Attachment A

ORDINANCE NO.

ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO AMENDING THE BUDGET FOR THE FISCAL YEAR 2008-09 TO PROVIDE AN ADDITIONAL APPROPRIATION OF $3,436,713 TO CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECT PF-01002, CIVIC CENTER INFRASTRUCTURE IMPROVEMENTS

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 9, 2008 did adopt a budget for fiscal year 2008-09; and

B. Since fiscal year 2000-01 through fiscal year 2007-08, the City Council appropriated a total of $7,494,000 for CIP Project PF-01002, Civic Center Infrastructure Improvements (Project) to cover the costs of improvements which include elevator upgrades, Americans with Disabilities Act (ADA) improvements, electrical system upgrades, generator replacement, mechanical system upgrades and building exterior sealing and painting; and

C. The elevator upgrade was completed in 2005. Design services were awarded in 2005 (CMR: 282:05) for the remainder of the work which includes electrical system upgrades, generator replacement, mechanical system upgrades, and exterior sealing and painting. Due to the cost of the project, construction of the remaining work has been broken into three phases and will be bid in three stages; and

D. Work in Phase 1 will include replacement of the main building generator, boiler, and refurbishment or replacement of major garage and building mechanical and electrical systems. Future phases will upgrade the balance of the mechanical systems. A contract for Construction Management Services was awarded in March 2008 to assist City staff with management of construction of Phase 1; and

E. The work to be completed under Phase 1 will be completed by four multiple prime contractors responsible for General Interior/Exterior Work Items and Finishes; Mechanical and Controls; Plumbing, Fire Sprinklers and Fuel Oil System; and Electrical and Fire Alarm. Use of this delivery method,
coupled with a construction management firm, provides reduced overhead cost for the specialty contractors, increased competition for each contract, and augments project management services of the limited staffing available in-house; and

F. Phase 1 of this project was put out to bid; the low bid is higher than the amount available, and an additional appropriation is required to provide the funds; and

G. Additional services such as green building consultant, testing services, hazardous materials removal and other miscellaneous activities are additional services identified to complete Phase 1 of this Project. The existing appropriation balance of this Project is $2,546,662 and is not sufficient to cover the Project Phase 1 costs of $5,983,375. Details are broken down as follows; and

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nexgen Builders, Inc. - for general interior/</td>
<td>$ 548,800</td>
</tr>
<tr>
<td>exterior work items and finishes*</td>
<td></td>
</tr>
<tr>
<td>ACCO Engineered Systems, Inc. - for mechanical</td>
<td>$2,871,275</td>
</tr>
<tr>
<td>and controls*</td>
<td></td>
</tr>
<tr>
<td>ACCO Engineered Systems, Inc - for plumbing,</td>
<td>$1,575,800</td>
</tr>
<tr>
<td>fire sprinklers and fuel oil system*</td>
<td></td>
</tr>
<tr>
<td>Rosendin Electric - for electrical and fire</td>
<td>$ 537,500</td>
</tr>
<tr>
<td>alarm*</td>
<td></td>
</tr>
<tr>
<td>Green building consultant</td>
<td>$ 200,000</td>
</tr>
<tr>
<td>Testing services</td>
<td>$ 75,000</td>
</tr>
<tr>
<td>Hazardous materials removal</td>
<td>$ 125,000</td>
</tr>
<tr>
<td>Other miscellaneous expenses (printing, mailing,</td>
<td>$ 50,000</td>
</tr>
<tr>
<td>etc.)</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$5,983,375</strong></td>
</tr>
<tr>
<td><strong>Existing appropriation balance</strong></td>
<td><strong>$2,546,662</strong></td>
</tr>
<tr>
<td><strong>Amount needed</strong></td>
<td><strong>$3,436,713</strong></td>
</tr>
</tbody>
</table>
*contract amount includes 10% contingency

H. City Council authorization is needed to amend the 2008-09 budget to make available the funds needed for CIP Project PF-01002, Civic Center Infrastructure Improvements; and

I. The total additional appropriation of $3,436,713 will be funded by the infrastructure reserve; and

J. City Council authorization is needed to amend the 2008-09 budget to make available the funds required for construction of CIP Project PF-01002, Civic Center Infrastructure Improvements.

SECTION 2. The Capital Project Fund Infrastructure Reserve is hereby decreased by Three Million Four Hundred
Thirty Six Thousand Seven Hundred Thirteen Dollars ($3,436,713) with a remaining balance of Eight Million One Hundred Fifty Seven Thousand Two Hundred Eighty Seven Dollars ($8,157,287) as shown in Exhibit A.

SECTION 3. The sum of Three Million Four Hundred Thirty Six Thousand Seven Hundred Thirteen Dollars ($3,436,713) is hereby appropriated to CIP Project PF-01002, Civic Center Infrastructure Improvements.

SECTION 4. 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 5. As provided in Section 2.04.330 of the Palo Alto Municipal Code, this ordinance shall become effective upon adoption.

SECTION 6. The Council of the City of Palo Alto hereby finds that this project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15301 and 15302 of the CEQA Guidelines, and therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED:
AYES:
NOES:
ABSTENTIONS:
ABSENT:
ATTEST:

City Clerk

APPROVED:

Mayor

APPROVED AS TO FORM:

City Manager

Director of Public Works

Director of Administrative Services
### EXHIBIT A

**Budget Amendment Ordinances Impacting Infrastructure Reserve Approved-To-Date in 2008-09**

<table>
<thead>
<tr>
<th>BAO Description</th>
<th>Cost</th>
<th>Revenue</th>
<th>Placeholders Already in the 2007-08 Adopted Budget</th>
<th>Impact on the Capital Fund Infrastructure Reserve</th>
<th>Estimated Future Year Ongoing Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance - July 1, 2008 (Projected Balance)</td>
<td></td>
<td></td>
<td></td>
<td>$16,493,000</td>
<td>($4,899,000) $11,594,000</td>
</tr>
<tr>
<td>08-09 Net change to reserve - adopted budget</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008-09 Projected Ending Balance Before BAOs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less: Additional Appropriation (Budget Amendment Ordinance)</td>
<td></td>
<td></td>
<td></td>
<td>($3,436,713)</td>
<td></td>
</tr>
<tr>
<td>PF-01002 - Civic Center (Phase 1)</td>
<td>$3,436,713</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total BAOs</strong></td>
<td>$3,436,713</td>
<td></td>
<td>($3,436,713)</td>
<td></td>
<td>$8,157,287</td>
</tr>
</tbody>
</table>

**Reserve Balance After BAO's**

$8,157,287
Description: This project will upgrade building systems within the Civic Center. The scope of the improvements includes electrical system upgrades, generator replacement, mechanical systems upgrades, limited accessibility upgrades, code required upgrades, and exterior sealing and painting. Mechanical and electrical systems serving the police wing have been excluded from this project and will be accomplished with renovations prior to a new department occupying the space. See Supplemental Information

Justification: The Civic Center is 38 years old and houses City offices and three levels of parking. Major electrical and mechanical systems are approaching the end of their useful lives and are in need of replacement in order to maintain uninterrupted service. Preventative maintenance of building exteriors, including window leak inspections, recalking, and sealing, will prevent damage and more costly repairs later.

Supplemental Information: A complete building system study was completed in fiscal year 2002-03. The elevator upgrade was completed in 2005. Construction of the next phase will be accomplished in fiscal years 2007-08 and 2008-09.

Due to the increased cost of construction (project was originally funded for $2.6 Million), the remainder of the project will be phased over a five year period with construction scheduled in fiscal year 2007-08 through fiscal year 2012-13. The project will be bid in three stages.

CIP FACTS:
- Continuing
- Project Status: Design
- Timeline: FY 2008-2012
- Overall Project Completion: 30%
- Percent Spent: 66%
- Managing Department: Public Works
- Comprehensive Plan: Policy C-24, Program C-19
- Board/Commission Review: ARB

IMPACT ANALYSIS:
- Environmental: This project is categorically exempt from CEQA under Section 15301.
- Design Elements: This project may be subject to ARB review.
- Operating: This project will reduce maintenance costs in future years.
- Telecommunications: None

| PRIOR YEARS |
|---|---|
| PY Budget | $7,494,000 |
| PY Actuals as of 06/30/2008 | $4,947,338 |

<table>
<thead>
<tr>
<th>FUTURE FINANCIAL REQUIREMENTS</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>Total Funding</th>
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<tbody>
<tr>
<td>Pre-Design Costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Design Costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction Costs</td>
<td>$3,436,713</td>
<td>$4,176,000</td>
<td>$1,546,000</td>
<td>$1,460,000</td>
<td>$10,618,713</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Budget Request</td>
<td>$3,436,713</td>
<td>$4,176,000</td>
<td>$1,546,000</td>
<td>$1,460,000</td>
<td>$10,618,713</td>
<td></td>
</tr>
<tr>
<td>Revenues:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Source of Funds:</td>
<td>Infrastructure Reserve</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
CONTRACT No. C09127144A
(Public work)
Public Works Department

This Contract, number C09127144A dated ________ is entered into by and between the City of Palo Alto, a California Charter City and a municipal corporation of the State of California ("City"), and Nexgen Builders, Inc. ("Contractor").

