as well as updates to the website to provide milestone updates to the public and additional press releases as necessary. Informational signage for the project will be posted for the duration of construction and outreach door to door with businesses and residents adjacent to the project area. The Public Works Department will coordinate with the Economic Development Manager to minimize possible impacts to the business along this stretch.

Project Coordination

Through the City's monthly project coordination meetings, this project was coordinated with gas utility projects in the area which will be completed this fall. This project will be closely coordinated with additional Capital Improvement Program (CIP) projects including the 2011 Street Resurfacing Project, Sidewalk Replacement Project and the San Antonio HSIP Median and Resurfacing projects. Staff anticipates receiving Caltrans approval in Fall 2011 to proceed with the median and road construction. The work will be completed in three steps. In the first step, the trees and contaminated soil will be removed, street lights relocated, conduit replaced, stumps removed and irrigation installed. The second step will involve widening at Middlefield followed by the replacement of median curbs, curb and gutter, sidewalks and street repaving. The last step will be to plant the trees and install all landscaping.

Summary of Bid Process

Bid Name/Number	San Antonio Landscape Improvement Project – Phase II									
Proposed Length of Project	150 calendar days									
Number of Bid Packages Mailed to Contractors	18									
Number of Bid Packages Mailed to Builder's Exchanges	7									
Total Days to Respond to Bid	35									
Pre-Bid Meeting?	Yes									
Number of Company Attendees	7									
at Pre-Bid Meeting										
Number of Bids Received:	7									
Bid Price Range (base bid plus 3 alternates)	From a low of \$754,977 to a high of \$1,049,955									

Bids ranged from a high of \$1,049,955 to a low bid of \$754,977 and ranged from 7% above to 23% below the engineer's estimate (Attachment C). Staff has reviewed all bids submitted and found that the bid totaling \$754,977 submitted by Del Conte's Landscaping, Inc. was the lowest and recommends that Del Conte's Landscaping, Inc. be declared the lowest responsible bidder. Staff recommends awarding the base bid and add alternates #1, #2 and #3 for a contract total of \$754,977. Add Alternates #1 and #2 were selected because they include improvements to the frontage median at Transport Road near the gateway and additional understory planting along the landscaping strips. Add alternate #3 provides for additional soil removal and import soil to provide a better soil structure for the new landscaping.

The contingency amount of \$113,247, which equals 15 percent of the total contract, is requested for related, additional, but unforeseen work which may develop during the project. Due to economic and market conditions in the construction industry; and recognizing that the bid received is 23% below engineer's estimate, staff is requesting 15% contingency. Additional contingency may be needed due to removal of the contaminated soil if necessary repair of aged electrical conduit, and additional coordination required between the different contractors.

The lowest responsible bidder, Del Conte's Landscaping, Inc, has recently worked with the City on miscellaneous Parks projects. Staff investigated the references and found no significant complaints. Staff also checked with the Contractor's State License Board and found that the contractor has an active license on file.

Resource Impact

The Budget Amendment Ordinance is necessary to appropriate additional funds of \$205,400 from the Infrastructure Reserve to address the longer segment in Phase II and unforeseen soil contamination. The remaining funding is in the Capital

Improvement Project (CIP) Project PE-00104, San Antonio Medians (\$682,887) for a total project budget of \$888,287. The Infrastructure Reserve balance will decrease from \$2,161,763 to \$1,956,363.

Policy Implications

This project is in conformance with City of Palo Alto's Comprehensive Plan and does not represent any changes to existing City policies.

Environmental Review

In February 2007, a Mitigated Negative Declaration (MND) was adopted pursuant to the California Environmental Quality Act (CEQA). The MND covered the implementation of landscape improvements along the entire length of San Antonio Avenue and its frontages. An addendum was made to this MND in April 2011, in order to include the roadway widening at the intersection of San Antonio and Middlefield Road that will be completed as part of the 2012 Street Resurfacing Project (CMR ID #1634).

Attachments:

• A: Budget Amendment Ordinance (DOC)

• B - C12142000_DelConte_SA Landscape Phase2 (PDF)

• C - Bid Summary (PDF)

Prepared By: Holly Boyd,

Department Head: J. Michael Sartor, Interim Director

City Manager Approval: James Keene, City Manager

Attachment A

ORDINANCE NO.XXXX

ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO AMENDING THE BUDGET FOR FISCAL YEAR 2012 TO PROVIDE AN ADDITIONAL APPROPRIATION OF \$204,500 TO CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECT PE-00104, SAN ANTONIO MEDIANS

The Council of the City of Palo Alto does ordain as follows:

SECTION 1. The Council of the City of Palo Alto finds and determines as follows:

- A. Pursuant to the provisions of Section 12 of Article III of the Charter of the City of Palo Alto, the Council on June 20, 2011 did adopt a budget for fiscal year 2012; and
- B. D. In fiscal year 2006, Council approved CIP project PE-00104 to provide landscape and median improvements along San Antonio Road; and
- C. The San Antonio Landscaping and Median Project, Phase I, from Middlefield Road to Alma Street was completed in 2009; and
- D. In fiscal year 2010, the City Council approved Phase II of the project using Highway Safety Improvement Program (HSIP) funds to implement improvements for the portion of San Antonio Road between Highway 101 and Middlefield Road; and
- E. The project will include the removal of existing trees, replacement with sustainable deciduous and evergreen plants, and installation of irrigation systems; and
- F. Community meetings were held to discuss the project and receive public input; and
- G. Following a bid process, staff recommends that a contract in the amount of \$754,977 plus a contingency amount of \$113,247, be awarded to Del Conte's Landscaping Inc for the work; and

- H. CIP project PE-00104 has available funds of \$682,887, requiring additional funding of \$204,500 from the Infrastructure Reserve.
- I. City Council authorization is needed to amend the 2012 budget as hereinafter set forth.
- $\underline{\text{SECTION 2}}$. The sum of Two Hundred Four Thousand Five Hundred dollars (\$204,500) is hereby appropriated to CIP Project Number PE-00104.
- $\underline{\text{SECTION 3}}.$ Two Hundred Four Thousand Five Hundred dollars (\$204,500) is hereby transferred from the Infrastructure Reserve, leaving a balance of \$1,956,363.
- SECTION $\underline{4}$. A Mitigated Negative Declaration (MND) covering the implementation of landscape improvements along the entire length of San Antonio Avenue and its frontages was adopted in 2007 pursuant to the California Environmental Quality Act (CEQA), and amended in April 2011 to include the roadway widening at the intersection of San Antonio and Middlefield Road.
- $\underline{\text{SECTION 5}}$. As specified in Section 2.28.080(a) of the Palo Alto Municipal Code, a two-thirds vote of the City Council is required to adopt this ordinance.
- SECTION 6. As provided in Section 2.04.330 of the Palo Alto Municipal Code, this ordinance shall become effective upon adoption.

