Summary Title: Art Center Construction Contracts

Title: Approval of a Budget Amendment Ordinance in the amount of $3,545,904 for Improvements to the Palo Alto Art Center; Approval of a Contract in the Amount of $5,123,800 with Big D Pacific, Inc., for Improvements to the Palo Alto Art Center; Approval of a Contract in the Amount of $369,920 with Mark Cavagnero Associates for Construction Administration Services and Approval of Contract Amendment 1 for Construction Management Services in the Amount of $344,705 with Nova Partners (PF-07000)

From: City Manager

Lead Department: Public Works

Recommendations

Staff recommends that Council:

1. Adopt a Budget Amendment Ordinance (Attachment A) in the amount of $3,545,904 for the construction of electrical, mechanical, roofing, deferred maintenance, a children’s wing, paving and other improvements to the Palo Alto Art Center (PF-07000);

2. Approve and authorize the City Manager or his designee to execute a contract (Attachment B) with Big-D Pacific Builders, Inc., in the amount of $5,123,800 for construction of improvements at the Palo Alto Art Center. Of this amount $4,606,197 will come from Capital Improvement Project (CIP) PF-07000, Art Center Electrical and Mechanical Improvements, $353,084 will come from CIP PE-11012, Temporary Main Library and $164,500 will come from CIP PF-93009, Americans with Disabilities Act Compliance;

3. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Big-D Pacific Builders, Inc., for related, additional but unforeseen work which may develop during the project, the total value of which shall not exceed $1,024,760. Of this amount $973,000 will come from Capital Improvement Project (CIP) PF-07000, Art Center Electrical and Mechanical Improvements, $35,308 will come from CIP PE-11012, Temporary Main Library and $16,450 will come from CIP PF-93009, Americans with Disabilities Act (ADA) Compliance;
4. Approve and authorize the City Manager to execute Amendment No. One (Attachment C) to contract S11139458 with Nova Partners, Inc., to add up to $344,705 for construction management services for the Palo Alto Art Center. This amount includes $314,705 for basic services and $30,000 for additional services, for a total amount not to exceed $422,705.

5. Approve and authorize the City Manager to execute a contract (Attachment D) with Mark Cavagnero Associates, Inc., in the amount of $369,920 for construction administration services for the Palo Alto Art Center. This amount includes $321,670 for basic services and $48,250 for additional services.

Background
The 28,000 square foot Art Center facility and its building infrastructure and systems have not been significantly upgraded since the facility was constructed in 1951 as Palo Alto’s City Hall. The only major repairs made to the facility have been seismic improvements in 1987.

In 1999, the Palo Alto Art Center Foundation began to address the need for renovations proactively by focusing on two programmatic concerns and facility challenges: 1) the need for upgrades to the gallery spaces of the Art Center to support the popular exhibition program, and 2) the need for additional children’s art classrooms and program space to meet the demand in the community. In March 1999, the City Council approved a proposal from the Palo Alto Art Center Foundation to explore the development of a public/private partnership that would make possible a capital campaign to expand and renovate the Art Center.

In August 2001, a Joint Site Planning Committee comprised of City and Art Foundation representatives was convened with the goal of developing a site design that would allow the Main Library and the Art Center to expand while addressing the limitations and opportunities offered by the site, neighborhood considerations, and the desires of community stakeholders. In September 2001, the Art Center Foundation received a second $50,000 grant request from the David and Lucile Packard Foundation that was matched by the City (CMR:226:02). Using these funds, the Art Foundation contracted with Mark Cavagnero Associates in association with SWA Group to develop the joint site plan. The resulting Site Planning Study for the Palo Alto Main Library and Art Center was completed on February 8, 2002. A Public Draft Environmental Impact Review (EIR) of the site was prepared for the City of Palo Alto by Thomas Reid Associates and completed on April 17, 2002.

In 2002, Mark Cavagnero Associates continued work on the master plan and design for the Palo Alto Art Center improvements, which were reviewed and approved by the Architectural Review Board. A Memorandum of Understanding (MOU) was approved unanimously by Council at its July 15, 2002 meeting (CMR:340:02), describing the City’s
commitment to contribute $5M to finance a fund set up through a public/private partnership over five years. This MOU was intended to go into effect upon successful passage of a library bond measure in November 2002. However, the bond measure was ultimately unsuccessful.

In the spring of 2003, the Art Foundation Board unanimously voted to commit to the implementation of the master plan for the Art Center. Supported by a $10,000 grant from the Non-Profit Finance Fund, the Art Foundation worked with fundraising and organizational development consultants to prepare for the possibility of a future capital campaign.

In 2005, the Art Foundation contracted with Mark Cavagnero Associates to develop the improvements to the building, including a children’s area. Since then, the City and Art Foundation have continued in a partnership for the building improvements, with the Art Foundation maintaining the design contract with Mark Cavagnero Associates. Now that the project is about to begin construction, the contract with Mark Cavagnero Associates will shift to the City, per a Construction Agreement between the City and the Art Foundation for the management of the bid and construction, represented in a Construction Funding Agreement that was approved by Council on February 7, 2011 (Staff Report 1301). Staff Report 1301 also contains a detailed history of the project and the various agreements between the City and the Art Foundation.

**Discussion**

**Art Center Facility Improvements:**
The City’s scope of work includes mechanical, electrical and accessibility upgrades to the facility, while the Art Foundation’s scope of work includes the creation of a Children’s Wing and an upgrade of the exhibition galleries. While the scope of City-sponsored work differs from the Art Foundation-sponsored work, both parties agree that it will be more efficient, cost-effective, and less disruptive to the community to have the work completed concurrently.

In addition to the above-mentioned electrical, mechanical and Children’s Wing improvements, the City has added deferred-maintenance items to the project such as a new roof, new gutters, new downspouts, seismic upgrade to roofing envelope, exterior painting, additional interior painting, termite treatment and dry rot repairs, new window safety glazing, exterior lighting improvements and parking lot maintenance. While these items will increase the construction cost, they will result in an overall cost-savings by including them as part of a larger project and by making these repairs now when the construction climate is favorable. It will also eliminate future construction disruption to the Art Center’s occupants and patrons. The roof, which is the most costly of the deferred maintenance items, had been scheduled for replacement in FY 2014, shortly after completion of the Art Center rehabilitation project. Funding for the roof had been planned for a future CIP PF-14001, ($200,000) however, that roofing estimate did not include the seismic upgrades that would be needed, which will increase the roofing
cost. The seismic work is desirable in order to provide better protection for the building and its occupants and will be easier to accomplish now that the roofing is part of a larger project. The roof replacement and funding for the remaining unfunded costs would be paid from the Infrastructure Reserve. In addition, the City has added 1 percent of the construction cost as funding for public art.

Temporary Main Library:
The Art Center auditorium was identified as the preferred location for a temporary library during the renovation of the adjacent Main Library (CMR:435:10). The auditorium was not part of the Art Center improvement project, but will have improved lighting, carpeting and other amenities added as part of the temporary library work. Combining the library’s auditorium upgrade with the rest of the Art Center project will result in a better price for the auditorium work and will not involve the disruption of shutting off the auditorium for temporary library conversion work shortly after opening the new Art Center. Having the same electricians, painters and other trades for both the auditorium and the Art Center work will result in a better work product and require less staff oversight than managing two separate contractors.

Contractor Prequalification
Given the size, complexity and location of the Art Center project, staff wanted to ensure that any contractor selected would be capable of completing the project at a high level of quality and in a timely fashion. In March 2011, a Request for Prequalification of Bidders was advertised and posted at local Builder’s Exchanges. Any contractor who intended to submit a bid was required to complete a questionnaire that presented the company’s financial status, ability to obtain bonding, experience on similar structures, and references. The application focused on essential requirements for public bids, history and organizational performance, safety, LEED and relevant technical experience, performance on recent projects, historical building experience and customer feedback. Approved companies demonstrated a successful, established organization with a positive track record in similar public projects. Of the 12 applicants, 6 contractors passed the initial review. Project data sheets showing relevant, successful work of significant dollar value were the main differentiators.

A notice inviting formal bids (IFB) for the Palo Alto Art Center improvements was sent to the six pre-qualified contractors. The bidding period was 28 days. Bids were received from 2 contractors on June 28, 2011, as listed on the attached bid summary (Attachment E). Bids ranged from a low of $5,165,139 to a high of $5,638,120. These prices include the cost for two bids Add Alternates. The low bidder is determined based on the cost of the base bid plus all bid alternates. The construction manager, Nova Partners, contacted the four firms that chose not to submit a bid and the response from the firms was that they did not submit because it was not a prevailing wage job.

<table>
<thead>
<tr>
<th>Bid Name/Number</th>
<th>IFBXX</th>
<th>Palo Alto Art Center Improvements</th>
</tr>
</thead>
</table>

Summary of Bid Process

July 25, 2011
(ID # 1663)
Proposed Length of Project | 12 months  
---|---
Number of Bids Mailed to Contractors | 6  
Number of Bids Mailed to Builder’s Exchanges | N/A (prequalified contractors only)  
Total Days to Respond to Bid | 28  
Pre-Bid Meeting? | Yes  
Number of Company Attendees at Pre-Bid Meeting | 16  
Number of Bids Received | 2  
Bid Price Range* | Low of $5,165,139 to a high of $5,638,120 with the inclusion of Add Alternates B and C  

*Bid summary provided in Attachment E

Staff has reviewed all bids submitted and recommends that Big-D Pacific Builders, Inc. be declared the lowest responsible bidder. Staff recommends that the City award the Base Bid ($5,040,000) plus Add Alternate B ($83,800) for a total contract award of $5,123,800. Add Alternate B includes the cost for new sewer lines, safety glass and flooring hazardous material abatement and replacement flooring. The base bid of $5,040,000 by Big-D Pacific, Inc., is approximately 7 percent above Mack 5’s estimate of $4,692,000, however, Mack 5’s estimate was prepared shortly before the final completion of the design plans and did not include certain deferred maintenance items such as a new roof, roof-related seismic upgrades, parking lot repaving, etc.