For and in consideration of the covenants, terms, and conditions ("the provisions") of this Contract, City and Contractor ("the parties") agree:

1. **Term.** This Contract shall commence and be binding on the parties on the Date of Execution of this Contract, and shall expire on the date of recording of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder, subject to the earlier termination of this Contract.

2. **General Scope of Project and Work.** Contractor shall furnish labor, services, materials and equipment in connection with the construction of the Project and complete the Work in accordance with the covenants, terms and conditions of this Contract to the satisfaction of City. The Project and Work is generally described as follows:

Title of Project: Civic Center Infrastructure Upgrades — General Interior/Exterior Work Items and Finishes

Invitation for Bids (IFB) No. 127144A

Bid: $498,875.00

3. **Contract Documents.** This Contract shall consist of the documents set forth below, which are on file with the City Clerk and are hereby incorporated by reference. For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, these documents and the provisions thereof are set forth in the following descending order of precedence.
   a. This Contract.
   b. Invitation for Bid
   c. General Conditions.
   d. Project Specifications.
   e. Drawings.
   f. Change Orders.
   g. Bid.
   h. Supplementary Conditions.
   k. Other Specifications, or part thereof, not expressly incorporated in the Contract Specifications or the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (1992), or, if no time is stated, within thirty (30) Days of the date of receipt of Contractor's invoices.
   l. Any other document not expressly mentioned herein which is issued by City or entered into by the parties.

4. **Compensation.** In consideration of Contractor's performance of its obligations hereunder, City shall pay to Contractor the amount set forth in Contractor's Bid in accordance with the provisions of this Contract and upon the receipt of written invoices and all necessary supporting documentation within the time set forth in the Contract Specifications and the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (1992), or, if no time is stated, within thirty (30) Days of the date of receipt of Contractor's invoices.

5. **Insurance.** On or before the Date of Execution, Contractor shall obtain and maintain the policies of insurance coverage described in the Invitation For Bid on terms and conditions and in amounts as may be required by the Risk Manager. City shall not be obligated to take out insurance on Contractor's personal property or the personal property of any person performing labor or services or supplying materials or equipment under the Project. Contractor shall furnish City with the certificates of insurance and with original endorsements affecting coverage required under this Contract on or before the Date of Execution. The certificates and endorsements for each insurance policy shall be signed by a person who is authorized by that insurer to bind coverage in its behalf.
behalf. Proof of insurance shall be mailed to the Project Manager to the address set forth in Section 16 of this Contract.

6. **Indemnification.** Contractor agrees to protect, defend, indemnify and hold City, its Council members, officers, employees, agents and representatives harmless from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments, arising, in whole or in part, directly or indirectly, at any time from any injury to or death of persons or damage to property as a result of the willful acts or the negligent acts or omissions of Contractor, or which results from Contractor's noncompliance with any Law respecting the condition, use, occupation or safety of the Project site, or any part thereof, or which arises from Contractor's failure to do anything required under this Contract or for doing anything which Contractor is required not to do under this Contract, or which arises from conduct for which any Law may impose strict liability on Contractor in the performance of or failure to perform the provisions of this Contract, except as may arise from the sole willful acts or negligent acts or omissions of City or any of its Council members, officers, employees, agents or representatives. This indemnification shall extend to any and all claims, demands, or liens made or filed by reason of any work performed by Contractor under this Contract at any time during the term of this Contract, or arising thereafter.

To the extent Contractor will use hazardous materials in connection with the execution of its obligations under this Contract, Contractor further expressly agrees to protect, indemnify, hold harmless and defend City, its City Council members, officers and employees from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments City may incur, arising, in whole or in part, in connection with or as a result of Contractor's willful acts or negligent acts or omissions under this Contract, under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601-9675, as amended); the Resource Conservation and Recovery Act (42 U.S.C. §§6901-6992k, as amended); the Toxic Substances Control Act (15 U.S.C. §§2601-2692, as amended); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Safety Code, §§25300-25395, as amended); the Hazardous Waste Control Law (Health & Safety Code, §§25100-25250, as amended); the Safe Drinking Water and Toxic Enforcement Act (Health & Safety Code, §§25249.5-25249.13, as amended); the Underground Storage of Hazardous Substances Act (Health & Safety Code, §§25280-25299.7, as amended); or under any other local, state or federal law, statute or ordinance, or at common law.

7. **Assumption of Risk.** Contractor agrees to voluntarily assume any and all risk of loss, damage, or injury to the property of Contractor which may occur in, on, or about the Project site at any time and in any manner, excepting such loss, injury, or damage as may be caused by the sole willful act or negligent act or omission of City or any of its Council members, officers, employees, agents or representatives.

8. **Waiver.** The acceptance of any payment or performance, or any part thereof, shall not operate as a waiver by City of its rights under this Contract. A waiver by City of any breach of any part or provision of this Contract by Contractor shall not operate as a waiver or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the parties in the administration of any part or provision of this Contract be construed to waive or to lessen the right of City to insist upon the performance of Contractor in strict compliance with the covenants, terms and conditions of this Contract.

9. **No Exoneration By Inspection:** The City has the right, but not the duty, to inspect Contractor's Work. The right of inspection is solely for the benefit of City. Contractor has the obligation to complete the Work in a satisfactory manner in compliance with Contract requirements. The presence of a City inspector does not shift that obligation to the City or relieve Contractor from its obligations to complete the Work in a satisfactory manner in compliance with the Contract requirements.

10. **Compliance with Laws.** Contractor shall comply with all Laws now in force or which may hereafter become in force pertaining to the Project and Work and this Contract, with the requirement of any bid security or fire underwriters or other similar body now or hereafter constituted, with any discretionary license or permit issued pursuant to any Law of any public agency or official as well as with any provision of all recorded documents affecting the Project site, insofar as any are required by reason of the use or occupancy of the Project site, and with all Laws pertaining to nondiscrimination in employment and hazardous materials.

11. **Bid Security Bonds.** As a condition precedent to City's obligation to pay compensation to Contractor, and on or before the Date of Execution, Contractor shall furnish to the Project Manager the Bid Security as required under the Invitation For Bid.
12. **Representations and Warranties.** In the supply of any materials and equipment and the rendering of labor and services during the course and scope of the Project and Work, Contractor represents and warrants:

   a. Any materials and equipment which shall be used during the course and scope of the Project and Work shall be vested in Contractor;

   b. Any materials and equipment which shall be used during the course and scope of the Project and Work shall be merchantable and fit to be used for the particular purpose for which the materials are required;

   c. Any labor and services rendered and materials and equipment used or employed during the course and scope of the Project and Work shall be free of defects in workmanship for a period of one (1) year after the recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder;

   d. Any manufacturer's warranty obtained by Contractor shall be obtained or shall be deemed obtained by Contractor for and in behalf of City;

   e. Any information submitted by Contractor prior to the award of Contract, or thereafter, upon request, whether or not submitted under a continuing obligation by the terms of the Contract to do so, is true and correct at the time such information is submitted or made available to the City;

   f. Contractor has not colluded, conspired, or agreed, directly or indirectly, with any person in regard to the terms and conditions of Contractor's Bid, except as may be permitted by the Invitation For Bid;

   g. Contractor has the power and authority to enter into this Contract with City, that the individual executing this Contract is duly authorized to do so by appropriate resolution, and that this Contract shall be executed, delivered and performed pursuant to the power and authority conferred upon the person or persons authorized to bind Contractor;

   h. Contractor has not made an attempt to exert undue influence with the Purchasing Manager or Project Manager or any other person who has directly contributed to City's decision to award the contract to Contractor;

   i. There are no unresolved claims or disputes between Contractor and City which would materially affect Contractor's ability to perform under the Contract;

   j. Contractor has furnished and will furnish true and accurate statements, records, reports, resolutions, certifications, and other written information as may be requested of Contractor by City from time to time during the term of this Contract;

   k. Contractor and any person performing labor and services under this Project are duly licensed by the State of California as required by California Business & Professions Code Section 7028, as amended; and

   l. Contractor has fully examined and inspected the Project site and has full knowledge of the physical conditions of the Project site.

13. **Assignment.** This Contract and the performance required hereunder is personal to Contractor, and it shall not be assigned by Contractor. Any attempted assignment shall be null and void.

14. **Claims of Contractor.** All claims pertaining to extra work, additional charges, or delays within the Contract Time or other disputes arising out of the Contract shall be submitted by Contractor to City in writing by certified or registered mail within ten (10) Days after the claim arose or within such other time as may be permitted or required by law, and shall be described in sufficient detail to give adequate notice of the substance of the claim to City.