INTRODUCED AND PASSED:	
AYES: NOES:	
ABSTENTIONS: ABSENT:	
ATTEST:	APPROVED:
City Clerk	Mayor

	·
APPROVED AS TO FORM:	City Manager
	Director of Public Works
	Director of Administrative Services



CONSTRUCTION CONTRACT

Contract No. C12142000

City of Palo Alto

and

Del Conte Landscaping, Inc.

PROJECT
SAN ANTONIO LANDSCAPE IMPROVEMENTS PHASE 2

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CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT entered into on 12th Of September, 2011 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and DEL CONTE LANDSCAPING, INC. ("Contractor"), is made with reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. Contractor is a California Corporation duly organized and in good standing in the State of California, Contractor's License Number 672485. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Construction Contract.
- C. On 13th Of June, 2011, City issued an Invitation for Bids (IFB) to contractors for the San Antonio Landscaping Improvements Project Phase 2 ("Project"). In response to the IFB, Contractor submitted a bid.
- D. City and Contractor desire to enter into this Construction Contract for the Project, and other services as identified in the Bid Documents for the Project upon the following terms and conditions.

NOW THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the undersigned parties as follows:

SECTION 1 INCORPORATION OF RECITALS AND DEFINITIONS.

1.1 Recitals.

All of the recitals are incorporated herein by reference.

1.2 Definitions.

Capitalized terms shall have the meanings set forth in this Construction Contract and/or in the General Conditions. If there is a conflict between the definitions in this Construction Contract and in the General Conditions, the definitions in this Construction Contract shall prevail.

SECTION 2 THE PROJECT.

The Project is the construction of the San Antonio Landscaping Improvements Project - Phase 2 ("Project").

SECTION 3 THE CONTRACT DOCUMENTS.

3.1 List of Documents.

The Contract Documents (sometimes collectively referred to as "Agreement" or "Bid Documents") consist of the following documents which are on file with the Purchasing Division and are hereby incorporated by reference.

- 1) Change Orders
- 2) Field Change Orders
- 3) Contract
- 4) Project Plans and Drawings

- 5) Technical Specifications
- 6) Special Provisions
- 7) Notice Inviting Bids
- 8) Instructions to Bidders
- 9) General Conditions
- 10) Bidding Addenda
- 11) Invitation for Bids
- 12) Contractor's Bid/Non-Collusion Affidavit
- 13) Reports listed in the Bidding Documents
- 14) Public Works Department's Standard Drawings and Specifications dated 2007 and updated from time to time
- 15) Utilities Department's Water, Gas, Wastewater, Electric Utilities Standards dated 2005 and updated from time to time
- 16) City of Palo Alto Traffic Control Requirements
- 17) City of Palo Alto Truck Route Map and Regulations
- 18) Notice Inviting Pre-Qualification Statements, Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable)
- 19) Performance and Payment Bonds
- 20) Insurance Forms

3.2 Order of Precedence.

For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, the Contract Documents shall have the order of precedence as set forth in the preceding section. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.

SECTION 4 THE WORK.

The Work includes all labor, materials, equipment, services, permits, fees, licenses and taxes, and all other things necessary for Contractor to perform its obligations and complete the Project, including, without limitation, any Changes approved by City, in accordance with the Contract Documents and all Applicable Code Requirements.

<u>SECTION 5</u> PROJECT TEAM.

In addition to Contractor, City has retained, or may retain, consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Project requires that Contractor operate efficiently, effectively and cooperatively with City as well as all other members of the Project Team and other contractors retained by City to construct other portions of the Project.

SECTION 6 TIME OF COMPLETION.

6.1 Time Is of Essence.

Time is of the essence with respect to all time limits set forth in the Contract Documents.

6.2 Commencement of Work.

Contractor shall commence the Work on the date specified in City's Notice to Proceed.

6.3 Contract Time.

Time is of the essence. Work hereunder shall begin on the date specified on the City's Notice to Proceed and shall be completed in two mobilizations;

The first mobilization shall be completed within one hundred five (105) calendar days after the commencement date specified in the City's Notice to Proceed; followed by a second mobilization to be completed forty-five (45) calendar days after the commencement date specified in the City's second Notice to Proceed. The 60-calendar day maintenance period shall begin after substantial completion of the project is reached, as determined by the City.

6.4 Liquidated Damages.

6.4.1 Entitlement.

City and Contractor acknowledge and agree that if Contractor fails to fully and satisfactorily complete the Work within the Contract Time, City will suffer, as a result of Contractor's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Such damages may include, but are not limited to:

- (i) Loss of public confidence in City and its contractors and consultants.
- (ii) Loss of public use of public facilities.
- (iii) Extended disruption to public.

6.4.2 Daily Amount.

City and Contractor have reasonably endeavored, but failed, to ascertain the actual damage that City will incur if Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time. Therefore, the parties agree that in addition to all other damages to which City may be entitled other than delay damages, in the event Contractor shall fail to achieve Substantial Completion of the entire Work within the Contract Time, Contractor shall pay City as liquidated damages the amount of \$500 per day for each Day occurring after the expiration of the Contract Time until Contractor achieves Substantial Completion of the entire Work. The liquidated damages amount is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer by delay in completion of the Work.

6.4.3 Exclusive Remedy.

City and Contractor acknowledge and agree that this liquidated damages provision shall be City's only remedy for delay damages caused by Contractor's failure to achieve Substantial Completion of the entire Work within the Contract Time.

6.4.4 Other Remedies.

City is entitled to any and all available legal and equitable remedies City may have where City's Losses are caused by any reason other than Contractor's failure to achieve Substantial Completion of the entire Work within the Contract Time.