Staff confirmed with the Contractor’s State License Board that the contractor has an active license on file. Staff checked references supplied by the contractor for previous work performed and found no major complaints.

A construction contingency amount of 20 percent is requested for the Art Center renovation because of the age and accuracy of the as-built plans used to prepare the current construction documents; the historic nature of the project; as well as the increased potential for unforeseen building conditions such as termites or dry rot. For comparison, a contingency of 25 percent was used for the renovation of the historic College Terrace Library (although only 16 percent was actually used). For work on the Temporary Main Library (PE-11012) and its related ADA compliance items (PF-93009), 10 percent of the estimated construction cost was added to the overall contingency budget as these work items are relatively small and straightforward in scope.

Nova Partners Contract Amendment – Construction Management

With the library and Community Center Measure N bond projects now under construction, the project administration workload for this project is beyond what Public Works staff can administer without assistance. Amendment No. 1 to the contract with Nova Partners (Attachment C) will provide for staff from Nova to supplement Public Works staff during the construction of the Art Center. Nova Partners will be present on
the job site to oversee the contractor’s work, provide liaison for and resolve issues common to the City, architect and contractor and to track contractor design queries and progress payments to ensure that they are properly answered and recorded.

City staff will oversee the construction management of the Temporary Main Library portion of construction but will work closely with Nova Partners throughout the job.

Mark Cavagnero Associates Contract – Construction Administration

The contract with the design architect, Mark Cavagnero Associates (Attachment D) will provide for the architect’s general construction administration oversight during the construction phase of the Art Center. As the designer of record, under this contract Mark Cavagnero Associates will respond to design questions and issues raised by the contractor, attend meetings at the job site, oversee green building submissions and assist in the preparation of the record documents.

Group 4 Architecture is the lead for the Measure N library and community center bond measure design, and will be involved in the construction administration for the Temporary Main Library portion of the work.

**Resource Impact**

The Temporary Main Library will be constructed within the auditorium of the Art Center. Since the auditorium is part of an overall Art Center construction contract bid package, it would have been difficult for the contractor to segregate the electrical, paint, carpet and other improvement items as separate bid items. Instead, the construction manager, Nova Partners, prepared an estimated cost of $388,392 (including 10 percent contingency) to construct the Temporary Main Library improvements within the auditorium. That cost is bondable under the Measure N Library and Community Center bond measure and will be encumbered to the construction contract through CIP PE-11012, Temporary Main Library. During construction the temporary library costs will be tracked separately from the Art Center improvement costs.

In order to keep pace with the Art Center construction schedule, design contingency funds from the Main Library were used to pay for the initial design of the temporary Main Library. A new CIP for the Temporary Main Library (PE-11012) was established as part of the Fiscal Year 2011 mid-year budget and any Main Library (PE-11000) funds that were used for the Temporary Main Library in the past will be transferred to the new CIP.

Since work on the Art Center (PF-07000) and the Temporary Main Library (PE-11012) are both included in one construction contract, a portion of the construction and construction administration contracts for Big-D Pacific and Mark Cavagnero Architects will also be paid from library bond measure money. The share paid by the Temporary Main Library CIP for these two contracts is equal to the proportional value of the temporary Main Library’s construction cost to the construction cost of the overall Art Center improvements. Proportional costs for the construction manager, Nova Partners,
is not included in the cost-sharing as the renovation of the auditorium is a relatively small project that can be managed by staff.

<table>
<thead>
<tr>
<th>Project</th>
<th>Art Center (PF-07000)</th>
<th>Temp Library (PE-11012)</th>
<th>Main (PE-93009)</th>
<th>ADA Compliance (PF-93009)</th>
<th>Total Construction Contract Amount</th>
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<tbody>
<tr>
<td>Contract, Bid-D Pacific Builders</td>
<td>$4,606,197</td>
<td>$353,084</td>
<td>$164,500</td>
<td>$5,123,800</td>
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<td>Construction Change Orders, Bid-D Pacific Builders</td>
<td>$973,000</td>
<td>$35,308</td>
<td>$16,450</td>
<td>$1,024,760</td>
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<tr>
<td>Subtotal, Big-D (Construction):</td>
<td>$5,579,197</td>
<td>$388,392</td>
<td>$180,950</td>
<td>$6,148,560</td>
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<tr>
<td>Nova Partners-Construction Mgmt</td>
<td>$314,705</td>
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<tr>
<td>Nova Partners-Additional Services</td>
<td>$30,000</td>
<td></td>
<td></td>
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<tr>
<td>Subtotal, Nova (Construction Mgmt):</td>
<td>$344,705</td>
<td></td>
<td></td>
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<tr>
<td>MCA Architect-Additional Services</td>
<td>$42,798</td>
<td>$3,715</td>
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<td>Subtotal, MCA (Construction Admin):</td>
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<td>$13,317</td>
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<td>TOTALS:</td>
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<td>$416,875</td>
<td>$194,267</td>
<td>$6,863,164</td>
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</tr>
</tbody>
</table>

The original budget for the Art Center project was $4,340,000. The extent and cost of additional deferred maintenance items was being developed in tandem with the budget process (Staff Report 1301, Feb 7, 2011) and was unknown until more detail could be added to the design plans.

The Budget Amendment Ordinance (Attachment A) is necessary to accept and approve expending the Art Foundation contribution up to $2,000,000, of which $1,250,000 has been deposited with the City. The remaining Art Foundation contribution beyond $1,250,000 will be on a reimbursable basis at the conclusion of the project once actual
costs have been reconciled. In addition the inclusion of deferred maintenance costs in the project makes it necessary for additional funding. To minimize the impact of the draw on the Infrastructure Reserve staff has identified surplus funding in the amount of $1,330,000 from recently completed projects. One project, the Public Safety Building (PE-98020) has been inactive and much of the funding has been returned to the Infrastructure Reserve. If significant design work is required on the project in the future, staff will need to return with a request for additional funding. The net impact to the Infrastructure Reserve will be a reduction of $965,904.

Construction Funding Agreement with Art Foundation
On February 7, 2011, the Council approved a Construction Funding Agreement between the Art Foundation and the City where the Art Foundation agreed to fund a major portion of the project upgrade (Staff Report 1301). The Construction Funding Agreement outlines the administrative, reporting, and financial requirements of both parties. As outlined in this Agreement, the City will manage the construction project and the Art Foundation will fund their proportion of these costs. Construction management services have also been added to the cost-sharing agreement due to current staffing shortfalls related to the Measure N Library and Community Center bond project workload. The City’s portion of the funding for the renovation was approved in the FY 2007 Capital Improvement Program project budget (Art Center Electrical and Mechanical Upgrades, PF-07000) and currently has $3,856,000 (which does not include monies raised by the Art Foundation) of funding appropriated. The Art Foundation has already deposited $1,250,000 with the City and has raised the additional funds required to deposit for the Art Foundation’s portion by the completion of construction. The Art Foundation will contribute up to a maximum of $2,000,000 toward the construction portion of the improvement project.

Policy Implications
Approval of these contracts is consistent with Council’s direction to reduce the deferred maintenance backlog on City facilities.

Timeline
Art Center staff has been relocated to new spaces at the Lucie Stern Center and Cubberley Community Center and hazardous material removal at the Art Center has been completed. Construction on the remaining Art Center renovations will begin shortly after approval of the construction contract. Construction is expected to last for one year and be completed in approximately August 2012.

A temporary Main Library is included in the Art Center construction package and while it will be completed at the same time as the Art Center improvements, it will not be used as a library until the Main Library is closed for renovation. The Main Library will not be closed until the new Mitchell Park Library is opened in the summer of 2012.

Environmental Review
The Art Center Electrical and Mechanical Upgrades project was determined to be exempt from the California Environmental Quality Act (CEQA) review pursuant to Section 15301, “existing facilities.”

Attachments:

- A - BAO - PF-070000 Palo Alto Art Center improvements (DOC)
- B - Big D Pacific Contract (PDF)
- C - Nova Amendment 1 (PDF)
- D - MCA Contract (PDF)
- E - Bid Summary sheet (PDF)

Prepared By: Karen Bengard, Senior Engineer

Department Head: J. Michael Sartor, Interim Director

City Manager Approval: James Keene, City Manager
ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO
AMENDING THE BUDGET FOR THE FISCAL YEAR 2012 TO PROVIDE
AN ADDITIONAL APPROPRIATION OF $3,545,904 TO CAPITAL
IMPROVEMENT PROGRAM (CIP) PROJECT PF-07000, ART CENTER
ELECTRICAL & MECHANICAL UPGRADES

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

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

A. Pursuant to the provisions of Section 12 of Article III of the Charter of the City of Palo Alto, the Council on June 20, 2011 did adopt a budget for fiscal year 2012; and

B. In fiscal year 2007, the City Council appropriated an initial amount of $290,000 for CIP Project PF-07000 (Project) to provide replacement of the mechanical and electrical equipment and systems at the Palo Alto Art Center. In fiscal year 2009, Council increased the appropriation by $1,450,000, and in fiscal year 2011, Council further increased the project funding by $2,600,000 bringing the total appropriation to $4,340,000; and

C. The 28,000 square foot Art Center facility and its building infrastructure and systems have not been significantly upgraded since the facility was constructed in 1951. In March 1999, the City Council approved a proposal from the Palo Alto Art Center Foundation to explore the development of a public/private partnership that would make possible a capital campaign to expand and renovate the Art Center; and

D. In 2001, a Joint Site Planning Committee comprised of City and Art Foundation representatives began developing a site design that would allow the Main Library and the Art Center to expand while addressing the limitations and opportunities offered by the site, neighborhood considerations, and the desires of community stakeholders. In September 2001, the Art Center Foundation received a second $50,000 grant request from the David and Lucile Packard Foundation that was matched by the City (CMR:226:02). Using these funds, the Art Foundation contracted with the Mark Cavagnero Associates in association with SWA Group to develop the joint site plan. The resulting Site Planning Study for the Palo
Alto Main Library and Art Center was completed on February 8, 2002; and