15. **Audits by City.** During the term of this Contract and for a period of not less than three (3) years after the
expiration or earlier termination of this Contract, City shall have the right to audit Contractor’s Project-related and Work-related writings and business records, as such terms are defined in California Evidence Code Sections 250 and 1271, as amended, during the regular business hours of Contractor, or, if Contractor has no such hours, during the regular business hours of City.

16. Notices. All agreements, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and followed within two (2) Days by delivery of a hard copy of the material sent by facsimile transmission, in accordance with (1), (2) or (3) above. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

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
Dept – Public Works
Division – Facilities
Address – 3201 E. Bayshore Road
Palo Alto, CA 94303

Karen Smith, Project Manager

To Contractor: Nexgen Builders Inc.
225 Demeter Street
East Palo Alto, CA 94303

Attn: Noel Chamberlain

17. Appropriation of City Funds. This Contract is subject to the fiscal provisions of Article III, Section 12 of the Charter of the City of Palo Alto. Any charges hereunder for labor, services, materials and equipment may accrue only after such expenditures have been approved in advance in writing in accordance with applicable Laws. This Contract shall terminate without penalty (i) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (ii) 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 Contract are no longer available. This Section 17 shall control in the event of a conflict with any other provision of this Contract.

18. Miscellaneous.
   a. Bailee Disclaimer. The parties understand and agree that City does not purport to be Contractor’s bailee, and City is, therefore, not responsible for any damage to the personal property of Contractor.
   b. Consent. Whenever in this Contract the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.
   c. Controlling Law. The parties agree that this Contract shall be governed and construed by and in accordance with the Laws of the State of California.
   d. Definitions. The definitions and terms set forth in Section 1 of the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (1992) of this Contract are incorporated herein by reference.
   e. Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to
perform its obligations under this Contract which directly results from an Act of God or an act of a superior governmental authority.

f. Headings. The paragraph headings are not a part of this Contract and shall have no effect upon the construction or interpretation of any part of this Contract.

g. Incorporation of Documents. All documents constituting the Contract documents described in Section 3 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in this Contract and shall be deemed to be part of this Contract.

h. Integration. This Contract and any amendments hereto between the parties constitute the entire agreement between the parties concerning the Project and Work, and there are no other prior oral or written agreements between the parties that are not incorporated in this Contract.

i. Modification of Agreement. This Contract shall not be modified or be binding upon the parties, unless such modification is agreed to in writing and signed by the parties.

j. Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Contract shall define or otherwise control, establish, or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

k. Resolution. Contractor shall submit with its Bid a copy of any corporate or partnership resolution or other writing, which authorizes any director, officer or other employee or partner to act for or in behalf of Contractor or which authorizes Contractor to enter into this Contract.

l. Severability. If a court of competent jurisdiction finds or rules that any provision of this Contract is void or unenforceable, the provisions of this Contract not so affected shall remain in full force and effect.

m. Status of Contractor. In the exercise of rights and obligations under this Contract, Contractor acts as an independent contractor and not as an agent or employee of City. Contractor shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of City, and Contractor expressly waives any and all claims to such rights and benefits.

n. Successors and Assigns. The provisions of this Contract shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

o. Time of the Essence. Time is of the essence of this Contract and each of its provisions. In the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any Day observed as a legal holiday by City, the time for performance shall be extended to the following Business Day.

p. Alternative Dispute Resolution. The parties shall endeavor to resolve any disputes or claims arising out of or relating to this Contract by mediation, which, unless the parties agree otherwise, shall be conducted under the auspices of the Judicial Arbitration and Mediation Service (JAMS), San Jose, California. The intent of the parties is that the mediation shall proceed in advance of litigation; however, if any party should commence litigation before the conclusion of mediation, such litigation, including discovery, shall be stayed pending completion of mediation, and by executing this Contract the parties stipulate to mediation in accordance with Santa Clara County Superior Court Local Rule 1.15 or Rule 2-3(b) of the ADR Local Rules of the U.S. District Court for the Northern District of California, as such rules may be amended from time to time. The parties shall share the cost of the mediation, including the mediator’s fee, equally. Any written agreement reached in mediation shall be enforceable pursuant to California Code of Civil Procedure § 664.6, as amended.

q. Venue. Unless the parties mutually agree otherwise, mediation shall take place in San Jose, California. In the event that litigation is commenced by any party hereunder, the parties agree that such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United
in the United States District Court for the Northern District of California.

r. Recovery of Costs. 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, or if litigation is necessary to enforce a settlement reached at mediation pursuant to California Code of Civil Procedure § 664.6, as amended, then the prevailing party in any subsequent litigation may recover its reasonable costs, including attorney's fees, incurred subsequent to conclusion of the mediation.

s. Flow-down. Contractor agrees to include provisions of this Contract relating to Alternative Dispute Resolution, Venue, and Recovery of Costs in any subcontracts or major material purchase agreements which it enters into in connection with this Contract, and to require its subcontractors to include those provisions in any sub-contracts or major material purchase agreements, such that any mediation or litigation of any claim or dispute asserted by a subcontractor or major material supplier will be consolidated with any related claim or dispute between the Contractor and the City. Should the Contractor fail to do so, such that the City is required to defend an action brought by a subcontractor or material supplier inconsistent with the Alternative Dispute and Venue provisions of this Contract, Contractor shall indemnify City for City's costs of defense, including reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have by their duly appointed representatives executed this Contract in the city of Palo Alto, County of Santa Clara, State of California on the date first stated above.

APPROVED AS TO FORM:                   NEXGEN BUILDERS, INC.:

Senior Assistant City Attorney                      By: ________________________________

Name: ________________________________

APPROVED:

CITY OF PALO ALTO

Deputy City Manager

Title: ________________________________

Director of Administrative Services

Director of Public Works
CERTIFICATE OF ACKNOWLEDGMENT
(Civil Code § 1189)

STATE OF ____________________________

COUNTY OF __________________________

On ____________________________, before me, ____________________________ a
notary public in and for said County, personally appeared ____________________________,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature ____________________________ (Seal)
CONTRACT No. C09127144B

(Public work)

Public Works Department

This Contract, number C09127144B, dated ______ is entered into by and between the City of Palo Alto, a California Charter City and a municipal corporation of the State of California ("City"), and ACCO Engineered Systems, Inc. ("Contractor").

For and in consideration of the covenants, terms, and conditions ("the provisions") of this Contract, City and Contractor ("the parties") agree:

1. **Term.** This Contract shall commence and be binding on the parties on the Date of Execution of this Contract, and shall expire on the date of recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder, subject to the earlier termination of this Contract.

2. **General Scope of Project and Work.** Contractor shall furnish labor, services, materials and equipment in connection with the construction of the Project and complete the Work in accordance with the covenants, terms and conditions of this Contract to the satisfaction of City. The Project and Work is generally described as follows:

   Title of Project: **Civic Center Infrastructure Upgrade-Mechanical & Controls, IFB No. 127144B**

   Bid: $2,627,228.00

3. **Contract Documents.** This Contract shall consist of the documents set forth below, which are on file with the City Clerk and are hereby incorporated by reference. For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, these documents and the provisions thereof are set forth in the following descending order of precedence.
   a. This Contract.
   b. Invitation for Bid.
   c. General Conditions
   d. Project Specifications.
   e. Drawings.
   f. Change Orders.
   g. Bid.
   h. Supplementary Conditions.
   k. Other Specifications, or part thereof, not expressly incorporated in the Contract Specifications or the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (2007).
   l. Any other document not expressly mentioned herein which is issued by City or entered into by the parties.

4. **Compensation.** In consideration of Contractor's performance of its obligations hereunder, City shall pay to Contractor the amount set forth in Contractor's Bid in accordance with the provisions of this Contract and upon the receipt of written invoices and all necessary supporting documentation within the time set forth in the Contract Specifications and the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (1992), or, if no time is stated, within thirty (30) Days of the date of receipt of Contractor's invoices.

5. **Insurance.** On or before the Date of Execution, Contractor shall obtain and maintain the policies of insurance coverage described in the Invitation For Bid on terms and conditions and in amounts as may be required by the Risk Manager. City shall not be obligated to take out insurance on Contractor's personal property or the personal property of any person performing labor or services or supplying materials or equipment under the Project. Contractor shall furnish City with the certificates of insurance and with original endorsements affecting coverage required under this Contract on or before the Date of Execution. The certificates and endorsements for each insurance policy shall be signed by a person who is authorized by that insurer to bind coverage in its behalf.
6. **Indemnification.** Contractor agrees to protect, defend, indemnify and hold City, its Council members, officers, employees, agents and representatives harmless from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments, arising, in whole or in part, directly or indirectly, at any time from any injury to or death of persons or damage to property as a result of the willful acts or the negligent acts or omissions of Contractor, or which results from Contractor's noncompliance with any Law respecting the condition, use, occupation or safety of the Project site, or any part thereof, or which arises from Contractor's failure to do anything required under this Contract or for doing anything which Contractor is required not to do under this Contract, or which arises from conduct for which any Law may impose strict liability on Contractor in the performance of or failure to perform the provisions of this Contract, except as may arise from the sole willful acts or negligent acts or omissions of City or any of its Council members, officers, employees, agents or representatives. This indemnification shall extend to any and all claims, demands, or liens made or filed by reason of any work performed by Contractor under this Contract at any time during the term of this Contract, or arising thereafter.