6.5 Adjustments to Contract Time.

The Contract Time may only be adjusted for time extensions approved by City and agreed to by Change Order executed by City and Contractor in accordance with the requirements of the Contract Documents.

3

SECTION 7 COMPENSATION TO CONTRACTOR.

7.1 Contract Sum.

Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of Seven Hundred Fifty-Four Thousand Nine Hundred Seventy-Seven Dollars (\$754,977.00).

[This amount includes the Base Bid amount of \$652,375 and the Add Alternate No. B Line items 1, 2, 3 total amount of \$102,602.00.]

7.2 Full Compensation.

The Contract Sum shall be full compensation to Contractor for all Work provided by Contractor and, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all Losses arising out of the nature of the Work or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by City, all risks connected with the Work, and any and all expenses incurred due to suspension or discontinuance of the Work. The Contract Sum may only be adjusted for Change Orders issued, executed and satisfactorily performed in accordance with the requirements of the Contract Documents.

7.3 Compensation for Extra or Deleted Work.

The Contract Sum shall be adjusted (either by addition or credit) for Changes in the Work involving Extra Work or Deleted Work based on one or more of the following methods to be selected by City:

- 1. Unit prices stated in the Contract Documents or agreed upon by City and Contractor, which unit prices shall be deemed to include Contractor Markup and Subcontractor/Sub-subcontractor Markups permitted by this Section.
- 2. A lump sum agreed upon by City and Contractor, based on the estimated Allowable Costs and Contractor Markup and Subcontractor Markup computed in accordance with this Section.
- **3.** Contractor's Allowable Costs, plus Contractor Markup and Subcontractor Markups applicable to such Extra Work computed in accordance with this Section.

Contractor Markup and Subcontractor/Sub-subcontractor Markups set forth herein are the full amount of compensation to be added for Extra Work or to be subtracted for Deleted Work that is attributable to overhead (direct and indirect) and profit of Contractor and of its Subcontractors and Sub-subcontractors, of every Tier. When using this payment methodology, Contractor Markup and Subcontractor/Sub-subcontractor Markups, which shall not be compounded, shall be computed as follows:

7.3.1 Markup Self-Performed Work.

10% of the Allowable Costs for that portion of the Extra Work or Deleted Work to be performed by Contractor with its own forces.

7.3.2 Markup for Work Performed by Subcontractors.

15% of the Allowable Costs for that portion of the Extra Work or Deleted Work to be performed by a first Tier Subcontractor.

SECTION 8 STANDARD OF CARE.

Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. All services performed in connection with this Construction Contract shall be performed in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project.

SECTION 9 INDEMNIFICATION.

9.1 Hold Harmless.

To the fullest extent allowed by law, Contractor will defend, indemnify, and hold harmless City, its City Council, boards and commissions, officers, agents, employees, representatives and volunteers (hereinafter collectively referred to as "Indemnitees"), through legal counsel acceptable to City, from and against any and all Losses arising directly or indirectly from, or in any manner relating to any of, the following:

- (i) Performance or nonperformance of the Work by Contractor or its Subcontractors or Sub-subcontractors, of any tier:
- (ii) Performance or nonperformance by Contractor or its Subcontractors or Subsubcontractors of any tier, of any of the obligations under the Contract Documents;
- (iii) The construction activities of Contractor or its Subcontractors or Sub-subcontractors, of any tier, either on the Site or on other properties;
- (iv) The payment or nonpayment by Contractor to any of its employees, Subcontractors or Sub-subcontractors of any tier, for Work performed on or off the Site for the Project; and
- (v) Any personal injury, property damage or economic loss to third persons associated with the performance or nonperformance by Contractor or its Subcontractors or Subsubcontractors of any tier, of the Work.

However, nothing herein shall obligate Contractor to indemnify any Indemnitee for Losses resulting from the sole or active negligence or willful misconduct of the Indemnitee. Contractor shall pay City for any costs City incurs to enforce this provision. Nothing in the Contract Documents shall be construed to give rise to any implied right of indemnity in favor of Contractor against City or any other Indemnitee.

9.2 Survival.

The provisions of Section 9 shall survive the termination of this Construction Contract.

SECTION 10 NONDISCRIMINATION.

As set forth in Palo Alto Municipal Code section 2.30.510, Contractor certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Contractor acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and will comply with all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 11 INSURANCE AND BONDS.

On or before the Execution Date, Contractor shall provide City with evidence that it has obtained insurance and Performance and Payment Bonds satisfying all requirements in Article 11 of the General Conditions. Failure to do so shall be deemed a material breach of this Construction Contract.

SECTION 12 PROHIBITION AGAINST TRANSFERS.

City is entering into this Construction Contract based upon the stated experience and qualifications of the Contractor and its subcontractors set forth in Contractor's Bid. Accordingly, Contractor shall not assign, hypothecate or transfer this Construction Contract or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any assignment, hypothecation or transfer without said consent shall be null and void.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor or of any general partner or joint venturer or syndicate member of Contractor, if the Contractor is a partnership or joint venture or syndicate or co-tenancy shall result in changing the

control of Contractor, shall be construed as an assignment of this Construction Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

SECTION 13 NOTICES.

13.1 Method of Notice.

All notices, demands, requests or approvals to be given under this Construction Contract shall be given in writing and shall be deemed served on the earlier of the following:

- (i) On the date delivered if delivered personally;
- On the third business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;
- (iii) On the date sent if sent by facsimile transmission;
- (iv) On the date sent if delivered by electronic mail; or
- (iv) On the date it is accepted or rejected if sent by certified mail.

13.2 Notice Recipients.

All notices, demands or requests (including, without limitation, Claims) from Contractor to City shall include the Project name and the number of this Construction Contract and shall be addressed to City at:

To City: City of Palo Alto

City Clerk

250 Hamilton Avenue P.O. Box 10250 Palo Alto, CA 94303

Copy to: ☐ City of Palo Alto

Public Works Administration

250 Hamilton Avenue Palo Alto, CA 94301 Attn: Elizabeth Ames

Or

City of Palo Alto
Utilities Engineering
250 Hamilton Avenue
Palo Alto, CA 94301

Attn:

In addition, copies of all Claims by Contractor under this Construction Contract shall be provided to the following:

Palo Alto City Attorney's Office 250 Hamilton Avenue P.O. Box 10250 Palo Alto, California 94303

All Claims shall be delivered personally or sent by certified mail.