E. In 2002, Mark Cavagnero Associates continued work on the master plan and conceptual design for the Palo Alto Art Center and site. The plan was completed on June 14, 2002 and approved by Council. A Memorandum of Understanding (MOU) was approved by Council at its July 15, 2002 meeting describing the City’s commitment to contribute $5M to finance a fund set up through a public/private partnership over five years. This MOU was intended to go into effect upon successful passage of a library bond measure in November 2002. However, the bond measure was ultimately unsuccessful; and

F. In 2003, supported by a $10,000 grant from the Non-Profit Finance Fund, the Art Foundation worked with fundraising and organizational development consultants to prepare for the possibility of a future capital campaign. The Art Foundation has committed $2 million to the project, of which the City has received $1.25 million to date, which will be transferred into the Infrastructure Reserve; and

G. In 2005, the Art Foundation contracted with Mark Cavagnero Associates to develop the improvements to the building, including a children’s area. Since then, the City and Art Foundation have continued in a partnership for the building improvements, with the Art Foundation maintaining the design contract with Mark Cavagnero Associates. Now that the project is about to begin construction, the contract with Mark Cavagnero Associates will shift to the City, per a Construction Agreement between the City and the Art Foundation for the management of the bid and construction, represented in a Construction Funding Agreement approved by Council on February 7, 2011 (Staff Report 1301); and

H. The City’s scope of work includes mechanical, electrical and accessibility upgrades to the facility, while the Art Foundation’s scope of work includes the creation of a Children’s Wing and an upgrade of the exhibition galleries. While the scope of City-sponsored work differs from the Art Foundation-sponsored work, both parties agree that it will be more efficient, cost-effective, and less disruptive to the community to have the work completed concurrently.

I. In addition to the above-mentioned electrical, mechanical and Children’s Wing improvements, the City will also now add deferred-maintenance items to the project such as a new roof, new gutters, new downspouts, seismic upgrade to roofing envelope, exterior painting, new carpets, additional interior painting, termite treatment and dry rot repairs, new window safety glazing,
exterior lighting improvements and parking lot maintenance. While these items will increase the construction cost, they will result in an overall cost-savings by including them as part of a larger project and by making these repairs now when the construction climate is favorable. It will also eliminate future construction disruption to the Art Center’s occupants and patrons; and

J. The Art Center auditorium will become a temporary library, under a separate Capital Improvement Project (PE-11012), during the renovation of the adjacent Main Library. The auditorium was not part of the Art Center improvement project, but will have improved lighting, carpeting and other amenities added as part of the temporary library work. Combining the library’s auditorium upgrade with the rest of the Art Center project will result in a better price for the auditorium work and will not involve the disruption of shutting off the auditorium for temporary library conversion work shortly after opening the new Art Center. Having the same electricians, painters and other trades for both the auditorium and the Art Center work will result in a better work product and require less staff oversight than managing two separate contractors; and

K. A notice inviting formal bids for the Palo Alto Art Center improvements was sent to six pre-qualified contractors. Staff recommends that Big-D Pacific Builders, Inc. be declared the lowest responsible bidder with a bid of $5,123,800, and that a contingency of 20 percent be included; and

L. With the library and Community Center Measure N bond projects now under construction, the project administration workload for this project is beyond what Public Works staff can administer without assistance. Nova Partners will supplement Public Works staff during the construction of the Art Center and will oversee the contractor’s work, provide liaison for and resolve issues common to the City, architect and contractor, and track contractor design queries and progress payments. Mark Cavagnero Associates will respond to design questions and issues raised by the contractor, attend meetings at the job site, oversee green building submissions and assist in the preparation of the record documents. The Art Center Project will pay a portion of these contracts for construction administration; and

M. Additional funding of $1,330,000 will be transferred from various completed or reduced Capital Improvement Projects with the appropriations returned to the Infrastructure Reserve as summarized in the table below; and

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
</table>

| Transfer appropriation from project PE-05010 (College Terrace Library Project) | $450,000 |
| Transfer appropriation from project PF-01002 (Civic Center Improvements Project) | $300,000 |
| Transfer appropriation from project PE-09002 (Greer Park Improvements Project) | $200,000 |
| Transfer appropriation from project PE-07005 (California Avenue Improvements Project Phase I) | $80,000 |
| Transfer appropriation from project PE-98020 (Public Safety Building Project) | $300,000 |
| **Total returned to IR** | **$1,330,000** |

N. City Council authorization is needed to amend the 2012 budget to make available the funds needed for CIP Project PF-07000, Art Center Electrical & Mechanical Upgrades.

**SECTION 2.** The appropriation for CIP Project PF-07000, Art Center Electrical & Mechanical Upgrades is hereby increased by Three Million Five Hundred Forty-Five Thousand Nine Hundred Four Dollars ($3,545,904).

**SECTION 3.** The appropriation for CIP Project PE-05010 College Terrace Library Project is hereby decreased by Four Hundred Fifty Thousand Dollars ($450,000) and the funds are returned to the Capital Fund Infrastructure Reserve.

**SECTION 4.** The appropriation for CIP Project PF-01002 Civic Center Improvements project is hereby decreased by Three Hundred Thousand Dollars ($300,000) and the funds are returned to the Capital Fund Infrastructure Reserve.

**SECTION 5.** The appropriation for CIP Project PE-09002 Greer Park Improvements Project is hereby decreased by Two Hundred Thousand Dollars ($200,000) and the funds are returned to the Capital Fund Infrastructure Reserve.

**SECTION 6.** The appropriation for CIP Project PE-07005 California Avenue Improvements Project Phase I is hereby decreased by Eighty Thousand Dollars ($80,000) and the funds are returned to the Capital Fund Infrastructure Reserve.
SECTION 7. The appropriation for CIP Project PE-98020 Public Safety Building Project is hereby decreased by Three Hundred Thousand Dollars ($300,000) and the funds are returned to the Capital Fund Infrastructure Reserve.

SECTION 8. One Million Two Hundred Fifty Thousand Dollars ($1,250,000) is hereby transferred from the Public Works Department Capital Budget to CIP Project PF-07000, Art Center Electrical & Mechanical Upgrades, as part of the donation from the Art Foundation.

SECTION 9. Two Million Two Hundred Ninety-Five Thousand Nine Hundred Four Dollars ($2,295,904) is hereby transferred from the Capital Project Fund Infrastructure Reserve to CIP Project PF-07000, Art Center Electrical & Mechanical Upgrades.

SECTION 10. The transactions above will reduce the balance of the Infrastructure Reserve to Three Million Four Hundred Eleven Thousand Seven Hundred Sixty-Three Dollars ($3,411,763).

SECTION 11. 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 12. As provided in Section 2.04.330 of the Palo Alto Municipal Code, this ordinance shall become effective upon adoption.

SECTION 13. The Council of the City of Palo Alto hereby finds that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15301 of the CEQA Guidelines as repair, maintenance and/or minor alteration of existing facilities and no further environmental review is necessary.

INTRODUCED AND PASSED:
AYES:
NOES:
ABSTENTIONS:
ABSENT:
ATTEST: APPROVED:
<table>
<thead>
<tr>
<th>City Clerk</th>
<th>Mayor</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPROVED AS TO FORM:</td>
<td>City Manager</td>
</tr>
<tr>
<td>Senior Asst. City Attorney</td>
<td>Director of Public Works</td>
</tr>
<tr>
<td></td>
<td>Director of Administrative Services</td>
</tr>
</tbody>
</table>
CONSTRUCTION CONTRACT

Contract No. C12141803

City of Palo Alto

and

Big-D Pacific Builders, LP

PROJECT
PALO ALTO ART CENTER RENOVATION
PROJECT

Rev. August 3, 2010
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CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT entered into on July 25th, 2011 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and Big-D Pacific Builders, LP, a limited California partnership ("Contractor"), is made with reference to the following:

RECITALS:

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. Contractor is a Class B "Builder" duly organized and in good standing in the State of California, Contractor's License Number 833335. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Construction Contract.

C. On June 1, 2011, City issued an Invitation for Bids (IFB) to contractors for the Palo Alto Art Renovation Project ("Project"). In response to the IFB, Contractor submitted a bid.

D. City and Contractor desire to enter into this Construction Contract for the Project, and other services as identified in the Bid Documents for the Project upon the following terms and conditions.

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

SECTION 1 INCORPORATION OF RECITALS AND DEFINITIONS.

1.1 Recitals.
All of the recitals are incorporated herein by reference.

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

SECTION 2 THE PROJECT.

The Project is the construction of the Palo Alto Art Renovation Project ("Project").

SECTION 3 THE CONTRACT DOCUMENTS.

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

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

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Rev. August 3,
3.2 Order of Precedence.
For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, the Contract Documents shall have the order of precedence as set forth in the preceding section. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.

SECTION 4 THE WORK.

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

SECTION 5 PROJECT TEAM.

In addition to Contractor, City has retained, or may retain, consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Project requires that Contractor operate efficiently, effectively and cooperatively with City as well as all other members of the Project Team and other contractors retained by City to construct other portions of the Project.
SECTION 6  
TIME OF COMPLETION.

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

6.2 Commencement of Work.
Contractor shall commence the Work on the date specified in City’s Notice to Proceed.

6.3 Contract Time.
Work hereunder shall begin on the date specified on the City’s Notice to Proceed and shall be completed
☐ not later than .
☒ within three hundred and sixty-five calendar days (365) after the commencement date specified in City’s Notice to Proceed.

6.4 Liquidated Damages.

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

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

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

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

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

6.5 Adjustments to Contract Time.
The Contract Time may only be adjusted for time extensions approved by City and agreed to by Change Order executed by City and Contractor in accordance with the requirements of the Contract Documents.
SECTION 7  COMPENSATION TO CONTRACTOR.

7.1 Contract Sum.
Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of five million, one hundred twenty-three, eight hundred dollars ($5,123,800.00).