To the extent Contractor will use hazardous materials in connection with the execution of its obligations under this Contract, Contractor further expressly agrees to protect, indemnify, hold harmless and defend City, its City Council members, officers and employees from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments City may incur, arising, in whole or in part, in connection with or as a result of Contractor's willful acts or negligent acts or omissions under this Contract, under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601-9675, as amended); the Resource Conservation and Recovery Act (42 U.S.C. 9601-6992k, as amended); the Toxic Substances Control Act (15 U.S.C. 2601-2692, as amended); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Safety Code, 25300-25395, as amended); the Hazardous Waste Control Law (Health & Safety Code, 25100-25250.25, as amended); the Safe Drinking Water and Toxic Enforcement Act (Health & Safety Code, 25249.5-25249.13, as amended); the Underground Storage of Hazardous Substances Act (Health & Safety Code, 25280-25299.7, as amended); or under any other local, state or federal law, statute or ordinance, or at common law.

7. **Assumption of Risk.** Contractor agrees to voluntarily assume any and all risk of loss, damage, or injury to the property of Contractor which may occur in, on, or about the Project site at any time and in any manner, excepting such loss, injury, or damage as may be caused by the sole willful act or negligent act or omission of City or any of its Council members, officers, employees, agents or representatives.

8. **Waiver.** The acceptance of any payment or performance, or any part thereof, shall not operate as a waiver by City of its rights under this Contract. A waiver by City of any breach of any part or provision of this Contract by Contractor shall not operate as a waiver or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the parties in the administration of any part or provision of this Contract be construed to waive or to lessen the right of City to insist upon the performance of Contractor in strict compliance with the covenants, terms and conditions of this Contract.

9. **No Exoneration By Inspection:** The City has the right, but not the duty, to inspect Contractor's Work. The right of inspection is solely for the benefit of City. Contractor has the obligation to complete the Work in a satisfactory manner in compliance with Contract requirements. The presence of a City inspector does not shift that obligation to the City or relieve Contractor from its obligations to complete the Work in a satisfactory manner in compliance with the Contract requirements.

10. **Compliance with Laws.** Contractor shall comply with all Laws now in force or which may hereafter be in force pertaining to the Project and Work and this Contract, with the requirement of any bid security or fire underwriters or other similar body now or hereafter constituted, with any discretionary license or permit issued pursuant to any Law of any public agency or official as well as with any provision of all recorded documents affecting the Project site, insofar as any are required by reason of the use or occupancy of the Project site, and with all Laws pertaining to nondiscrimination in employment and hazardous materials.

11. **Bid Security Bonds.** As a condition precedent to City's obligation to pay compensation to Contractor, and on or before the Date of Execution, Contractor shall furnish to the Project Manager the Bid Security as required under the Invitation For Bid.
12. **Representations and Warranties.** In the supply of any materials and equipment and the rendering of labor and services during the course and scope of the Project and Work, Contractor represents and warrants:

a. Any materials and equipment which shall be used during the course and scope of the Project and Work shall be vested in Contractor;

b. Any materials and equipment which shall be used during the course and scope of the Project and Work shall be merchantable and fit to be used for the particular purpose for which the materials are required;

c. Any labor and services rendered and materials and equipment used or employed during the course and scope of the Project and Work shall be free of defects in workmanship for a period of one (1) year after the recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder;

d. Any manufacturer's warranty obtained by Contractor shall be obtained or shall be deemed obtained by Contractor for and in behalf of City.

e. Any information submitted by Contractor prior to the award of Contract, or thereafter, upon request, whether or not submitted under a continuing obligation by the terms of the Contract to do so, is true and correct at the time such information is submitted or made available to the City;

f. Contractor has not colluded, conspired, or agreed, directly or indirectly, with any person in regard to the terms and conditions of Contractor's Bid, except as may be permitted by the Invitation For Bid;

g. Contractor has the power and authority to enter into this Contract with City, that the individual executing this Contract is duly authorized to do so by appropriate resolution, and that this Contract shall be executed, delivered and performed pursuant to the power and authority conferred upon the person or persons authorized to bind Contractor;

h. Contractor has not made an attempt to exert undue influence with the Purchasing Manager or Project Manager or any other person who has directly contributed to City's decision to award the contract to Contractor;

i. There are no unresolved claims or disputes between Contractor and City which would materially affect Contractor's ability to perform under the Contract;

j. Contractor has furnished and will furnish true and accurate statements, records, reports, resolutions, certifications, and other written information as may be requested of Contractor by City from time to time during the term of this Contract;

k. Contractor and any person performing labor and services under this Project are duly licensed by the State of California as required by California Business & Professions Code Section 7028, as amended; and

l. Contractor has fully examined and inspected the Project site and has full knowledge of the physical conditions of the Project site.

13. **Assignment.** This Contract and the performance required hereunder is personal to Contractor, and it shall not be assigned by Contractor. Any attempted assignment shall be null and void.

14. **Claims of Contractor.** All claims pertaining to extra work, additional charges, or delays within the Contract Time or other disputes arising out of the Contract shall be submitted by Contractor to City in writing by certified or registered mail within ten (10) Days after the claim arose or within such other time as may be permitted or required by law, and shall be described in sufficient detail to give adequate notice of the substance of the claim to City.

15. **Audits by City.** During the term of this Contract and for a period of not less than three (3) years after the
expiration or earlier termination of this Contract, City shall have the right to audit Contractor's Project-related and Work-related writings and business records, as such terms are defined in California Evidence Code Sections 250 and 1271, as amended, during the regular business hours of Contractor, or, if Contractor has no such hours, during the regular business hours of City.

16. Notices. All agreements, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and followed within two (2) Days by delivery of a hard copy of the material sent by facsimile transmission, in accordance with (1), (2) or (3) above. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

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  
Dept – Public Works  
Division – Facilities  
Address – 3201 E. Bayshore Road  
Palo Alto, CA 94303

Karen Smith, Project Manager

To Contractor:  
ACCO Engineered Systems, Inc.  
1133 Aladdin Avenue  
San Leandro, CA 94577

Attn: John W. Hansen

17. Appropriation of City Funds. This Contract is subject to the fiscal provisions of Article III, Section 12 of the Charter of the City of Palo Alto. Any charges hereunder for labor, services, materials and equipment may accrue only after such expenditures have been approved in advance in writing in accordance with applicable Laws. This Contract shall terminate without penalty (I) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (II) 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 Contract are no longer available. This Section 17 shall control in the event of a conflict with any other provision of this Contract.

18. Miscellaneous.

a. Bailee Disclaimer. The parties understand and agree that City does not purport to be Contractor's bailee, and City is, therefore, not responsible for any damage to the personal property of Contractor.

b. Consent. Whenever in this Contract the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

c. Controlling Law. The parties agree that this Contract shall be governed and construed by and in accordance with the Laws of the State of California.

d. Definitions. The definitions and terms set forth in Section 1 of the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (1992) of this Contract are incorporated herein by reference.

e. Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to
perform its obligations under this Contract which directly results from an Act of God or an act of a superior governmental authority.

f. Headings. The paragraph headings are not a part of this Contract and shall have no effect upon the construction or interpretation of any part of this Contract.

g. Incorporation of Documents. All documents constituting the Contract documents described in Section 3 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in this Contract and shall be deemed to be part of this Contract.

h. Integration. This Contract and any amendments hereto between the parties constitute the entire agreement between the parties concerning the Project and Work, and there are no other prior oral or written agreements between the parties that are not incorporated in this Contract.

i. Modification of Agreement. This Contract shall not be modified or be binding upon the parties, unless such modification is agreed to in writing and signed by the parties.

j. Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Contract shall define or otherwise control, establish, or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

k. Resolution. Contractor shall submit with its Bid a copy of any corporate or partnership resolution or other writing, which authorizes any director, officer or other employee or partner to act for or in behalf of Contractor or which authorizes Contractor to enter into this Contract.

l. Severability. If a court of competent jurisdiction finds or rules that any provision of this Contract is void or unenforceable, the provisions of this Contract not so affected shall remain in full force and effect.

m. Status of Contractor. In the exercise of rights and obligations under this Contract, Contractor acts as an independent contractor and not as an agent or employee of City. Contractor shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of City, and Contractor expressly waives any and all claims to such rights and benefits.

n. Successors and Assigns. The provisions of this Contract shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

o. Time of the Essence. Time is of the essence of this Contract and each of its provisions. In the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any Day observed as a legal holiday by City, the time for performance shall be extended to the following Business Day.