All notices, demands, requests or approvals from City to Contractor shall be addressed to:

City Of Palo Alto
Purchasing & Contracts Administration
250 Hamilton Ave
Palo Alto., Ca 94301
Attn: John Montenero

13.3 Change of Address.

In the event of any change of address, the moving party shall notify the other party of the change of address in writing. Each party may, by written notice only, add, delete or replace any individuals to whom and addresses to which notice shall be provided.

<u>SECTION 14</u> DISPUTE RESOLUTION.

14.1 Resolution of Contract Disputes.

Contract Disputes shall be resolved by the parties in accordance with the provisions of this Section 14, in lieu of any and all rights under the law that either party have its rights adjudged by a trial court or jury. All Contract Disputes shall be subject to the Contract Dispute Resolution Process set forth in this Section 14, which shall be the exclusive recourse of Contractor and City for such Contract Disputes.

14.2 Resolution of Other Disputes.

14.2.1 Non-Contract Disputes.

Contract Disputes shall not include any of the following:

- (i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency;
- (ii) Third party tort claims for personal injury, property damage or death relating to any Work performed by Contractor or its Subcontractors or Subsubcontractors of any tier;
- (iii) False claims liability under California Government Code Section 12650, et. seq.;
- (iv) Defects in the Work first discovered by City after Final Payment by City to Contractor:
- (v) Stop notices; or
- (vi) The right of City to specific performance or injunctive relief to compel performance of any provision of the Contract Documents.

14.2.2 Litigation, City Election.

Matters that do not constitute Contract Disputes shall be resolved by way of an action filed in the Superior Court of the State of California, County of Santa Clara, and shall not be subject to the Contract Dispute Resolution Process. However, the City reserves the right, in its sole and absolute discretion, to treat such disputes as Contract Disputes. Upon written notice by City of its election as provided in the preceding sentence, such dispute shall be submitted by the parties and finally decided pursuant to the Contract Dispute Resolution Process in the manner as required for Contract Disputes, including, without limitation, City's right under Paragraph 14.4.2 to defer resolution and final determination until after Final Completion of the Work.

14.3 Submission of Contract Dispute.

14.3.1 By Contractor.

Contractors may commence the Contract Dispute Resolution Process upon City's written response denying all or part of a Claim pursuant to Paragraph 4.2.9 or 4.2.10 of the General Conditions. Contractor shall submit a written Statement of Contract Dispute (as set forth below) to City within seven (7) Days after City rejects all or a portion of Contractor's Claim. Failure by Contractor to submit its Statement of Contract Dispute in a timely manner shall result in City's decision by City on the Claim becoming final and binding. Contractor's Statement of Contract Dispute shall be signed under penalty of perjury and shall state with specificity the events or circumstances giving rise to the Contract Dispute, the dates of their occurrence and the asserted effect on the Contract Sum and the Contract Time. The Statement of Contract Dispute shall include adequate supporting data to substantiate the disputed Claim. Adequate supporting data for a Contract Dispute relating to an adjustment of the Contract Time shall include both of the following:

- (i) All of the scheduling data required to be submitted by Contractor under the Contract Documents to obtain extensions of time and adjustments to the Contract Time and
- (ii) A detailed, event-by-event description of the impact of each event on completion of Work. Adequate data to support a Statement of Contract Dispute involving an adjustment of the Contract Sum must include both of the following:
 - (a) A detailed cost breakdown and
 - (b) Supporting cost data in such form and including such information and other supporting data as required under the Contract Documents for submission of Change Order Requests and Claims.

14.3.2 By City.

City's right to commence the Contract Dispute Resolution Process shall arise at any time following City's actual discovery of the circumstances giving rise to the Contract Dispute. City asserts Contract Disputes in response to a Contract Dispute asserted by Contractor. A Statement of Contract Dispute submitted by City shall state the events or circumstances giving rise to the Contract Dispute, the dates of their occurrence and the damages or other relief claimed by City as a result of such events.

14.4 Contract Dispute Resolution Process.

The parties shall utilize each of the following steps in the Contract Dispute Resolution Process in the sequence they appear below. Each party shall participate fully and in good faith in each step in the Contract Dispute Resolution Process, and good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the process.

14.4.1 Direct Negotiations.

Designated representatives of City and Contractor shall meet as soon as possible (but not later than ten (10) Days after receipt of the Statement of Contract Dispute) in a good faith effort to negotiate a resolution to the Contract Dispute. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claims or defenses being asserted by such party in the negotiations, and with full authority to resolve such Contract Dispute then and there, subject only to City's obligation to obtain administrative and/or City Council approval of any agreed settlement or resolution. If the Contract Dispute involves the assertion of a right or claim by a Subcontractor or Sub-subcontractor, of any tier, against Contractor that is in turn being asserted by Contractor against City ("Pass-Through Claim"), then the Subcontractor or Sub-Subcontractor shall also have a

representative attend the negotiations, with the same authority and knowledge as described above. Upon completion of the meeting, if the Contract Dispute is not resolved, the parties may either continue the negotiations or any party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

14.4.2 Deferral of Contract Disputes.

Following the completion of the negotiations required by Paragraph 14.4.1, all unresolved Contract Disputes shall be deferred pending Final Completion of the Project, subject to City's right, in its sole and absolute discretion, to require that the Contract Dispute Resolution Process proceed prior to Final Completion. All Contract Disputes that have been deferred until Final Completion shall be consolidated within a reasonable time after Final Completion and thereafter pursued to resolution pursuant to this Contract Dispute Resolution Process. The parties can continue informal negotiations of Contract Disputes; provided, however, that such informal negotiations shall not be alter the provisions of the Agreement deferring final determination and resolution of unresolved Contract Disputes until after Final Completion.

14.4.3 Mediation.

If the Contract Dispute remains unresolved after negotiations pursuant to Paragraph 14.4.1, the parties shall submit the Contract Dispute to non-binding mediation before a mutually acceptable third party mediator.