[This amount includes the Base Bid and Add Alternates $5,040,000.00 and $83,800.00.]

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

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

1. Unit prices stated in the Contract Documents or agreed upon by City and Contractor, which unit prices shall be deemed to include Contractor Markup and Subcontractor/Sub-subcontractor Markups permitted by this Section.

2. A lump sum agreed upon by City and Contractor, based on the estimated Allowable Costs and Contractor Markup and Subcontractor Markup computed in accordance with this Section.

3. Contractor’s Allowable Costs, plus Contractor Markup and Subcontractor Markups applicable to such Extra Work computed in accordance with this Section.

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

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

7.3.2 Markup for Work Performed by Subcontractors.
15% of the Allowable Costs for that portion of the Extra Work or Deleted Work to be performed by a first Tier Subcontractor.
SECTION 8  STANDARD OF CARE.

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

SECTION 9  INDEMNIFICATION.

9.1 Hold Harmless.

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

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

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

9.2 Survival.

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

SECTION 10  NONDISCRIMINATION.

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

SECTION 11  INSURANCE AND BONDS.

On or before the Execution Date, Contractor shall provide City with evidence that it has obtained insurance and Performance and Payment Bonds satisfying all requirements in Article 11 of the General Conditions. Failure to do so shall be deemed a material breach of this Construction Contract.
SECTION 12 PROHIBITION AGAINST TRANSFERS.

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

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor or of any general partner or joint venturer or syndicate member of Contractor, if the Contractor is a partnership or joint venture or syndicate or co-tenancy shall result in changing the control of Contractor, shall be construed as an assignment of this Construction Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.
SECTION 13 NOTICES.

13.1 Method of Notice.
All notices, demands, requests or approvals to be given under this Construction Contract shall be given in writing and shall be deemed served on the earlier of the following:
(i) On the date delivered if delivered personally;
(ii) On the third business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;
(iii) On the date sent if sent by facsimile transmission;
(iv) On the date sent if delivered by electronic mail; or
(v) On the date it is accepted or rejected if sent by certified mail.

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

To City: City of Palo Alto
City Clerk
250 Hamilton Avenue
P.O. Box 10250
Palo Alto, CA 94303

Copy to: City of Palo Alto
Public Works
Administration
250 Hamilton Avenue
Palo Alto, CA 94301
Attn: Karen Bengard

Or

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

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

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

All Claims shall be delivered personally or sent by certified mail.
All notices, demands, requests or approvals from City to Contractor shall be addressed to:

BIG-D PACIFIC BUILDERS
6210 Stoneridge Mall Road #460
Pleasanton, CA 94566

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

SECTION 14 DISPUTE RESOLUTION.

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

14.2 Resolution of Other Disputes.

14.2.1 Non-Contract Disputes.
Contract Disputes shall not include any of the following:
(i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency;
(ii) Third party tort claims for personal injury, property damage or death relating to any Work performed by Contractor or its Subcontractors or Sub-subcontractors of any tier;
(iii) False claims liability under California Government Code Section 12650, et. seq.;
(iv) Defects in the Work first discovered by City after Final Payment by City to Contractor;
(v) Stop notices; or
(vi) The right of City to specific performance or injunctive relief to compel performance of any provision of the Contract Documents.

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

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

(i) All of the scheduling data required to be submitted by Contractor under the Contract Documents to obtain extensions of time and adjustments to the Contract Time and

(ii) A detailed, event-by-event description of the impact of each event on completion of Work. Adequate data to support a Statement of Contract Dispute involving an adjustment of the Contract Sum must include both of the following:

(a) A detailed cost breakdown and

(b) Supporting cost data in such form and including such information and other supporting data as required under the Contract Documents for submission of Change Order Requests and Claims.

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

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

14.4.1 Direct Negotiations.
Designated representatives of City and Contractor shall meet as soon as possible (but not later than ten (10) Days after receipt of the Statement of Contract Dispute) in a good faith effort to negotiate a resolution to the Contract Dispute. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claims or defenses being asserted by such party in the negotiations, and with full authority to resolve such Contract Dispute then and there, subject only to City's obligation to obtain administrative and/or City Council approval of any agreed settlement or resolution. If the Contract Dispute involves the assertion of a right or claim by a Subcontractor or Sub-subcontractor, of any tier, against Contractor that is in turn being asserted by Contractor against City ("Pass-Through Claim"), then the Subcontractor or Sub-Subcontractor shall also have a
representative attend the negotiations, with the same authority and knowledge as described above. Upon completion of the meeting, if the Contract Dispute is not resolved, the parties may either continue the negotiations or any party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

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

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

.1 Qualifications of Mediator. The parties shall endeavor to select a mediator who is a retired judge or an attorney with at least five (5) years of experience in public works construction contract law and in mediating public works construction disputes. In addition, the mediator shall have at least twenty (20) hours of formal training in mediation skills.

.2 Submission to Mediation and Selection of Mediator. The party initiating mediation of a Contract Dispute shall provide written notice to the other party of its decision to mediate. In the event the parties are unable to agree upon a mediator within fifteen (15) Days after the receipt of such written notice, then the parties shall submit the matter to the American Arbitration Association (AAA) at its San Francisco Regional Office for selection of a mediator in accordance with the AAA Construction Industry Mediation Rules.

.3 Mediation Process. The location of the mediation shall be at the offices of City. The costs of mediation shall be shared equally by both parties. The mediator shall provide an independent assessment on the merits of the Contract Dispute and recommendations for resolution. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

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

.1 Arbitration Initiation. The arbitration shall be initiated by filing a complaint in arbitration in accordance with the regulations promulgated pursuant to California Public Contract Code Section 10240.5.
.2 Qualifications of the Arbitrator. The arbitrator shall be approved by all parties. The arbitrator shall be a retired judge or an attorney with at least five (5) years of experience in public works construction contract law and in arbitrating public works construction disputes. In addition, the arbitrator shall have at least twenty (20) hours of formal training in arbitration skills. In the event the parties cannot agree upon an arbitrator, the provisions of California Public Contract Code Section 10240.3 shall be followed in selecting an arbitrator possessing the qualifications required herein.

.3 Hearing Days and Location. Arbitration hearings shall be held at the offices of City and shall, except for good cause shown to and determined by the arbitrator, be conducted on consecutive business days, without interruption or continuance.

.4 Hearing Delays. Arbitration hearings shall not be delayed except upon good cause shown.

.5 Recording Hearings. All hearings to receive evidence shall be recorded by a certified stenographic reporter, with the costs thereof borne equally by City and Contractor and allocated by the arbitrator in the final award.

.6 Limitation of Depositions. The parties may conduct discovery in accordance with the provisions of section 10240.11 of the Public Contract Code; provided, however, that depositions shall be limited to both of the following:

(i) Ten (10) percipient witnesses for each party and 5 expert witnesses per party.

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

.7 Authority of the Arbitrator. The arbitrator shall have the authority to hear dispositive motions and issue interim orders and interim or executory awards.

.8 Waiver of Jury Trial. Contractor and City each voluntarily waives its right to a jury trial with respect to any Contract Dispute that is subject to binding arbitration in accordance with the provisions of this Paragraph 14.4.4. Contractor shall include this provision in its contracts with its Subcontractors who provide any portion of the Work.

14.5 Non-Waiver.
Participation in the Contract Dispute Resolution Process shall not waive, release or compromise any defense of City, including, without limitation, any defense based on the assertion that the rights or Claims of Contractor that are the basis of a Contract Dispute were previously waived by Contractor due to Contractor’s failure to comply with the Contract Documents, including, without limitation, Contractor’s failure to comply within any time periods for providing notice of requests for adjustments of the Contract Sum or Contract Time or for submission of Claims or supporting documentation of Claims.
SECTION 15

DEFAULT.

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

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

SECTION 16

CITY’S RIGHTS AND REMEDIES.

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

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

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

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

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

16.1.5 Invoke the Performance Bond.
City may, with or without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.
16.1.6 Additional Provisions.
All of City’s rights and remedies under this Construction Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not waive the City’s authority to designate other breaches as material nor limit City’s right to terminate the Construction Contract, or prevent the City from terminating the Agreement for breaches that are not material. City’s determination of whether there has been noncompliance with the Construction Contract so as to warrant exercise by City of its rights and remedies for default under the Construction Contract, shall be binding on all parties. No termination or action taken by City after such termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all liquidated damages and Losses suffered by City.

16.2 Delays by Sureties.
Without limiting to any of City’s other rights or remedies, City has the right to suspend the performance of the Work by Contractor’s sureties in the event of any of the following:
(i) The sureties’ failure to begin Work within a reasonable time in such manner as to insure full compliance with the Construction Contract within the Contract Time;
(ii) The sureties’ abandonment of the Work;
(iii) If at any time City is of the opinion the sureties’ Work is unnecessarily or unreasonably delaying the Work;
(iv) The sureties’ violation of any terms of the Construction Contract;
(v) The sureties’ failure to perform according to the Contract Documents; or
(vi) The sureties’ failure to follow City’s instructions for completion of the Work within the Contract Time.

16.3 Damages to City.
16.3.1 For Contractor’s Default.
City will be entitled to recovery of all Losses under law or equity in the event of Contractor’s default under the Contract Documents.

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

16.4 Suspension by City for Convenience.
City may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time. The order shall be specifically identified as a Suspension Order by City. Upon receipt of a Suspension Order, Contractor shall, at City’s expense, comply with the order and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order. During the Suspension or extension of the Suspension, if any, City shall either cancel the Suspension Order or, by Change Order, delete the Work covered by the Suspension Order. If a Suspension Order is canceled or expires, Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. A Suspension Order shall not be the exclusive method for City to stop the Work.
16.5 Termination Without Cause.
City may, at its sole discretion and without cause, terminate this Construction Contract in part or in whole by giving thirty (30) Days written notice to Contractor. The compensation allowed under this Paragraph 16.5 shall be the Contractor’s sole and exclusive compensation for such termination and Contractor waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind resulting from termination without cause.