p. Alternative Dispute Resolution. The parties shall endeavor to resolve any disputes or claims arising out of or relating to this Contract by mediation, which, unless the parties agree otherwise, shall be conducted under the auspices of the Judicial Arbitration and Mediation Service (JAMS), San Jose, California. The intent of the parties is that the mediation shall proceed in advance of litigation; however, if any party should commence litigation before the conclusion of mediation, such litigation, including discovery, shall be stayed pending completion of mediation, and by executing this Contract the parties stipulate to mediation in accordance with Santa Clara County Superior Court Local Rule 1.15 or Rule 2-3(b) of the ADR Local Rules of the U.S. District Court for the Northern District of California, as such rules may be amended from time to time. The parties shall share the cost of the mediation, including the mediator’s fee, equally. Any written agreement reached in mediation shall be enforceable pursuant to California Code of Civil Procedure § 664.6, as amended.

q. Venue. Unless the parties mutually agree otherwise, mediation shall take place in San Jose, California. In the event that litigation is commenced by any party hereunder, the parties agree that such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United
in the United States District Court for the Northern District of California.

r. Recovery of Costs. 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, or if litigation is necessary to enforce a settlement reached at mediation pursuant to California Code of Civil Procedure § 664.6, as amended, then the prevailing party in any subsequent litigation may recover its reasonable costs, including attorney's fees, incurred subsequent to conclusion of the mediation.

s. Flow-down. Contractor agrees to include provisions of this Contract relating to Alternative Dispute Resolution, Venue, and Recovery of Costs in any subcontracts or major material purchase agreements which it enters into in connection with this Contract, and to require its subcontractors to include those provisions in any sub-contracts or major material purchase agreements, such that any mediation or litigation of any claim or dispute asserted by a subcontractor or major material supplier will be consolidated with any related claim or dispute between the Contractor and the City. Should the Contractor fail to do so, such that the City is required to defend an action brought by a subcontractor or material supplier inconsistent with the Alternative Dispute and Venue provisions of this Contract, Contractor shall indemnify City for City's costs of defense, including reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have by their duly appointed representatives executed this Contract in the city of Palo Alto, County of Santa Clara, State of California on the date first stated above.

APPROVED AS TO FORM: ACCO ENGINEERED SYSTEMS, INC.:

Senior Assistant City Attorney

By: _______________________________________

Name: _____________________________________

Title: _______________________________________

CITY OF PALO ALTO

APPROVED

Deputy City Manager

Director of Administrative Services

Director of Public Works
CERTIFICATE OF ACKNOWLEDGMENT
(Civil Code § 1189)

STATE OF ____________________

COUNTY OF ____________________

On ______________________, before me, ______________________, a notary public in and for said County, personally appeared ______________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature ______________________ (Seal)
CONTRACT No.C09127144C
(Public work)
Public Works Department

This Contract, number C09127144C dated ______ is entered into by and between the City of Palo Alto, a California Charter City and a municipal corporation of the State of California ("City"), and ACCO Engineered Systems, Inc ("Contractor").

For and in consideration of the covenants, terms, and conditions ("the provisions") of this Contract, City and Contractor ("the parties") agree:

1. **Term.** This Contract shall commence and be binding on the parties on the Date of Execution of this Contract, and shall expire on the date of recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder, subject to the earlier termination of this Contract.

2. **General Scope of Project and Work.** Contractor shall furnish labor, services, materials and equipment in connection with the construction of the Project and complete the Work in accordance with the covenants, terms and conditions of this Contract to the satisfaction of City. The Project and Work is generally described as follows:

Title of Project: **Civic Center Infrastructure Upgrades – Plumbing, Fire Sprinkler & Fuel Oil System, Invitation for Bids (IFB) No. 127144C**

Bid: **$ 1,432,530**

3. **Contract Documents.** This Contract shall consist of the documents set forth below, which are on file with the City Clerk and are hereby incorporated by reference. For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, these documents and the provisions thereof are set forth in the following descending order of precedence.
   a. This Contract.
   b. Invitation for Bid.
   c. General Conditions
   d. Project Specifications.
   e. Drawings.
   f. Change Orders.
   g. Bid.
   h. Supplementary Conditions.
   k. Other Specifications, or part thereof, not expressly incorporated in the Contract Specifications or the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (1992), or, if no time is stated, within thirty (30) Days of the date of receipt of Contractor's invoices.
   l. Any other document not expressly mentioned herein which is issued by City or entered into by the parties.

4. **Compensation.** In consideration of Contractor's performance of its obligations hereunder, City shall pay to Contractor the amount set forth in Contractor's Bid in accordance with the provisions of this Contract and upon the receipt of written invoices and all necessary supporting documentation within the time set forth in the Contract Specifications and the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (1992), or, if no time is stated, within thirty (30) Days of the date of receipt of Contractor's invoices.

5. **Insurance.** On or before the Date of Execution, Contractor shall obtain and maintain the policies of insurance coverage described in the Invitation For Bid on terms and conditions and in amounts as may be required by the Risk Manager. City shall not be obligated to take out insurance on Contractor's personal property or the personal property of any person performing labor or services or supplying materials or equipment under the Project. Contractor shall furnish City with the certificates of insurance and with original endorsements affecting coverage required under this Contract on or before the Date of Execution. The certificates and endorsements for each
for each insurance policy shall be signed by a person who is authorized by that insurer to bind coverage in its behalf. Proof of insurance shall be mailed to the Project Manager to the address set forth in Section 16 of this Contract.

6. **Indemnification.** Contractor agrees to protect, defend, indemnify and hold City, its Council members, officers, employees, agents and representatives harmless from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments, arising, in whole or in part, directly or indirectly, at any time from any injury to or death of persons or damage to property as a result of the willful acts or the negligent acts or omissions of Contractor, or which results from Contractor's noncompliance with any Law respecting the condition, use, occupation or safety of the Project site, or any part thereof, or which arises from Contractor's failure to do anything required under this Contract or for doing anything which Contractor is required not to do under this Contract, or which arises from conduct for which any Law may impose strict liability on Contractor in the performance of or failure to perform the provisions of this Contract, except as may arise from the sole willful acts or negligent acts or omissions of City or any of its Council members, officers, employees, agents or representatives. This indemnification shall extend to any and all claims, demands, or liens made or filed by reason of any work performed by Contractor under this Contract at any time during the term of this Contract, or arising thereafter.

To the extent Contractor will use hazardous materials in connection with the execution of its obligations under this Contract, Contractor further expressly agrees to protect, indemnify, hold harmless and defend City, its City Council members, officers and employees from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments City may incur, arising, in whole or in part, in connection with or as a result of Contractor's willful acts or negligent acts or omissions under this Contract, under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601-9675, as amended); the Resource Conservation and Recovery Act (42 U.S.C. §§6901-6992, as amended); the Toxic Substances Control Act (15 U.S.C. §§2601-2692, as amended); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Safety Code, §§25300-25395, as amended); the Hazardous Waste Control Law (Health & Safety Code, §§25100-25250, as amended); the Safe Drinking Water and Toxic Enforcement Act (Health & Safety Code, §§25249.5-25249.13, as amended); the Underground Storage of Hazardous Substances Act (Health & Safety Code, §§25280-25299.7, as amended); or under any other local, state or federal law, statute or ordinance, or at common law.

7. **Assumption of Risk.** Contractor agrees to voluntarily assume any and all risk of loss, damage, or injury to the property of Contractor which may occur in, on, or about the Project site at any time and in any manner, excepting such loss, injury, or damage as may be caused by the sole willful act or negligent act or omission of City or any of its Council members, officers, employees, agents or representatives.

8. **Waiver.** The acceptance of any payment or performance, or any part thereof, shall not operate as a waiver by City of its rights under this Contract. A waiver by City of any breach of any part or provision of this Contract by Contractor shall not operate as a waiver or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the parties in the administration of any part or provision of this Contract be construed to waive or to lessen the right of City to insist upon the performance of Contractor in strict compliance with the covenants, terms and conditions of this Contract.

9. **No Exoneration By Inspection:** The City has the right, but not the duty, to inspect Contractor's Work. The right of inspection is solely for the benefit of City. Contractor has the obligation to complete the Work in a satisfactory manner in compliance with Contract requirements. The presence of a City inspector does not shift that obligation to the City or relieve Contractor from its obligations to complete the Work in a satisfactory manner in compliance with the Contract requirements.

10. **Compliance with Laws.** Contractor shall comply with all Laws now in force or which may hereafter be in force pertaining to the Project and Work and this Contract, with the requirement of any bid security or fire underwriters or other similar body now or hereafter constituted, with any discretionary license or permit issued pursuant to any Law of any public agency or official as well as with any provision of all recorded documents affecting the Project site, insofar as any are required by reason of the use or occupancy of the Project site, and with all Laws pertaining to nondiscrimination in employment and hazardous materials.

11. **Bid Security Bonds.** As a condition precedent to City's obligation to pay compensation to Contractor, and on or before the Date of Execution, Contractor shall furnish to the Project Manager the Bid Security as required under
the Invitation For Bid.