- .1 Qualifications of Mediator. The parties shall endeavor to select a mediator who is a retired judge or an attorney with at least five (5) years of experience in public works construction contract law and in mediating public works construction disputes. In addition, the mediator shall have at least twenty (20) hours of formal training in mediation skills.
- 2 Submission to Mediation and Selection of Mediator. The party initiating mediation of a Contract Dispute shall provide written notice to the other party of its decision to mediate. In the event the parties are unable to agree upon a mediator within fifteen (15) Days after the receipt of such written notice, then the parties shall submit the matter to the American Arbitration Association (AAA) at its San Francisco Regional Office for selection of a mediator in accordance with the AAA Construction Industry Mediation Rules.
- .3 Mediation Process. The location of the mediation shall be at the offices of City. The costs of mediation shall be shared equally by both parties. The mediator shall provide an independent assessment on the merits of the Contract Dispute and recommendations for resolution. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

14.4.4 Binding Arbitration.

If the Contract Dispute is not resolved by mediation, then any party may submit the Contract Dispute for final and binding arbitration pursuant to the provisions of California Public Contract Code Sections 10240, et seq. The award of the arbitrator therein shall be final and may be entered as a judgment by any court of competent jurisdiction. Such arbitration shall be conducted in accordance with the following:

Arbitration Initiation. The arbitration shall be initiated by filing a complaint in arbitration in accordance with the regulations promulgated pursuant to California Public Contract Code Section 10240.5.

- Qualifications of the Arbitrator. The arbitrator shall be approved by all parties. The arbitrator shall be a retired judge or an attorney with at least five (5) years of experience in public works construction contract law and in arbitrating public works construction disputes. In addition, the arbitrator shall have at least twenty (20) hours of formal training in arbitration skills. In the event the parties cannot agree upon an arbitrator, the provisions of California Public Contract Code Section 10240.3 shall be followed in selecting an arbitrator possessing the qualifications required herein.
- .3 Hearing Days and Location. Arbitration hearings shall be held at the offices of City and shall, except for good cause shown to and determined by the arbitrator, be conducted on consecutive business days, without interruption or continuance.
- .4 Hearing Delays. Arbitration hearings shall not be delayed except upon good cause shown.
- **Recording Hearings.** All hearings to receive evidence shall be recorded by a certified stenographic reporter, with the costs thereof borne equally by City and Contractor and allocated by the arbitrator in the final award.
- **Limitation of Depositions.** The parties may conduct discovery in accordance with the provisions of section 10240.11 of the Public Contract Code; provided, however, that depositions shall be limited to both of the following:
 - (i) Ten (10) percipient witnesses for each party and 5 expert witnesses per party.

Upon a showing of good cause, the arbitrator may increase the number of permitted depositions. An individual who is both percipient and expert shall, for purposes of applying the foregoing numerical limitation only, be deemed an expert. Expert reports shall be exchanged prior to receipt of evidence, in accordance with the direction of the arbitrator, and expert reports (including initial and rebuttal reports) not so submitted shall not be admissible as evidence.

- **.7 Authority of the Arbitrator.** The arbitrator shall have the authority to hear dispositive motions and issue interim orders and interim or executory awards.
- .8 Waiver of Jury Trial. Contractor and City each voluntarily waives its right to a jury trial with respect to any Contract Dispute that is subject to binding arbitration in accordance with the provisions of this Paragraph 14.4.4. Contractor shall include this provision in its contracts with its Subcontractors who provide any portion of the Work.

14.5 Non-Waiver.

Participation in the Contract Dispute Resolution Process shall not waive, release or compromise any defense of City, including, without limitation, any defense based on the assertion that the rights or Claims of Contractor that are the basis of a Contract Dispute were previously waived by Contractor due to Contractor's failure to comply with the Contract Documents, including, without limitation, Contractor's failure to comply with any time periods for providing notice of requests for adjustments of the Contract Sum or Contract Time or for submission of Claims or supporting documentation of Claims.

SECTION 15 DEFAULT.

15.1 Notice of Default.

In the event that City determines, in its sole discretion, that Contractor has failed or refused to perform any of the obligations set forth in the Contract Documents, or is in breach of any provision of the Contract Documents, City may give written notice of default to Contractor in the manner specified for the giving of notices in the Construction Contract.

15.2 Opportunity to Cure Default.

Except for emergencies, Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) Days (or such shorter time as City may reasonably require) after receipt of written notice. However, if the breach cannot be reasonably cured within such time, Contractor will commence to cure the breach within two (2) Days (or such shorter time as City may reasonably require) and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) Days after receipt of such written notice.

SECTION 16 CITY'S RIGHTS AND REMEDIES.

16.1 Remedies Upon Default.

If Contractor fails to cure any default of this Construction Contract within the time period set forth above in Section 15, then City may pursue any remedies available under law or equity, including, without limitation, the following:

16.1.1 Delete Certain Services.

City may, without terminating the Construction Contract, delete certain portions of the Work, reserving to itself all rights to Losses related thereto.

16.1.2 Perform and Withhold.

City may, without terminating the Construction Contract, engage others to perform the Work or portion of the Work that has not been adequately performed by Contractor and withhold the cost thereof to City from future payments to Contractor, reserving to itself all rights to Losses related thereto.

16.1.3 Suspend The Construction Contract.

City may, without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, suspend all or any portion of this Construction Contract for as long a period of time as City determines, in its sole discretion, appropriate, in which event City shall have no obligation to adjust the Contract Sum or Contract Time, and shall have no liability to Contractor for damages if City directs Contractor to resume Work.

16.1.4 Terminate the Construction Contract for Default.

City shall have the right to terminate this Construction Contract, in whole or in part, upon the failure of Contractor to promptly cure any default as required by Section 15. City's election to terminate the Construction Contract for default shall be communicated by giving Contractor a written notice of termination in the manner specified for the giving of notices in the Construction Contract. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein.

16.1.5 Invoke the Performance Bond.

City may, with or without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

16.1.6 Additional Provisions.

All of City's rights and remedies under this Construction Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not waive the City's authority to designate other breaches as material nor limit City's right to terminate the Construction Contract, or prevent the City from terminating the Agreement for breaches that are not material. City's determination of whether there has been noncompliance with the Construction Contract so as to warrant exercise by City of its rights and remedies for default under the Construction Contract, shall be binding on all parties. No termination or action taken by City after such termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all liquidated damages and Losses suffered by City.