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

.1 For Work Performed. The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.

.2 For Close-out Costs. Reasonable costs of Contractor and its Subcontractors and Sub-subcontractors for:
   (i) Demobilizing and
   (ii) Administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) Days after receipt of the notice of termination.

.3 For Fabricated Items. Previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

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

16.6 Contractor's Duties Upon Termination.
Upon receipt of a notice of termination for default or for convenience, Contractor shall, unless the notice directs otherwise, do the following:
(i) Immediately discontinue the Work to the extent specified in the notice;
(ii) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work that is not discontinued;
(iii) Provide to City a description, in writing no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as City may determine necessary in order to decide whether to accept assignment of or request Contractor to terminate the subcontract, purchase order or contract;
(iv) Promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and
(v) Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.
SECTION 17  
CONTRACTOR’S RIGHTS AND REMEDIES.

17.1 Contractor’s Remedies.  
Contractor may terminate this Construction Contract only upon the occurrence of one of the following:

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

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

17.2Damages to Contractor.  
In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Paragraph 16.5.1 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

SECTION 18  
ACCOUNTING RECORDS.

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

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

SECTION 19  
INDEPENDENT PARTIES.

Each party is acting in its independent capacity and not as agents, employees, partners, or joint venturers of the other party. City, its officers or employees shall have no control over the conduct of Contractor or its respective agents, employees, subconsultants, or subcontractors, except as herein set forth.
SECTION 20  NUISANCE.

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

SECTION 21  PERMITS AND LICENSES.

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

SECTION 22  WAIVER.

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

SECTION 23  GOVERNING LAW.

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

SECTION 24  COMPLETE AGREEMENT.

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

SECTION 25  SURVIVAL OF CONTRACT.

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

SECTION 26  PREVAILING WAGES.

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

Or

☐ The Contractor is required to pay general prevailing wages as defined in Subchapter 3, Title 8 of the California Code of Regulations and Section 16000 et seq, and Section 1773.1 of the California Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the Director of the Department of Industrial Relations. Copies of these rates may be obtained at cost at the Purchasing office of the City of Palo Alto. Contractor shall provide a copy of prevailing wage rates to any staff or subcontractor hired, and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5,
1810, and 1813 of the Labor Code.

SECTION 27 NON APPROPRIATION.

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

SECTION 28 AUTHORITY.

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

SECTION 29 ATTORNEY FEES.

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

SECTION 30 SEVERABILITY.

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

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

☐ Purchasing Manager
☐ City Manager

APPROVED AS TO FORM:

Senior Asst. City Attorney

APPROVED:

Public Works Director

CONTRACTOR

BIG-D PACIFIC BUILDERS, LP

By:___________________________

Name:________________________

Title:________________________
ATTACHMENT C
AMENDMENT NO. 1 TO CONTRACT NO. S11139458
BETWEEN THE CITY OF PALO ALTO AND
NOVA PARTNERS INC.

This Amendment No. 1 to Contract No. S11139458 ("Contract") is entered into July 25, 2011, by and between the CITY OF PALO ALTO, a charter city and a municipal corporation of the State of California ("CITY"), and NOVA PARTNERS INC., a California corporation, located at 1361 S. Winchester Blvd. Suite 103, San Jose, California 95128, Telephone Number: 408-874-0370 ("CONTRACTOR").

RECATAL:

WHEREAS, the Contract was entered into between the parties for the provision of construction management services; and

WHEREAS, the parties wish to amend the Contract;

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

Section 4. NOT TO EXCEED COMPENSATION is hereby amended to read as follows: “The compensation to be paid to the CONSULTANT for performance of the services described in Exhibit A, including both payment for professional services and reimbursable expenses, shall not exceed Four Hundred Twenty-Two Thousand Seven hundred Five Dollars ($422,705.00). The applicable rates and schedule of payment are set out in “Exhibit C-1” and title “HOURLY RATE SCHEDULE,” which is attached to and made in part of this Agreement. Additional Services, if any, shall be authorized in accordance with and subject to the provisions of “Exhibit C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in “Exhibit A”.”

The following exhibit(s) to the Contract are hereby amended to read as set forth in the attachment(s) to this Amendment, which are incorporated in full by this reference:

a. Exhibit “A” entitled “Scope of Services”.

b. Exhibit “B” entitled “Schedule of Performance”.

c. Exhibit “C-1” entitled “Compensation”.

Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.
IN WITNESS WHEREOF, the parties have by their duly authorized representatives executed this Amendment on the date first above written.

APPROVED: 

Purchasing Manager 

APPROVED AS TO FORM:

Senior Asst. City Attorney 

Attachments:
- EXHIBIT "A": SCOPE OF SERVICES
- EXHIBIT "B": PROJECT SCHEDULE
- EXHIBIT "C": COMPENSATION 

NOVA PARTNERS INC.

By: ________________________________

Name: David Marks

Title: Vice President
EXHIBIT “A”

Scope of Services
Amendment 1
Palo Alto Art Center Renovation
PF-07000

I. INTRODUCTION

This contract is to provide construction management services in conjunction with the execution of infrastructure improvements at the Art Center, located at 1313 Newell Rd., Palo Alto. The Consultant shall provide services during pre-construction, construction and post-construction stages of the project.

II. BACKGROUND INFORMATION

The Palo Alto Art Center is a two-story building with a partial basement. The first floor is approximately 22,160 square feet and the basement level is approximately 5,360 square feet. The structural system is brick and wood. The building was constructed in 1952; originally built to serve as City Hall. Although the building is not registered as a historic building, there is historical significance and the building will be modified in accordance with the Secretary of the Interior’s Standards for Rehabilitation. The existing mechanical and electrical systems have not substantially changed from the original equipment, with the boilers in the basement currently serving both this building and the adjoining Main Library. In addition to electrical and mechanical upgrades, seismic, accessibility and deferred maintenance items (roofing, painting, flooring, landscaping, dry rot repairs and miscellaneous other repairs) are included in the scope of work. The estimated construction budget for this project is approximately $5.5 million.

The City of Palo Alto, in joint partnership with the Art Center Foundation Group retained Mark Cavagnero Associates, supported by sub-consultants SWA, Hohbach Lewin, Gayner Engineers, Van Maren & Associates, and Silverman & Light to conduct an assessment of the building, and to provide design services for the required improvements. Renovations are to the Leadership in Energy and Environmental Design (LEED) level of Silver. A commissioning agent has been retained separately by the City.

Funding for this project is through a cost-sharing agreement between the City and the Art Foundation. The project is anticipated to be bid as a lump-sum agreement, with costs allocated on a percentage basis to the City and to the Art Center. Change orders related to Art Center-requested items shall be tracked separately from items related to City maintenance issues. A cost-sharing agreement is currently under development and will be provided to the Consultant.

III SCOPE OF WORK
A. General

Nova Partners, Inc., (hereinafter "Consultant") shall provide a construction professional or professionals to represent the City at the construction site full time. This on-site representative(s) of the Consultant shall be approved by the City as having appropriate work experience for the position. If at any time, the City is not satisfied with the performance of Consultant staff, the City reserves the right to request the services of a different individual. If for any reason the Consultant proposes a change of staffing during the course of the project, the City reserves the right to approve any new staff.

Office space and equipment for Consultant's staff shall be provided by the Consultant. During construction the office space location shall be in Palo Alto city limits, in proximity to the construction site. Trailers or equipment used by the Consultant may require permits from the City, which Consultant shall obtain and pay.

The Consultant shall provide qualified licensed engineers, architects, or other construction professionals to represent the City on-site throughout the bid and construction phases. The Consultant shall work with the Public Works Engineering Division, for coordination of the project.

B. Tasks

The Consultant’s scope of work shall include, but not necessarily be limited to the following:

A. Construction Phase

The construction is estimated to start in the summer of 2011 and to be completed within 12 months from the Notice to Proceed. The Consultant shall:

1. Be responsible for coordination and oversight of the day-to-day construction performed by the contractor and their sub-contractors.

2. Coordinate with the contractors, city departments and staff regarding any construction activity that impacts occupants of the building. Communicate all necessary information and schedules as appropriate to all interested parties. Resolve all issues that occur due to disruption to occupants.

3. Prepare all necessary documentation for the project including daily construction inspection/progress reports, photographs and/or videos, requests for information, and correspondence with contractor and design Consultants.

4. Maintain accurate and up to date project file which includes all documentation required for the proper management of a construction project.

5. Prepare and maintain various logs such as request for information, submittals, change orders, etc.

6. With input from the City’s Project Manager, prepare project milestones and
EXHIBIT "A"

overall schedule framework for coordination of the various contracts. This schedule framework shall be utilized by contractors to prepare their individual Critical Path Method schedules.

7. Monitor contractor's progress. Notify the City of any schedule slippage and coordinate with contractor on the recovery plan.

8. Review the progress payment requests submitted by contractors for validity and make recommendation to the City.

9. Review contractors extra work requests for accuracy and validity. Prepare Extra Work Authorizations, if needed, for City's approval. Track all the scope and cost changes.

10. Conduct weekly construction meetings. Distribute the Minutes of the Meetings to all stakeholders.

11. Coordinate the services of a testing agency for materials testing as well as for Special Inspections. Coordinate and schedule progress field tests and any required sign-offs. Review and distribute testing agency reports in compliance with the specifications. The testing agency services shall be secured by the City.

12. Monitor any deviations in scope, schedules or performance and keep the City informed of any issues that might arise.

13. Testing agency will be under contract with the City. Consultant will coordinate with the Contractor in scheduling the testing agency services for materials testing and special inspections. Consultant will ensure that all required sign-offs are reviewed and distributed and are in compliance with the specifications and the California Building Codes.

14. Consultant will work with the commissioning agent, design Consultants, and the contractors to ensure that all new equipment have been installed in accordance with the contract documents, are working properly as stand-alone equipment, and are working properly as part of a complete system.

15. Consultant shall oversee any green building requirements needed on-site and work with the design consultant as needed to track project Leadership in Energy and Environmental Design (LEED) requirements.