12. **Representations and Warranties.** In the supply of any materials and equipment and the rendering of labor and services during the course and scope of the Project and Work, Contractor represents and warrants:

   a. Any materials and equipment which shall be used during the course and scope of the Project and Work shall be vested in Contractor;

   b. Any materials and equipment which shall be used during the course and scope of the Project and Work shall be merchantable and fit to be used for the particular purpose for which the materials are required;

   c. Any labor and services rendered and materials and equipment used or employed during the course and scope of the Project and Work shall be free of defects in workmanship for a period of one (1) year after the recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder;

   d. Any manufacturer's warranty obtained by Contractor shall be obtained or shall be deemed obtained by Contractor for and in behalf of City.

   e. Any information submitted by Contractor prior to the award of Contract, or thereafter, upon request, whether or not submitted under a continuing obligation by the terms of the Contract to do so, is true and correct at the time such information is submitted or made available to the City;

   f. Contractor has not colluded, conspired, or agreed, directly or indirectly, with any person in regard to the terms and conditions of Contractor's Bid, except as may be permitted by the Invitation For Bid;

   g. Contractor has the power and authority to enter into this Contract with City, that the individual executing this Contract is duly authorized to do so by appropriate resolution, and that this Contract shall be executed, delivered and performed pursuant to the power and authority conferred upon the person or persons authorized to bind Contractor;

   h. Contractor has not made an attempt to exert undue influence with the Purchasing Manager or Project Manager or any other person who has directly contributed to City's decision to award the contract to Contractor;

   i. There are no unresolved claims or disputes between Contractor and City which would materially affect Contractor's ability to perform under the Contract;

   j. Contractor has furnished and will furnish true and accurate statements, records, reports, resolutions, certifications, and other written information as may be requested of Contractor by City from time to time during the term of this Contract;

   k. Contractor and any person performing labor and services under this Project are duly licensed by the State of California as required by California Business & Professions Code Section 7028, as amended; and

   l. Contractor has fully examined and inspected the Project site and has full knowledge of the physical conditions of the Project site.

13. **Assignment.** This Contract and the performance required hereunder is personal to Contractor, and it shall not be assigned by Contractor. Any attempted assignment shall be null and void.

14. **Claims of Contractor.** All claims pertaining to extra work, additional charges, or delays within the Contract Time or other disputes arising out of the Contract shall be submitted by Contractor to City in writing by certified or registered mail within ten (10) Days after the claim arose or within such other time as may be permitted or required by law, and shall be described in sufficient detail to give adequate notice of the substance of the claim to City.
15. **Audits by City.** During the term of this Contract and for a period of not less than three (3) years after the expiration or earlier termination of this Contract, City shall have the right to audit Contractor's Project-related and Work-related writings and business records, as such terms are defined in California Evidence Code Sections 250 and 1271, as amended, during the regular business hours of Contractor, or, if Contractor has no such hours, during the regular business hours of City.

16. **Notices.** All agreements, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and followed within two (2) Days by delivery of a hard copy of the material sent by facsimile transmission, in accordance with (1), (2) or (3) above. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

   **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
   Dept. – Public Works
   Division – Facilities
   Address – 3201 E. Bayshore Road
   Palo Alto, CA 94303

   Karen Smith, Project Manager

   **To Contractor:**
   ACCO Engineered Systems, Inc.
   1133 Aladdin Avenue
   San Leandro, CA 94577

   Attn: __________________________________________

17. **Appropriation of City Funds.** This Contract is subject to the fiscal provisions of Article III, Section 12 of the Charter of the City of Palo Alto. Any charges hereunder for labor, services, materials and equipment may accrue only after such expenditures have been approved in advance in writing in accordance with applicable Laws. This Contract shall terminate without penalty (i) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (ii) 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 Contract are no longer available. This Section 17 shall control in the event of a conflict with any other provision of this Contract.

18. **Miscellaneous.**

   a. **Bailee Disclaimer.** The parties understand and agree that City does not purport to be Contractor's bailee, and City is, therefore, not responsible for any damage to the personal property of Contractor.

   b. **Consent.** Whenever in this Contract the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

   c. **Controlling Law.** The parties agree that this Contract shall be governed and construed by and in accordance with the Laws of the State of California.

   d. **Definitions.** The definitions and terms set forth in Section 1 of the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (1992) of this Contract are incorporated herein by reference.
e. Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Contract which directly results from an Act of God or an act of a superior governmental authority.

f. Headings. The paragraph headings are not a part of this Contract and shall have no effect upon the construction or interpretation of any part of this Contract.

g. Incorporation of Documents. All documents constituting the Contract documents described in Section 3 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in this Contract and shall be deemed to be part of this Contract.

h. Integration. This Contract and any amendments hereto between the parties constitute the entire agreement between the parties concerning the Project and Work, and there are no other prior oral or written agreements between the parties that are not incorporated in this Contract.

i. Modification of Agreement. This Contract shall not be modified or be binding upon the parties, unless such modification is agreed to in writing and signed by the parties.

j. Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Contract shall define or otherwise control, establish, or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

k. Resolution. Contractor shall submit with its Bid a copy of any corporate or partnership resolution or other writing, which authorizes any director, officer or other employee or partner to act for or in behalf of Contractor or which authorizes Contractor to enter into this Contract.

l. Severability. If a court of competent jurisdiction finds or rules that any provision of this Contract is void or unenforceable, the provisions of this Contract not so affected shall remain in full force and effect.

m. Status of Contractor. In the exercise of rights and obligations under this Contract, Contractor acts as an independent contractor and not as an agent or employee of City. Contractor shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of City, and Contractor expressly waives any and all claims to such rights and benefits.

n. Successors and Assigns. The provisions of this Contract shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

o. Time of the Essence. Time is of the essence of this Contract and each of its provisions. In the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any Day observed as a legal holiday by City, the time for performance shall be extended to the following Business Day.

p. Alternative Dispute Resolution. The parties shall endeavor to resolve any disputes or claims arising out of or relating to this Contract by mediation, which, unless the parties agree otherwise, shall be conducted under the auspices of the Judicial Arbitration and Mediation Service (JAMS), San Jose, California. The intent of the parties is that the mediation shall proceed in advance of litigation; however, if any party should commence litigation before the conclusion of mediation, such litigation, including discovery, shall be stayed pending completion of mediation, and by executing this Contract the parties stipulate to mediation in accordance with Santa Clara County Superior Court Local Rule 1.15 or Rule 2-3(b) of the ADR Local Rules of the U.S. District Court for the Northern District of California, as such rules may be amended from time to time. The parties shall share the cost of the mediation, including the mediator's fee, equally. Any written agreement reached in mediation shall be enforceable pursuant to California Code of Civil Procedure § 664.6, as amended.

q. Venue. Unless the parties mutually agree otherwise, mediation shall take place in San Jose, California. In the event that litigation is commenced by any party hereunder, the parties agree that such action
such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

r. Recovery of Costs. 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, or if litigation is necessary to enforce a settlement reached at mediation pursuant to California Code of Civil Procedure § 664.6, as amended, then the prevailing party in any subsequent litigation may recover its reasonable costs, including attorney's fees, incurred subsequent to conclusion of the mediation.

s. Flow-down. Contractor agrees to include provisions of this Contract relating to Alternative Dispute Resolution, Venue, and Recovery of Costs in any subcontracts or major material purchase agreements which it enters into in connection with this Contract, and to require its subcontractors to include those provisions in any sub-contracts or major material purchase agreements, such that any mediation or litigation of any claim or dispute asserted by a subcontractor or major material supplier will be consolidated with any related claim or dispute between the Contractor and the City. Should the Contractor fail to do so, such that the City is required to defend an action brought by a subcontractor or material supplier inconsistent with the Alternative Dispute and Venue provisions of this Contract, Contractor shall indemnify City for City's costs of defense, including reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have by their duly appointed representatives executed this Contract in the city of Palo Alto, County of Santa Clara, State of California on the date first stated above.

APPROVED AS TO FORM:  

______________________________
Senior Assistant City Attorney

ACCO ENGINEERED SERVICES, INC.:  

By: ______________________________

______________________________
Name: ____________________________

______________________________
Title: ____________________________

APPROVED:

______________________________
CITY OF PALO ALTO

______________________________
Deputy City Manager

______________________________
Director of Administrative Services

______________________________
Director of Public Works
CERTIFICATE OF ACKNOWLEDGMENT

(Civil Code § 1189)

STATE OF ________________________

COUNTY OF ______________________

On ______________________, before me, ______________________, a notary public in and for said County, personally appeared ______________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature ______________________ (Seal)
CONTRACT No.C09127144D
Public Works Department

This Contract, number C09127144D, dated _______ is entered into by and between the City of Palo Alto, a California Charter City and a municipal corporation of the State of California ("City"), and Rosendin Electric, Inc. ("Contractor").

For and in consideration of the covenants, terms, and conditions (*the provisions*) of this Contract, City and Contractor ("the parties") agree:

1. **Term.** This Contract shall commence and be binding on the parties on the Date of Execution of this Contract, and shall expire on the date of recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder, subject to the earlier termination of this Contract.