16.2 Delays by Sureties.

Without limiting to any of City's other rights or remedies, City has the right to suspend the performance of the Work by Contractor's sureties in the event of any of the following:

- (i) The sureties' failure to begin Work within a reasonable time in such manner as to insure full compliance with the Construction Contract within the Contract Time;
- (ii) The sureties' abandonment of the Work;
- (iii) If at any time City is of the opinion the sureties' Work is unnecessarily or unreasonably delaying the Work;
- (iv) The sureties' violation of any terms of the Construction Contract;
- (v) The sureties' failure to perform according to the Contract Documents; or
- (vi) The sureties' failure to follow City's instructions for completion of the Work within the Contract Time.

16.3 Damages to City.

16.3.1 For Contractor's Default.

City will be entitled to recovery of all Losses under law or equity in the event of Contractor's default under the Contract Documents.

16.3.2 Compensation for Losses.

In the event that City's Losses arise from Contractor's default under the Contract Documents, City shall be entitled to withhold monies otherwise payable to Contractor until Final Completion of the Project. If City incurs Losses due to Contractor's default, then the amount of Losses shall be deducted from the amounts withheld. Should the amount withheld exceed the amount deducted, the balance will be paid to Contractor or its designee upon Final Completion of the Project. If the Losses incurred by City exceed the amount withheld, Contractor shall be liable to City for the difference and shall promptly remit same to City.

16.4 Suspension by City for Convenience.

City may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time. The order shall be specifically identified as a Suspension Order by City. Upon receipt of a Suspension Order, Contractor shall, at City's expense, comply with the order and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order. During the Suspension or extension of the Suspension, if any, City shall either cancel the Suspension Order or, by Change Order, delete the Work covered by the Suspension Order. If a Suspension Order is canceled or expires, Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. A Suspension Order shall not be the exclusive method for City to stop the Work.

16.5 Termination Without Cause.

City may, at its sole discretion and without cause, terminate this Construction Contract in part or in whole by giving thirty (30) Days written notice to Contractor. The compensation allowed under this Paragraph 16.5 shall be the Contractor's sole and exclusive compensation for such termination and Contractor waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind resulting from termination without cause.

16.5.1 Compensation.

Following such termination and within forty-five (45) Days after receipt of a billing from Contractor seeking payment of sums authorized by this Paragraph 16.5, City shall pay the following to Contractor as Contractor's sole compensation for performance of the Work:

- .1 For Work Performed. The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.
- **.2 For Close-out Costs.** Reasonable costs of Contractor and its Subcontractors and Sub-subcontractors for:
 - (i) Demobilizing and
 - (ii) Administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) Days after receipt of the notice of termination.
- **.3 For Fabricated Items.** Previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

16.5.2 Subcontractors.

Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts permitting termination for convenience by Contractor on terms that are consistent with this Construction Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor against City under this Section.

16.6 Contractor's Duties Upon Termination.

Upon receipt of a notice of termination for default or for convenience, Contractor shall, unless the notice directs otherwise, do the following:

- (i) Immediately discontinue the Work to the extent specified in the notice;
- (ii) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work that is not discontinued:
- (iii) Provide to City a description, in writing no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as City may determine necessary in order to decide whether to accept assignment of or request Contractor to terminate the subcontract, purchase order or contract;
- (iv) Promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and
- (v) Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

SECTION 17 CONTRACTOR'S RIGHTS AND REMEDIES.

17.1 Contractor's Remedies.

Contractor may terminate this Construction Contract only upon the occurrence of one of the following:

17.1.1 For Work Stoppage.

The Work is stopped for sixty (60) consecutive Days, through no act or fault of Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor, due to issuance of an order of a court or other public authority other than City having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable. This provision shall not apply to any work stoppage resulting from the City's issuance of a suspension notice issued either for cause or for convenience.

17.1.2 For City's Non-Payment.

If City does not make pay Contractor undisputed sums within ninety (90) Days after receipt of notice from Contractor, Contractor may terminate the Construction Contract (30) days following a second notice to City of Contractor's intention to terminate the Construction Contract.

17.2 Damages to Contractor.

In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Paragraph 16.5.1 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

SECTION 18 ACCOUNTING RECORDS.

18.1 Financial Management and City Access.

Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Construction Contract in accordance with generally accepted accounting principles and practices. City and City's accountants during normal business hours, may inspect, audit and copy Contractor's records, books, estimates, take-offs, cost reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project. Contractor shall retain these documents for a period of three (3) years after the later of (i) final payment or (ii) final resolution of all Contract Disputes and other disputes, or (iii) for such longer period as may be required by law.

18.2 Compliance with City Requests.

Contractor's compliance with any request by City pursuant to this Section 18 shall be a condition precedent to filing or maintenance of any legal action or proceeding by Contractor against City and to Contractor's right to receive further payments under the Contract Documents. City many enforce Contractor's obligation to provide access to City of its business and other records referred to in Section 18.1 for inspection or copying by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

SECTION 19 INDEPENDENT PARTIES.

Each party is acting in its independent capacity and not as agents, employees, partners, or joint venturers of the other party. City, its officers or employees shall have no control over the conduct of Contractor or its respective agents, employees, subconsultants, or subcontractors, except as herein set forth.

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SECTION 20 NUISANCE.

Contractor shall not maintain, commit, nor permit the maintenance or commission of any nuisance in connection in the performance of services under this Construction Contract.

SECTION 21 PERMITS AND LICENSES.

Except as otherwise provided in the Special Provisions and Technical Specifications, The Contractor shall provide, procure and pay for all licenses, permits, and fees, required by the City or other government jurisdictions or agencies necessary to carry out and complete the Work. Payment of all costs and expenses for such licenses, permits, and fees shall be included in one or more Bid items. No other compensation shall be paid to the Contractor for these items or for delays caused by non-City inspectors or conditions set forth in the licenses or permits issued by other agencies.

SECTION 22 WAIVER.

A waiver by either party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

SECTION 23 GOVERNING LAW.

This Construction Contract shall be construed in accordance with and governed by the laws of the State of California.

SECTION 24 COMPLETE AGREEMENT.

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This Agreement may be amended only by a written instrument, which is signed by the parties.

SECTION 25 SURVIVAL OF CONTRACT.