16. Consultant shall monitor and document the contractors' work for any deviations in scope, schedule or performance and keep the City informed of any issues that may arise.

17. As per the construction contract, once the Contractor requests for substantial completion and it is determined to be warranted, Consultant shall prepare and compile a project punch list with the assistance from the City Staff.
EXHIBIT "A"

Architect/Engineer, and Project Manager to be forwarded to the Contractor. Consultant shall oversee the completion of the punch list items before the final notice of completion is issued.

C. Post-construction
The post construction phase shall be completed within 8 weeks after the City issued “Notice of Completion to the Contractor”. The Consultant shall:

1. Coordinate the preparation of record drawings with the contractor and review these drawings for “as-built” accuracy.

2. Ensure completion and delivery of all contractor required close out documentation including Operation and Maintenance manuals, record drawings, warranties, etc.

3. Consolidate all project files and documentation maintained by the Consultant to be retained by the City.

4. Respond to and coordinate items related to defective work-items that are included in the project’s warranty period. Work with the responsible party to repair and/or replace defective work.

5. Under the direction of the City’s Project Manager, work to resolve any contract claim issues (stop notices, bonding, delays, extra work etc.), that may arise.

6. Consultant will set up and coordinate contractor provided training of City staff as required by the contract documents and as necessary to ensure that the appropriate City personnel are adequately trained and familiar with the new and refurbished equipment.

D. Administrative

1. Review progress payment requests within five (5) days of receipt from the contractor and architect firm (Mark Cavagnero Associates). Verify the accuracy and resolve any discrepancies in the invoice(s).

2. Provide detailed Construction updates for monthly presentations as well as present quarterly financial updates for presentation to all Stakeholders at monthly Stakeholder meetings. This project will be a proportional shared cost between the City and the Art Foundation and proportional costs and change order costs shall be tracked in a manner acceptable to the Art Foundation and the City.

3. Review and comment on any project-related correspondence if requested by the Project Manager. Routine correspondence that is related to product
EXHIBIT “A”

information or minor construction issues may be prepared and answered by the Consultant, with a copy of the response directed to the Project Manager and the Architect/Engineer. Correspondence requiring City response shall be signed only by the Project Manager.

4. Throughout the construction process, the Consultant shall address comments and concerns of the contractor and the Architect/Engineer on as-needed basis.

5. Attendance at the following meetings is anticipated:
   - Regularly scheduled site meetings with multiple prime contractors, such as weekly progress review meetings.
   - Site meetings with the city staff, Project Manager, architect/engineer, and contractors to address and resolve issues.
   - Attend meetings with various City departments as needed to coordinate plans or construction logistics.

E. Reimbursables

Reimbursables include, but are not limited to, preparation of public outreach materials, cost of copying of plans and specifications, miscellaneous small contracts, coordination with the Main Library and other tasks not included herein. Overnight courier service, travel outside of the Bay Area (as approved by the City), drawing reproduction and additional subconsultants are considered to be a reimbursable expense.

Postage, travel (unless for out of town travel, as authorized by the City), meals, computers, telephone, faxes, digital photographs and other related overhead costs shall not be considered as reimbursable but shall be included in the overall project costs.

Consultant rates shall include all markups, with the exception of reimbursable costs. Reimbursable costs included above are for mileage, phone usage, copier, printing, faxes, digital photographs, computer and software. All expenses and subconsultants will be marked up by an amount not to exceed 10%.

F. Additional Services

Additional services include, but are not limited to, meetings, extended project duration, small contracts and other items approved in advance by the City’s Project Manager.

G. Allowance- Extended Construction Duration

Construction is expected to be completed within 12 months of the Notice to Proceed to the contractor. If project delays cause the project to extend beyond this duration, the City may, upon written authorization by the Project Manager, continue the services of the Consultant at the Senior Project Manager level for up
to an additional 80 hours.

IV. PROJECT ADMINISTRATION
Karen Bengard will act as Project Manager. During construction, all questions, correspondence and invoices will be addressed to the City of Palo Alto, Engineering Division, Attn: Karen Bengard, P.O. Box 10250, Palo Alto, CA, 94303.

~ End of Scope ~
EXHIBIT “B”

SCHEDULE OF PERFORMANCE

The CONSULTANT shall perform the services described in project tasks so as to complete each milestone within the month specified. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for consultant and the CLIENT. The CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 14 days of receipt of the Notice to Proceed.

Milestone: 

Construction Phase (56 weeks):
- Award of Construction Contract
- Construction Start- Notice to Proceed
- Notice of Completion

Approx. Date:
- July 2011
- August 2011
- August 2012

Post- Construction Phase (8 weeks):
- Punch list, training and warranty issues

August-Sept 2012
EXHIBIT “C-1”

COMPENSATION

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The hourly rates that the Consultant fee is based on, is itemized in the table below:

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<td>Project Engineer</td>
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ATTACHMENT D

CITY OF PALO ALTO CONTRACT NO. C12142298

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND

MARK CAVAGNERO ASSOCIATES ARCHITECTS

FOR PROFESSIONAL SERVICES

This Agreement is entered into on this 25th day of July, 2011, ("Agreement") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and MARK CAVAGNERO ASSOCIATES ARCHITECTS, a California corporation, located at 1045 Sansome Street, Suite 200, San Francisco, CA 94111 ("CONSULTANT").

RECATALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to upgrade the Art Center ("Project") and desires to engage a consultant to provide construction administration services to electrical and mechanical systems upgrades in connection with the Project ("Services").

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit "A", attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM.
The term of this Agreement shall be from the date of its full execution through completion of the services in accordance with the Schedule of Performance attached as Exhibit "B" unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit "B", attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement

Professional Services
Rev. June 2, 2010

1
shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, including both payment for professional services and reimbursable expenses, the maximum contract amount shall not exceed $369,920. The Professional Services portion required shall not exceed Three Hundred Twenty One Thousand Six Hundred Seventy Dollars ($321,670). In the event Additional Services are authorized, the total compensation for additional services and reimbursable expenses shall not exceed Forty Eight Thousand Two Hundred Fifty Dollars ($48,250). The applicable rates and schedule of payment are set out in Exhibit “C-1”, entitled “HOURLY RATE SCHEDULE,” which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit “C”. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit “A”.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT’s billing rates (set forth in Exhibit “C-1”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform
Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all negligent errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all negligent errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. COST ESTIMATES. DELETED BY MUTUAL AGREEMENT.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT’s obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Kang Kiang as the Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and Paul Loeffler as the project Architect to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY’s project manager. CONSULTANT, at CITY’s request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.
The City’s project manager is Karen Bengard, Public Works Department, Engineering Division, 250 Hamilton Avenue, Palo Alto, CA 94303, Telephone:650-329-2636. The project manager will be CONSULTANT’s point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

**SECTION 14. OWNERSHIP OF MATERIALS.** Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

**SECTION 15. AUDITS.** CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT’s records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

**SECTION 16. INDEMNITY.**

16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements (“Claims”) that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party. CONSULTANT shall defend against any claim, actual or alleged, arising from CONSULTANT’S service under this Agreement. CONSULTANT shall have no duty to defend the City or any party claiming through the City for claims that are unrelated to CONSULTANT’S service under this Agreement.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT’s services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

**SECTION 17. WAIVERS.** The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of
any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best’s Key Rating Guide ratings of A:-VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY’s Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days’ prior written notice of the cancellation, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY’s Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT’s liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to
CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT’s services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the project director
at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a “Consultant” as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.
SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the City’s Environmentally Preferred Purchasing policies which are available at the City’s Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of the City’s Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, Consultant shall comply with the following zero waste requirements:

- All printed materials provided by Consultant to City generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the City’s Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by Consultant on behalf of the City shall be purchased in accordance with the City’s Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.
- Reusable/returnable pallets shall be taken back by the Consultant, at no additional cost to the City, for reuse or recycling. Consultant shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. NON-APPROPRIATION

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

SECTION 25. MISCELLANEOUS PROVISIONS.

25.1. This Agreement will be governed by the laws of the State of California.
25.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

25.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

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

25.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

25.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

25.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

25.8 If, pursuant to this contract with CONSULTANT, City shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident (“Personal Information”), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City’s express written consent.

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CITY OF PALO ALTO

City Manager

APPROVED AS TO FORM:

Senior Asst. City Attorney

MARK CAVAGNERO ASSOCIATES
ARCHITECTS

By: MARK CAVAGNERO
Name: MARK CAVAGNERO
Title: Principal

Attachments:

EXHIBIT "A": SCOPE OF WORK
EXHIBIT "B": SCHEDULE OF PERFORMANCE
EXHIBIT "C": COMPENSATION
EXHIBIT "C-1": SCHEDULE OF RATES
EXHIBIT "D": INSURANCE REQUIREMENTS
EXHIBIT “A”
SCOPe OF SERVICES

1.0 INTRODUCTION

In a public/private partnership, both the City of Palo Alto (City) and the Palo Alto Art Center Foundation (Foundation) are upgrading the Art Center building, located at 1313 Newell Rd, Palo Alto, CA. The City’s scope of work includes seismic upgrades; replacement or retrofit of building mechanical systems, electrical systems and distribution systems, plumbing systems, lighting, life safety system, Americans with Disabilities Act (ADA) improvements (as triggered by Title 24 provisions required by the aforementioned upgrades), maintenance items (roofing, exterior and interior painting, partial window replacement, termite treatment, dry rot repairs, replacement of basement boiler with gas furnace, etc.), interior modifications and the transformation of the Art Center auditorium into a temporary Main Library. The Foundation’s scope of work includes modification of classrooms and kitchen, adding a hallway to create a children’s wing, construction of a children’s entry courtyard, parking and outdoor classroom, renovation of the sculpture garden, lighting upgrades in galleries, installation of specialty equipment and millwork, and other interior modifications. These and other related improvements for both the City and Art Foundation are included in the bid documents.