2. **General Scope of Project and Work.** Contractor shall furnish labor, services, materials and equipment in connection with the construction of the Project and complete the Work in accordance with the covenants, terms and conditions of this Contract to the satisfaction of City. The Project and Work is generally described as follows:

   Title of Project: **Civic Center Infrastructure Upgrades-Electrical & Fire Alarm, IFB No. 127144D**

   Bid: $ 488,590.00

3. **Contract Documents.** This Contract shall consist of the documents set forth below, which are on file with the City Clerk and are hereby incorporated by reference. For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, these documents and the provisions thereof are set forth in the following descending order of precedence.
   
a. This Contract.
b. Invitation for Bid.
c. General Conditions
d. Project Specifications.
e. Drawings.
f. Change Orders.
g. Bid.
h. Supplementary Conditions.
k. Other Specifications, or part thereof, not expressly incorporated in the Contract Specifications or the City of Palo Alto Dept. of Public Works, Standard Drawings and Specifications (2007).
l. Any other document not expressly mentioned herein which is issued by City or entered into by the parties.

4. **Compensation.** In consideration of Contractor's performance of its obligations hereunder, City shall pay to Contractor the amount set forth in Contractor's Bid in accordance with the provisions of this Contract and upon the receipt of written invoices and all necessary supporting documentation within the time set forth in the Contract Specifications and the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (1992), or, if no time is stated, within thirty (30) Days of the date of receipt of Contractor's invoices.

5. **Insurance.** On or before the Date of Execution, Contractor shall obtain and maintain the policies of insurance coverage described in the Invitation For Bid on terms and conditions and in amounts as may be required by the Risk Manager. City shall not be obligated to take out insurance on Contractor's personal property or the personal property of any person performing labor or services or supplying materials or equipment under the Project. Contractor shall furnish City with the certificates of insurance and with original endorsements affecting coverage required under this Contract on or before the Date of Execution. The certificates and endorsements for each insurance policy shall be signed by a person who is authorized by that insurer to bind coverage in its behalf. Proof of insurance shall be mailed to the Project Manager to the address set forth in Section 16 of this Contract.
6. **Indemnification.** Contractor agrees to protect, defend, indemnify and hold City, its Council members, officers, employees, agents and representatives harmless from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments, arising, in whole or in part, directly or indirectly, at any time from any injury to or death of persons or damage to property as a result of the willful acts or the negligent acts or omissions of Contractor, or which results from Contractor’s noncompliance with any Law respecting the condition, use, occupation or safety of the Project site, or any part thereof, or which arises from Contractor’s failure to do anything required under this Contract or for doing anything which Contractor is required not to do under this Contract, or which arises from conduct for which any Law may impose strict liability on Contractor in the performance of or failure to perform the provisions of this Contract, except as may arise from the sole willful acts or negligent acts or omissions of City or any of its Council members, officers, employees, agents or representatives. This indemnification shall extend to any and all claims, demands, or liens made or filed by reason of any work performed by Contractor under this Contract at any time during the term of this Contract, or arising thereafter.

To the extent Contractor will use hazardous materials in connection with the execution of its obligations under this Contract, Contractor further expressly agrees to protect, indemnify, hold harmless and defend City, its City Council members, officers and employees from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments City may incur, arising, in whole or in part, in connection with or as a result of Contractor’s willful acts or negligent acts or omissions under this Contract, under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601-9775, as amended); the Resource Conservation and Recovery Act (42 U.S.C. § 9601-9692k, as amended); the Toxic Substances Control Act (15 U.S.C. § 2601-2692, as amended); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Safety Code, § 25300-25395, as amended); the Hazardous Waste Control Law (Health & Safety Code, § 25100-25250.25, as amended); the Safe Drinking Water and Toxic Enforcement Act (Health & Safety Code, § 25249.5-25249.13, as amended); the Underground Storage of Hazardous Substances Act (Health & Safety Code, § 25280-25299.7, as amended); or under any other local, state or federal law, statute or ordinance, or at common law.

7. **Assumption of Risk.** Contractor agrees to voluntarily assume any and all risk of loss, damage, or injury to the property of Contractor which may occur in, on, or about the Project site at any time and in any manner, excepting such loss, injury, or damage as may be caused by the sole willful act or negligent act or omission of City or any of its Council members, officers, employees, agents or representatives.

8. **Waiver.** The acceptance of any payment or performance, or any part thereof, shall not operate as a waiver by City of its rights under this Contract. A waiver by City of any breach of any part or provision of this Contract by Contractor shall not operate as a waiver or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the parties in the administration of any part or provision of this Contract be construed to waive or to lessen the right of City to insist upon the performance of Contractor in strict compliance with the covenants, terms and conditions of this Contract.

9. **No Exoneration By Inspection:** The City has the right, but not the duty, to inspect Contractor's Work. The right of inspection is solely for the benefit of City. Contractor has the obligation to complete the Work in a satisfactory manner in compliance with Contract requirements. The presence of a City inspector does not shift that obligation to the City or relieve Contractor from its obligations to complete the Work in a satisfactory manner in compliance with the Contract requirements.

10. **Compliance with Laws.** Contractor shall comply with all Laws now in force or which may hereafter be in force pertaining to the Project and Work and this Contract, with the requirement of any bid security or fire underwriters or other similar body now or hereafter constituted, with any discretionary license or permit issued pursuant to any Law of any public agency or official as well as with any provision of all recorded documents affecting the Project site, insofar as any are required by reason of the use or occupancy of the Project site, and with all Laws pertaining to nondiscrimination in employment and hazardous materials.

11. **Bid Security Bonds.** As a condition precedent to City’s obligation to pay compensation to Contractor, and on or before the Date of Execution, Contractor shall furnish to the Project Manager the Bid Security as required under the Invitation For Bid.

12. **Representations and Warranties.** In the supply of any materials and equipment and the rendering of labor and
services during the course and scope of the Project and Work, Contractor represents and warrants:

a. Any materials and equipment which shall be used during the course and scope of the Project and Work shall be vested in Contractor;

b. Any materials and equipment which shall be used during the course and scope of the Project and Work shall be merchantable and fit to be used for the particular purpose for which the materials are required;

c. Any labor and services rendered and materials and equipment used or employed during the course and scope of the Project and Work shall be free of defects in workmanship for a period of one (1) year after the recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder;

d. Any manufacturer's warranty obtained by Contractor shall be obtained or shall be deemed obtained by Contractor for and in behalf of City.

e. Any information submitted by Contractor prior to the award of Contract, or thereafter, upon request, whether or not submitted under a continuing obligation by the terms of the Contract to do so, is true and correct at the time such information is submitted or made available to the City;

f. Contractor has not colluded, conspired, or agreed, directly or indirectly, with any person in regard to the terms and conditions of Contractor's Bid, except as may be permitted by the invitation for Bid;

g. Contractor has the power and authority to enter into this Contract with City, that the individual executing this Contract is duly authorized to do so by appropriate resolution, and that this Contract shall be executed, delivered and performed pursuant to the power and authority conferred upon the person or persons authorized to bind Contractor;

h. Contractor has not made an attempt to exert undue influence with the Purchasing Manager or Project Manager or any other person who has directly contributed to City's decision to award the contract to Contractor;

i. There are no unresolved claims or disputes between Contractor and City which would materially affect Contractor's ability to perform under the Contract;

j. Contractor has furnished and will furnish true and accurate statements, records, reports, resolutions, certifications, and other written information as may be requested of Contractor by City from time to time during the term of this Contract;

k. Contractor and any person performing labor and services under this Project are duly licensed by the State of California as required by California Business & Professions Code Section 7028, as amended; and

l. Contractor has fully examined and inspected the Project site and has full knowledge of the physical conditions of the Project site.

13. Assignment. This Contract and the performance required hereunder is personal to Contractor, and it shall not be assigned by Contractor. Any attempted assignment shall be null and void.

14. Claims of Contractor. All claims pertaining to extra work, additional charges, or delays within the Contract Time or other disputes arising out of the Contract shall be submitted by Contractor to City in writing by certified or registered mail within ten (10) Days after the claim arose or within such other time as may be permitted or required by law, and shall be described in sufficient detail to give adequate notice of the substance of the claim to City.

15. Audits by City. During the term of this Contract and for a period of not less than three (3) years after the expiration or earlier termination of this Contract, City shall have the right to audit Contractor's Project-related and Work-related writings and business records, as such terms are defined in California Evidence Code Sections 250 and 1271, as amended, during the regular business hours of Contractor, or, if Contractor has no such hours, during the regular business hours of City.
16. **Notices.** All agreements, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and followed within two (2) Days by delivery of a hard copy of the material sent by facsimile transmission, in accordance with (1), (2) or (3) above. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

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  
Dept – Public Works  
Division – Facilities  
Address – 3201 E. Bayshore Road  
Palo Alto, CA 94303  
Karen Smith, Project Manager

To Contractor:  
Rosendin Electric, Inc.  
880 Mabury Road  
San Jose, CA 95133  
Attn: Jim Hawk

17. **Appropriation of City Funds.** This Contract is subject to the fiscal provisions of Article III, Section 12 of the Charter of the City of Palo Alto. Any charges hereunder for labor, services, materials and equipment may accrue only after such expenditures have been approved in advance in writing in accordance with applicable Laws. This Contract shall terminate without penalty (i) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (ii) 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 Contract are no longer available. This Section 17 shall control in the event of a conflict with any other provision of this Contract.