The provisions of the Construction Contract which by their nature survive termination of the Construction Contract or Final Completion, including, without limitation, all warranties, indemnities, payment obligations, and City's right to audit Contractor's books and records, shall remain in full force and effect after Final Completion or any termination of the Construction Contract.

SECTION 26 PREVAILING WAGES.

This Project is not subject to prevailing wages. The Contractor is not required to pay prevailing wages in the performance and implementation of the Project, because the City, pursuant to its authority as a chartered city, has adopted Resolution No. 5981 exempting the City from prevailing wages. The City invokes the exemption from the state prevailing wage requirement for this Project and declares that the Project is funded one hundred percent (100%) by the City of Palo Alto.

Or

The Contractor is required to pay general prevailing wages as defined in Subchapter 3, Title 8 of the California Code of Regulations and Section 16000 et seq. and Section 1773.1 of the California Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the Director of the Department of Industrial Relations. Copies of these rates may be obtained at cost at the Purchasing office of the City of Palo Alto. Contractor shall provide a copy of prevailing wage rates to any staff or subcontractor hired, and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5,

1810, and 1813 of the Labor Code.

SECTION 27 NON APPROPRIATION.

This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that the City does not appropriate funds for the following fiscal year for this event, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Construction Contract are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 28 AUTHORITY.

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

SECTION 29 ATTORNEY FEES.

Each Party shall bear its own costs, including attorney's fees through the completion of mediation. If the claim or dispute is not resolved through mediation and in any dispute described in Paragraph 14.2, the prevailing party in any action brought to enforce the provision of this Agreement may recover its reasonable costs and attorney's fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorney's' fees paid to third parties.

SECTION 30 SEVERABILITY.

In case a provision of this Construction Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

IN WITNESS WHEREOF, the parties have caused this Construction Contract to be executed the date and year first above written.

CITY OF PALO ALTO	CONTRACTOR
☐ Purchasing Manager	DEL CONTE LANDSCAPING, INC.
City Manager	Ву:
APPROVED AS TO FORM	Name:
APPROVED AS TO FORM:	Title:
Senior Asst. City Attorney	
APPROVED:	
Public Works Director	

ATTACHMENT C

				Engineer's l	Estimate	Elite Lands	caping, INC		orporation Contractor	The Profess			onte's ping, INC		& Munoz tion, INC	Park West I			m Valley ruction
<u>#</u>	Base Bid Description	Qty	<u>Unit</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>
1	Notification	1	Lump Sum	\$5,000.00	\$5,000.00	\$2,000.00	\$2,000.00	\$5,000.00	\$5,000.00	\$1,630.00	\$1,630.00	\$3,426.00	\$3,426.00	\$1,500.00	\$1,500.00	\$446.00	\$446.00	\$7,180.00	\$7,180.00
2	Traffic Control	1	Lump Sum	\$50,000.00	\$50,000.00	\$40,000.00	\$40,000.00	\$45,000.00	\$45,000.00	\$18,525.00	\$18,525.00	\$2,168.00	\$2,168.00	\$20,000.00	\$20,000.00	\$203,572.00	\$203,572.00	\$177,160.00	\$177,160.00
3	Mobilization	2	: EA	\$10,000.00	\$20,000.00	\$75,000.00	\$150,000.00	\$8,000.00	\$16,000.00	\$13,125.00	\$26,250.00	\$4,768.50	\$9,537.00	\$18,000.00	\$36,000.00	\$25,676.69	\$51,353.38	\$5,205.00	\$10,410.00
4	Demolish Concrete Circle Planter	3	EA	\$1,250.00	\$3,750.00	\$1,000.00	\$3,000.00	\$2,000.00	\$6,000.00	\$2,053.00	\$6,159.00	\$86.67	\$260.00	\$1,000.00	\$3,000.00	\$1,212.82	\$3,638.46	\$685.00	\$2,055.00
5	Site Prep, tree & stump removal	103	EA	\$1,000.00	\$103,000.00	\$1,150.00	\$118,450.00	\$1,380.00	\$142,140.00	\$855.00	\$88,065.00	\$963.45	\$99,235.00	\$1,100.00	\$113,300.00	\$1,211.47	\$124,781.41	\$980.00	\$100,940.00
6	Class I RCRA Soil Excavation and Disposal	15	CY	\$345.00	\$5,175.00	\$725.00	\$10,875.00	\$496.00	\$7,440.00	\$509.00	\$7,635.00	\$483.60	\$7,254.00	\$570.00	\$8,550.00	\$322.61	\$4,839.15	\$512.00	\$7,680.00
7	Class I Soil Excavation and Disposal	200	CY	\$173.00	\$34,600.00	\$275.00	\$55,000.00	\$298.00	\$59,600.00	\$197.00	\$39,400.00	\$358.85	\$71,769.00	\$245.00	\$49,000.00	\$252.27	\$50,454.00	\$258.50	\$51,700.00
8	Class II Soil Excavation and Disposal	300	CY	\$113.00	\$33,900.00	\$110.00	\$33,000.00	\$103.00	\$30,900.00	\$79.00	\$23,700.00	\$88.78	\$26,635.00	\$100.00	\$30,000.00	\$95.81	\$28,743.00	\$263.00	\$78,900.00
9	Topsoil Import and Amendments	1950	CY	\$55.00	\$107,250.00	\$40.00	\$78,000.00	\$46.00	\$89,700.00	\$49.00	\$95,550.00	\$45.23	\$88,200.00	\$48.00	\$93,600.00	\$40.70	\$79,365.00	\$38.00	\$74,100.00
10	Landscaping	1	Lump Sum	\$130,000.00	\$130,000.00	\$66,000.00	\$66,000.00	\$75,000.00	\$75,000.00	\$68,300.00	\$68,300.00	\$69,785.00	\$69,785.00	\$100,000.00	\$100,000.00	\$78,935.48	\$78,935.48	\$58,790.00	\$58,790.00
11	60-day Landscape Maintenance	1	Lump Sum	\$5,000.00	\$5,000.00	\$1,250.00	\$1,250.00	\$1,500.00	\$1,500.00	\$4,635.00	\$4,635.00	\$1,827.00	\$1,827.00	\$7,500.00	\$7,500.00	\$2,453.44	\$2,453.44	\$8,800.00	\$8,800.00
12	Irrigation	1	Lump Sum	\$230,000.00	\$230,000.00	\$225,000.00	\$225,000.00	\$186,000.00	\$186,000.00	\$206,611.00	\$206,611.00	\$157,558.00	\$157,558.00	\$239,000.00	\$239,000.00	\$197,931.03	\$197,931.03	\$252,800.00	\$252,800.00
13	Utility Potholing	30	EA	\$400.00	\$12,000.00	\$665.00	\$19,950.00	\$250.00	\$7,500.00	\$303.00	\$9,090.00	\$949.03	\$28,471.00	\$350.00	\$10,500.00	\$111.58	\$3,347.40	\$865.00	\$25,950.00
14	Replace Street Light Conduit and Conductors	1500	LF	\$45.00	\$67,500.00	\$19.00	\$28,500.00	\$14.65	\$21,975.00	\$33.00	\$49,500.00	\$35.02	\$52,526.00	\$14.50	\$21,750.00	\$17.59	\$26,385.00	\$14.75	\$22,125.00
15	N-36 Electric Boxes	20	EA	\$645.00	\$12,900.00	\$530.00	\$10,600.00	\$432.00	\$8,640.00	\$1,100.00	\$22,000.00	\$1,167.25	\$23,345.00	\$450.00	\$9,000.00	\$485.13	\$9,702.60	\$565.00	\$11,300.00
16	Relocate Street Light & install new foundation	1	Lump Sum	\$4,400.00	\$4,400.00	\$2,000.00	\$2,000.00	\$1,700.00	\$1,700.00	\$3,300.00	\$3,300.00	\$3,502.00	\$3,502.00	\$1,500.00	\$1,500.00	\$1,807.10	\$1,807.10	\$3,700.00	\$3,700.00
17	Install New Double Arm Street Light with Luminaires	1	Lump Sum	\$4,400.00	\$4,400.00	\$2,250.00	\$2,250.00	\$1,900.00	\$1,900.00	\$3,300.00	\$3,300.00	\$3,502.00	\$3,502.00	\$1,800.00	\$1,800.00	\$2,049.68	\$2,049.68	\$3,700.00	\$3,700.00
18	Remove and Salvage Single Arm Street Light	1	Lump Sum	\$1,000.00	\$1,000.00	\$600.00	\$600.00	\$1,000.00	\$1,000.00	\$1,650.00	\$1,650.00	\$1,751.00	\$1,751.00	\$500.00	\$500.00	\$533.64	\$533.64	\$1,465.00	\$1,465.00
19	Project Close-out & As-Builts	1	Lump Sum	\$25,000.00	\$25,000.00	\$4,000.00	\$4,000.00	\$2,500.00	\$2,500.00	\$2,774.00	\$2,774.00	\$1,624.00	\$1,624.00	\$500.00	\$500.00	\$4,244.88	\$4,244.88	\$1,000.00	\$1,000.00
	Base Bid Total				\$854,875.00		\$850,475.00		\$709,495.00		\$678,074.00		\$652,375.00		\$747,000.00		\$874,582.65		\$899,755.00