2.0 CITY DUTIES

2.1 During the term of CONSULTANT’s professional services under this AGREEMENT the following items will be the responsibilities of the CITY:

2.1.1 The CITY’s Project Manager or authorized designee shall manage the CONSULTANT’s performance under the Agreement. CONSULTANT shall receive final direction only from the Project Manager or his or her authorized designee. The Project Manager shall resolve any conflicting direction from other groups, departments or agencies.

2.1.2 The CITY shall provide evaluation, mitigation design and administration of work for hazardous materials at each site and in the existing building.

2.1.3 CITY shall provide record drawings of existing project facilities (when available).

2.1.4 CITY shall provide all applicable building permits.

2.1.5 CITY shall provide Division 0 and 1 specifications (front-end), in Microsoft Word format to CONSULTANT for review and comment.

2.1.6 CITY shall print and provide construction contractors with copies of bid documents (Plans and Specifications).

2.1.8 CITY shall manage the construction of the Project and provide building code and quality control inspections.

2.1.9 The CITY shall oversee and manage coordination of artwork with the building
design, and artwork installation and protection of artwork that is to remain on-site. The CONSULTANT will assist the team to ensure that the design of the improvements is consistent with the future artwork shown on the construction documents.

3.0 BASIC SERVICES

3.1 Consultant Duties

The CONSULTANT shall provide support for construction administration, commissioning, LEED certification, record documents and project close out services as follows:

3.1.1 The CONSULTANT’s Basic Services include the services of a civil engineer, structural engineer, mechanical engineer, electrical engineer/lighting designer, landscape architect, acoustical engineer, and LEED consultants.

3.1.2 The CITY understands that the project was designed to target the standards for LEED Silver or higher certification by the USGBC.

CONSULTANT shall provide LEED project management services needed for the CITY to obtain LEED certification of the project, and assist in the documentation and calculations necessary to obtain LEED certification. CONSULTANT shall be the lead in registering the project and in overseeing the submissions of others (owner, contractor, etc.) that are required to submit information. The CONSULTANT is not responsible for the failure of other parties to submit their information in a timely or correct manner.

3.1.3 CONSULTANT shall include a LEED accredited professional on the design team to support Project Sustainable Building/Green Building design criteria as required to achieve LEED certification.

3.1.4 CONSULTANT shall work with the CITY’s commissioning agent throughout the project to address design or performance issues.

3.1.5 The CONSULTANT’s responsibility to provide basic Construction Administration Services for the Construction Phase under this Agreement commences with CITY’s issuance of a Notice to Proceed with the Contract for Construction and will end 12 months from that date or upon commencement by the CONSULTANT of the Substantial Completion Correction (“Punch”) list, as mutually agreed upon by CONSULTANT, the CITY’s Construction Manager and CITY, whichever comes first. If the punch list does not commence within 12 months of the Notice to Proceed, any further time and effort spent on behalf of the project shall be an Additional Service provided on a time and materials basis. Consultant will not be obligated to provide any work beyond the 12 months unless directed by CITY in writing.

3.1.6 The CONSULTANT shall be a representative of and shall advise and consult with the
CITY during the provision of the Contract Administration Services. The CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in this Agreement unless otherwise modified by written amendment.

3.1.7 Duties, responsibilities and limitations of authority of the CONSULTANT under this phase shall not be restricted, modified or extended without written agreement of the CITY.

3.1.8 The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

3.1.9 The CONSULTANT shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

3.1.10 Project Meetings and Site Visits

3.1.10.1 The CONSULTANT shall attend weekly meetings for the first six months of construction and bi-weekly for the remainder of the construction period. The CONSULTANT as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Project Manager or authorized designee and the CONSULTANT (1) to become generally familiar with and to keep the CITY informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

3.1.10.2 The CONSULTANT shall report to the CITY known deviations from the Contract Documents within 3 days of observation.

3.1.10.3 The CONSULTANT shall at all times have access to the work within 24 hours wherever it is in preparation or progress.

3.1.10.4 The CONSULTANT shall have authority to reject Work that does not conform to the Contract Documents. Whenever the CONSULTANT considers it necessary or advisable, the CONSULTANT will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the CONSULTANT or a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the CONSULTANT to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

3.1.10.5 The CONSULTANT shall be responsible for scheduling the sub consultants visits to the site in coordination with and or as directed by the CITY.
3.1.11 On the basis of on-site observations as a CONSULTANT, and through information provided to the CONSULTANT by the CITY’s Project Manager, the CONSULTANT shall keep the CITY informed of the quality of the work.

3.1.12 Submittals:

3.1.12.1 The CONSULTANT will review Contractor's submittals, including Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT’s action shall be taken with such reasonable promptness so as to cause no delay in the work, while allowing sufficient time in the CONSULTANT's judgment to permit adequate review unless otherwise agreed to. Submittals critical to work flow shall be responded to within a timely manner from receipt. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The CONSULTANT’s review shall not constitute review of safety precautions or, unless otherwise specifically stated by the CONSULTANT, of construction means, methods, techniques, sequences or procedures. The CONSULTANT’s review of specific items shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the CONSULTANT shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

3.1.12.2 The CONSULTANT shall maintain copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents. Reviewed submittals shall be stamped with appropriate action to be taken with notes and comments initialed and dated.

3.1.12.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional’s written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services; certifications or approvals performed by such design professionals.

3.1.13 Request for Information (RFI) & Architectural Supplement Information (ASI)

3.1.13.1 The CONSULTANT shall review properly prepared, timely requests by the Contractor for Requests for Information (RFI) about the Contract Documents. All RFI’s shall be responded to by the CONSULTANT within a five (5) working day period. A properly prepared RFI about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
3.1.13.2 If deemed appropriate by the CONSULTANT or if directed by the Project Manager or her authorized designee, the CONSULTANT shall on the CITY’s behalf prepare, reproduce and distribute supplemental Drawings and Specifications (Architectural Supplemental Information (ASI)) in response to RFI by the Contractor or because of a need determined by CONSULTANT to achieve the intent of the Contract Documents.

3.1.13.3 Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the CONSULTANT shall endeavor to secure faithful performance by both CITY and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.

3.1.13.4 The CONSULTANT’s action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the CITY, Contractor or separate contractors, while allowing sufficient time in the CONSULTANT’s professional judgment to permit adequate review. RFI’s critical to workflow shall be responded to within a timely manner from receipt.

3.1.14.5 CONSULTANT shall review for compliance, any items submitted by the Contractor for consistency with the contract documents, including but not limited to submittals, O&M Manuals, written guarantees, instruction books, diagrams and charts, etc.,

3.1.14.6 CONSULTANT shall review and recommend approval or rejection of substitutions for conformance with the project design concept and for compliance with Contract Documents

3.1.14 Changes in the Work:

3.1.14.1 Change Order Review and Negotiation: All changes to the Contract between the CITY and Contractor shall be only by change orders executed by the CITY.

3.1.14.2 CITY and its designee shall review the contents of all Contractor-requested changes to the contract time or price, endeavor to determine the cause of the request, and assemble and evaluate information concerning the request. CITY and its designee shall in its evaluations of the Contractor’s request consider the CONSULTANT’s comments regarding the proposed changes.

3.1.14.3 All proposed CONSULTANT and CITY-initiated changes shall first be described in detail by the CITY and its designee in a request for a proposal issued to the Contractor. The request shall be accompanied by drawings and specifications prepared by the CONSULTANT. In response to the request for a proposal, the Contractor shall submit to the CITY and its designee for evaluation detailed information concerning the price and time adjustments, if any, as may be necessary to perform the proposed change order work. The CITY and its designee shall review the Contractor’s proposal, shall discuss the proposed change order with the Contractor, and endeavor to determine the Contractor’s basis for the price and time proposed to perform the work. All work by CONSULTANT related to CITY-initiated changes will be performed as Additional Services on a Time and
Material Basis or mutually agreed lump sum. Any design changes necessitated by CONSULTANT shall be at no additional cost to the CITY.

3.1.14.4 CITY and CONSULTANT shall negotiate change requests on behalf of the CITY. CITY and its designee shall prepare and issue to the Contractor appropriate change order documents, reviewed and signed by the CONSULTANT as required by contract.

3.2.1 LEED Design and Documentation for Credits:

3.2.1.1 The CONSULTANT shall prepare and submit LEED documentation for certification purposes based on the LEED-CTv2.0 on LEED Online. The work includes preparing and submitting all required design submittal documentation for the LEED credits as identified on the LEED Matrix dated as shown on the construction documents.

3.2.1.2 The CONSULTANT shall provide fundamental support to the Commissioning Agent during the construction phase of the project. CONSULTANT work with the Commissioning Agent to discuss the design and develop a commissioning plan and checklists.

3.2.1.3 The CONSULTANT shall provide design intent information and clarifications to the Contractor and Commissioning Agent during the construction phase of the project.

3.2.1.4 The CONSULTANT shall provide Construction Administration services which include review of Contractor-provided LEED submittals required for the Construction submittal by the Contractor.

3.3 Project Closeout and Record Documents:

3.3.1 Project Closeout will begin with the commencement by CONSULTANT of the Punch list as mutually determined by CONSULTANT, CITY and CITY’s Construction Manager, and will end 60 calendar days from that date CONSULTANT shall complete all items over which the CONSULTANT has control. CONSULTANT Closeout Services after 60 days will be provided as an Additional Service on a Time & Materials basis. The Project Closeout phase will be within the total Construction Administration period, which is 12 months.

3.3.2 The CONSULTANT shall receive from the Contractor and forward to the CITY, for the CITY’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor.

3.3.3 The CONSULTANT shall conduct “Punch List” inspection to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

3.3.4 The CONSULTANT shall complete and distribute the project punch list in a timely
manner from the CITY’s request for inspection in either MS Word or Excel format.

3.3.5 CONSULTANT shall review the work to determine whether the punch list items have been completed and are in conformance with the Construction Documents.