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d. **Definitions.** The definitions and terms set forth in Section 1 of the City of Palo Alto Dept. of Public Works Standard Drawings and Specifications (1992) of this Contract are incorporated herein by reference.

e. **Force Majeure.** Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Contract which directly results from an Act of God or an act of a superior governmental authority.

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m. Status of Contractor. In the exercise of rights and obligations under this Contract, Contractor acts as an independent contractor and not as an agent or employee of City. Contractor shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of City, and Contractor expressly waives any and all claims to such rights and benefits.

n. Successors and Assigns. The provisions of this Contract shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

o. Time of the Essence. Time is of the essence of this Contract and each of its provisions. In the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any Day observed as a legal holiday by City, the time for performance shall be extended to the following Business Day.

p. Alternative Dispute Resolution. The parties shall endeavor to resolve any disputes or claims arising out of or relating to this Contract by mediation, which, unless the parties agree otherwise, shall be conducted under the auspices of the Judicial Arbitration and Mediation Service (JAMS), San Jose, California. The intent of the parties is that the mediation shall proceed in advance of litigation; however, if any party should commence litigation before the conclusion of mediation, such litigation, including discovery, shall be stayed pending completion of mediation, and by executing this Contract the parties stipulate to mediation in accordance with Santa Clara County Superior Court Local Rule 1.15 or Rule 2-3(b) of the ADR Local Rules of the U.S. District Court for the Northern District of California, as such rules may be amended from time to time. The parties shall share the cost of the mediation, including the mediator's fee, equally. Any written agreement reached in mediation shall be enforceable pursuant to California Code of Civil Procedure § 664.6, as amended.

q. Venue. Unless the parties mutually agree otherwise, mediation shall take place in San Jose, California. In the event that litigation is commenced by any party hereunder, the parties agree that such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

r. Recovery of Costs. 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, or if litigation is necessary to enforce a settlement reached at mediation pursuant to California Code of Civil Procedure § 664.6, as amended, then the prevailing party in any subsequent litigation may recover its reasonable costs, including attorney's fees, incurred subsequent to conclusion of the mediation.
s. Flow-down. Contractor agrees to include provisions of this Contract relating to Alternative Dispute Resolution, Venue, and Recovery of Costs in any subcontracts or major material purchase agreements which it enters into in connection with this Contract, and to require its subcontractors to include those provisions in any sub-contracts or major material purchase agreements, such that any mediation or litigation of any claim or dispute asserted by a subcontractor or major material supplier will be consolidated with any related claim or dispute between the Contractor and the City. Should the Contractor fail to do so, such that the City is required to defend an action brought by a subcontractor or material supplier inconsistent with the Alternative Dispute and Venue provisions of this Contract, Contractor shall indemnify City for City's costs of defense, including reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have by their duly appointed representatives executed this Contract in the city of Palo Alto, County of Santa Clara, State of California on the date first stated above.

APPROVED AS TO FORM: ROSENDIN ELECTRIC, INC.:  
Senior Assistant City Attorney 
By: ________________________________

Name: ________________________________

APPROVED:
Title: ________________________________

CITY OF PALO ALTO

Deputy City Manager

Director of Administrative Services

Director of Public Works
CERTIFICATE OF ACKNOWLEDGMENT

(Civil Code § 1189)

STATE OF __________________________

COUNTY OF _________________________

On _____________________________, before me, _____________________________ a notary public in and for said County, personally appeared _____________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature ______________________________ (Seal)
Attachment F: Building Infrastructure Study, dated September 5, 2003

The Building Infrastructure Study for the Palo Alto City Hall located at 250 Hamilton Avenue in Palo Alto, California was prepared by:

Huntsman Architectural Group
Project Coordination, Architectural & Accessibility

Flack + Kurtz
Mechanical, Electrical, Plumbing & Fire Protection

Rutherford & Chekene
Structural & Civil

Swinerton Management & Consulting
Cost Estimating

The Building Infrastructure Study (along with copies of the attachments to CMR:334:08) may be viewed at the Public Works Department counter located at 250 Hamilton Avenue, 6th Floor, Palo Alto or by contacting Karen Smith at 650-496-6973.
## BID RESULTS
**City of Palo Alto**

**Civic Center Infrastructure Upgrades**
Bid Package 1 (Phase 1 & Phase 2)

**BID DATE:** 7/15/08

### BID PACKAGES

<table>
<thead>
<tr>
<th>BID PACKAGE A CONTRACTORS</th>
<th>Bid Package A General Interior/Exterior Work Items and Finishes</th>
<th>Bid Package B Mechanical and Controls</th>
<th>Bid Package C Plumbing, Fire Sprinklers &amp; Fuel Oil System</th>
<th>Bid Package D Electrical (Low and High) Voltage and Fire Alarm</th>
<th>Total Winning Bid Amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ralph Larsen &amp; Son, Inc.</td>
<td>$885,000</td>
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<td>Rodan Builders, Inc.</td>
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<td>Roebelen Contracting, Inc.</td>
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<td>Cal-Pacific Construction</td>
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**Lowest Bid Package A**
$498,875

### BID PACKAGES

<table>
<thead>
<tr>
<th>BID PACKAGE B CONTRACTORS</th>
<th>Bid Package B Mechanical and Controls</th>
<th>Bid Package C Plumbing, Fire Sprinklers &amp; Fuel Oil System</th>
<th>Total Winning Bid Amounts</th>
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<tr>
<td>1</td>
<td>Kinetics Mechanical Service</td>
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### BID PACKAGES

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<th>BID PACKAGE C CONTRACTORS</th>
<th>Bid Package C Plumbing, Fire Sprinklers &amp; Fuel Oil System</th>
<th>Total Winning Bid Amounts</th>
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<td>1</td>
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<tr>
<td>2</td>
<td>ACCO Engineered Systems, Inc.</td>
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### BID PACKAGES

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<tr>
<th>BID PACKAGE D CONTRACTORS</th>
<th>Bid Package D Electrical (Low and High) Voltage and Fire Alarm</th>
<th>Total Winning Bid Amounts</th>
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<td>Kitech Security Systems</td>
<td>N/A</td>
</tr>
<tr>
<td>2</td>
<td>Rosendin Electric</td>
<td>N/A</td>
</tr>
<tr>
<td>3</td>
<td>Cupertino Electric</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Lowest Bid Package D**
N/A

**Total Project cost per low bid Contractors**
$4,860,448

**90% Construction Document Cost Estimated per Swinerton**
$5,911,700

**Project Cost per low bids less Cost Estimate = (under budget)/over budget**
($1,051,252)
CERTIFICATION OF NONDISCRIMINATION

PROJECT: CIVIC CENTER INFRASTRUCTURE UPGRADES-ELECTRICAL & FIRE ALARM

Certification of Nondiscrimination: As suppliers of goods and/or services to the City of Palo Alto in excess of $5,000, the firm, contractor or individual(s) listed below certify that: they do not and in the performance of this contract they will not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; and further certify that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

Firm: Rosendin Electric DATE: 7/15/08
Title of Officer Signing: Executive Vice President
Signature: [Signature]

CITY OF PALO ALTO IFB 127144D PAGE 1 OF 1
CERTIFICATION OF NONDISCRIMINATION 

PROJECT: CIVIC CENTER INFRASTRUCTURE UPGRADES – PLUMBING, FIRE SPRINKLER & FUEL OIL SYSTEM

Certification of Nondiscrimination: As suppliers of goods and/or services to the City of Palo Alto in excess of $5,000, the firm, contractor or individual(s) listed below certify that: they do not and in the performance of this contract they will not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; and further certify that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

Title of Officer Signing: President
Signature: STEVEN F. TUTTLE
CERTIFICATION OF NONDISCRIMINATION

PROJECT: CIVIC CENTER INFRASTRUCTURE UPGRADE – MECHANICAL & CONTROL

Certification of Nondiscrimination: As suppliers of goods and/or services to the City of Palo Alto in excess of $5,000, the firm, contractor or individual(s) listed below certify that: they do not and in the performance of this contract they will not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; and further certify that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

Title of Officer Signing:  Vice President
Signature:  [Signature]  Steven F. Tuttle
Certification of Nondiscrimination: As suppliers of goods and/or services to the City of Palo Alto in excess of $5,000, the firm, contractor or individual(s) listed below certify that: they do not and in the performance of this contract they will not discriminate in employment of any person because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person; and further certify that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

Firm: **NEXGEH BUILDERS INC.** DATE: **7-10-08**

Title of Office: **President**

Signature: [Signature]

CITY OF PALO ALTO IFB 127144A