				Engineers	Engineers Estimate E		Elite Landscaping, INC		Jensen Corporation		The Professional Tree		Del Conte's		Suarez & Munoz		Park West Landscape,		m Valley
	Add Alternate #1	<u>Qty</u>	<u>Unit</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>	<u>Price</u>	<u>Total</u>
16	Landscaping and Irrigation at Transport Road Median	1	Lump Sum	\$5,000.00	\$5,000.00	\$8,000.00	\$8,000.00	\$5,800.00	\$5,800.00	\$9,260.00	\$9,260.00	\$5,575.00	\$5,575.00	\$10,000.00	\$10,000.00	\$8,190.31	\$8,190.31	\$11,040.00	\$11,040.00
	Add Alternate #2		_																
17	Landscaping and Irrigation under Oak Trees in planter strips	1	Lump Sum	\$40,000.00	\$40,000.00	\$42,500.00	\$42,500.00	\$81,000.00	\$81,000.00	\$40,280.00	\$40,280.00	\$35,750.00	\$35,750.00	\$75,000.00	\$75,000.00	\$35,338.18	\$35,338.18	\$54,680.00	\$54,680.00
	A 1.1 A1(
4.0	Add Alternate #3		0)/	# 400.00	*	* 44 * 00	# 50.000.00	# 400.00	***	* 400.00	005 500 00	# 110.00	* 04.077.00	# 00.00	* 4 4 000 00	* 400.04	* 0= 000 00	# 40 = 00	***
18	Remove, dispose and replace one-ft depth of soil	512	CY	\$168.00	\$86,016.00	\$115.00	\$58,880.00	\$123.00	\$62,976.00	\$128.00	\$65,536.00	\$119.68	\$61,277.00	\$86.00	\$44,032.00	\$128.84	\$65,966.08	\$165.00	\$84,480.00
				A1:	# 101 010 00		* 4.00.000.00		1 10 770 00		# 445.070.00		* 4 0 0 0 0 0 0 0 0		*		* * * * * * * * * *		*
				Alternate Total	. ,		\$109,380.00		\$149,776.00		\$115,076.00		\$102,602.00		\$129,032.00		\$109,494.57		\$150,200.00
	Total Base Bid + Alternates	;			\$985,891.00		\$959,855.00		\$859,271.00		\$793,150.00		\$754,977.00		\$876,032.00		\$984,077.22		\$1,049,955.00

Base Bid Total \$854	54,875.00 \$85	50,475.00	\$709,495.00	\$678,074.00	\$652,375.00	\$747,000.00	\$874,582.65	\$899,755.00
Add Alt #1 \$	\$5,000.00	\$8,000.00	\$5,800.00	\$9,260.00	\$5,575.00	\$10,000.00	\$8,190.31	\$11,040.00
Add Alt #2 \$40	40,000.00 \$2	42,500.00	\$81,000.00	\$40,280.00	\$35,750.00	\$75,000.00	\$35,338.18	\$54,680.00
Add Alt #3 \$86	86,016.00 \$5	58,880.00	\$62,976.00	\$65,536.00	\$61,277.00	\$44,032.00	\$65,966.08	\$84,480.00
Grand Total: \$98	85,891.00 \$95	59,855.00	\$859,271.00	\$793,150.00	\$754,977.00	\$876,032.00	\$984,077.22	\$1,049,955.00