3.3.6 CONSULTANT shall conduct Final Completion observation with the CITY to check for general conformance of the Work with the requirements of the Contract Documents package and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

3.3.7 CONSULTANT shall attend a close out meetings with the City, the Construction Manager and the contractors (two meetings, the fee for which is included in Basic Services).

3.3.7 The CONSULTANT shall compare the “as-built” plans and supporting field documentation provided by the CITY for design completeness and intent and return the plans to the CITY for revision by the contractor. The CONSULTANT shall not be expected to comment upon field or other changes to which CONSULTANT was not party. The as-builts will ultimately become the record drawings for the project and the responsibility to draft any revisions and finalize the as-built plans into electronic, final record drawings shall be the responsibility of the CITY.

3.3.8 CONSULTANT shall provide CITY all drawings, specifications and other instruments of professional service furnished at the CITY’s request on electronic media. Use of the electronic media is at the CITY’s election and shall be at the sole risk of the CITY and without liability or legal exposure to the CONSULTANT. Furthermore, the CITY shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the CONSULTANT and CONSULTANT’s officers, employees, agents, and consultants from and against any and all claims, suits, demands, damages, liabilities, losses, and costs, including but not limited to reasonable attorneys' fees and other costs of defense, arising out of or resulting from any use, misuse, alteration, or modification of the Architect's instruments of professional service delivered to the CITY in electronic media form or by other means.

3.3.9 Due to the risk of damage, anomalies in transcription, additions, incorporation and modification during use by others, whether intended or otherwise, it is agreed that the CONSULTANT shall archive a copy of the electronic media transferred to the CITY, the contents of which it is expressly agreed shall be used as the conclusive proof in all disputes over the content of electronic media furnished to the CITY.

4.0 REIMBURSABLES

4.5.1 The CONSULTANT shall include an allowance for the preparation of informational kiosks (for display off-site during construction), printing, copying and other reimbursable expenses. Excessive shop drawing or plan review requested by the Contractor may be reimbursed if said review costs are agreed to in advance by the Contractor, and reimbursed to the City’s construction budget via a reduction in Professional Services.

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progress payment to the Contractor by the City. Any of these costs shall be expended only upon prior written authorization by the City's Project Manager.

4.5.2 CONSULTANT attendance at regular jobsite meetings are considered Basic Services and are not reimbursable. Travel to said meetings is considered a reimbursable expense.

Reproductions, plots, courier services, toll and meal costs are a Reimbursable cost. Costs of computers and other tools are not Reimbursable costs.

5.0 ALLOWANCE - EXTENDED CONSTRUCTION DURATION
Construction is expected to be completed within 12 months of the Notice to Proceed to the contractor. If project delays cause the project to extend beyond this duration, the City may continue the services of the CONSULTANT for up to an additional 80 hours.

6.0 ALLOWANCE - FURNITURE SELECTION
During construction the CONSULTANT may be asked to assist in the selection of furniture, or to adapt workspaces to accommodate existing or new furniture, or improvements such as data outlets. Such work could also involve the preparation of contract documents suitable for bid advertisement. Work related to furniture coordination and selection shall be negotiated in writing, in advance between the CITY and CONSULTANT

7.0 ADDITIONAL SERVICES
The following services are not part of the CONSULTANT's Basic Services and shall be performed by the CONSULTANT as Additional Services only if and when authorized by the CITY in writing:

7.7.1 Other participation services not described in Basic Services or Supplemental Services above.
7.7.2 Making changes in the design or documentation that is contrary to prior direction provided by the CITY.
7.7.3 Preparing CITY-initiated change orders during construction.
7.7.4 Providing more than two reviews of each submittal.
7.7.5 Detailed review of substitution request—No this is standard public works stuff. Substitutions will happen. I would remove this.
7.7.6 Work required to correct non-conforming work of contractor.

Additional Services shall be paid either on a negotiated fee or on a time and materials basis according to the standard fee schedule rates attached should any work be requested by the City which falls outside the basic services of this project. Additional Services may include items not specifically identified above, but all additional services work must be authorized in advance in writing by the City's Project Manager prior to accomplishment of the work.

8.0 INSURANCE REQUIREMENTS
Both the City of Palo Alto and the Palo Alto Arts Foundation shall be named as “additional insureds” to the insurance requirements of Exhibit D of this Contract.
EXHIBIT “B”
SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each milestone within the timeline specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement.

<table>
<thead>
<tr>
<th>Milestones</th>
<th>Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Award of Construction Contract for Art Center (CIP PF-07000)</td>
<td>July 2011</td>
</tr>
<tr>
<td>- Completion of Basic Services</td>
<td>12 Months</td>
</tr>
<tr>
<td>from Notice to Proceed to Contractor</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT “C”
COMPENSATION

Basic Services
The fees for this work shall include all Consultant costs necessary for providing the desired services including sub-consultant costs, reimbursables, meetings, and report generation. Reimbursables shall include travel, document reproduction costs, mailing, and courier services. Travel shall be reimbursed at the City’s current standard rate.

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be paid to the CONSULTANT on a lump sum basis and shall be calculated on the hourly rate schedules attached as Exhibit C-1 up to the Not to Exceed amount set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit “A” (“Basic Services”), extended construction duration, furniture selection allowances and reimbursable expenses shall not exceed $321,670. CONSULTANT agrees to complete all Basic Services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum amount shall not exceed $369,920. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY’s project manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including extended construction duration, furniture selection allowances and reimbursable expenses, does not exceed $321,670 and the total compensation for Additional Services does not exceed $369,920.

<table>
<thead>
<tr>
<th>BUDGET SCHEDULE</th>
<th>NOT TO EXCEED AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 3.0 Basic Services</td>
<td>$ 291,670</td>
</tr>
<tr>
<td>Section 4.0 Reimbursables</td>
<td>$ 11,000</td>
</tr>
<tr>
<td>Section 5.0 Allowance - Extended Construction Duration</td>
<td>$ 12,000</td>
</tr>
<tr>
<td>Section 6.0 Allowance – Furniture Selection</td>
<td>$ 7,000</td>
</tr>
<tr>
<td>Subtotal:</td>
<td>$ 321,670</td>
</tr>
<tr>
<td>Section 7.0 Additional Services (15% of subtotal)</td>
<td>$ 48,250</td>
</tr>
<tr>
<td>TOTAL:</td>
<td>$ 369,920</td>
</tr>
</tbody>
</table>

Professional Services
Rev. June 2, 2010

U:\John_Purch\Art Center Renovation Project (PF-07000)\Construction Admin - MCA\C121412298 MCA Contract - Palo Alto Art Center.doc
EXHIBIT “C-1”
HOURLY RATE SCHEDULE

<table>
<thead>
<tr>
<th>Role</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Principal</td>
<td>$220</td>
</tr>
<tr>
<td>Principal</td>
<td>$185</td>
</tr>
<tr>
<td>Associate</td>
<td>$150</td>
</tr>
<tr>
<td>Senior Architect</td>
<td>$130</td>
</tr>
<tr>
<td>Intermediate Architect</td>
<td>$110</td>
</tr>
</tbody>
</table>
EXHIBIT “D”
INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, AFFORDED BY COMPANIES WITH AN BEST’S KEY RATING OF A- VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY’S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

<table>
<thead>
<tr>
<th>REQUIRED</th>
<th>TYPE OF COVERAGE</th>
<th>REQUIREMENT</th>
<th>MINIMUM LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES</td>
<td>WORKER’S COMPENSATION</td>
<td>STATUTORY</td>
<td>EACH OCCURRENCE</td>
</tr>
<tr>
<td>YES</td>
<td>EMPLOYER’S LIABILITY</td>
<td>STATUTORY</td>
<td></td>
</tr>
<tr>
<td>YES</td>
<td>GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY</td>
<td>BODILY INJURY</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BODILY INJURY &amp; PROPERTY DAMAGE COMBINED</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED</td>
<td>BODILY INJURY</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- EACH PERSON</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- EACH OCCURRENCE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>PROFESSIONAL LIABILITY, INCLUDING ERRORS AND OMISSIONS MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENCE PERFORMANCE</td>
<td>BODILY INJURY AND PROPERTY DAMAGE, COMBINED</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>YES</td>
<td>THE CITY OF PALO ALTO AND PALO ALTO ARTS FOUNDATION ARE TO BE NAMED AS AN ADDITIONAL INSURED CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONTRACTORS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKER’S COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURERS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</td>
<td>ALL DAMAGES</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

I. INSURANCE COVERAGE MUST INCLUDE:
   A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
   B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR’S AGREEMENT TO INDEMNIFY CITY.
   C. DEDUCTIBLE AMOUNTS IN EXCESS OF $5,000 REQUIRE CITY’S PRIOR APPROVAL.

II. CONTRACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO “ADDITIONAL INSURED”
   A. PRIMARY COVERAGE
WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS
AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER
INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDs.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDs UNDER THE POLICY SHALL
NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS
ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDs, SHALL NOT INCREASE THE TOTAL LIABILITY OF
THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

PURCHASING AND CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303
### BID SUMMARY SHEET

<table>
<thead>
<tr>
<th>Bid Item</th>
<th>Description</th>
<th>WA Thomas</th>
<th>Big D</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Lump sum bid</td>
<td>$5,285,000</td>
<td>$4,780,000</td>
</tr>
<tr>
<td>2</td>
<td>Allowance for unseen M/E/P</td>
<td>60,000</td>
<td>60,000</td>
</tr>
<tr>
<td>3</td>
<td>Casework Allowance</td>
<td>20,000</td>
<td>20,000</td>
</tr>
<tr>
<td>4</td>
<td>Termite Repair Allowance</td>
<td>30,000</td>
<td>30,000</td>
</tr>
<tr>
<td>5</td>
<td>Hardscape/Paving repair Allowance</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>6</td>
<td>Site Lighting Allowance</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td>7</td>
<td>Potholing Allowance</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td>8</td>
<td>Exterior Signage Allowance</td>
<td>15,000</td>
<td>15,000</td>
</tr>
<tr>
<td>9</td>
<td>Floor Prep at Exposed concrete allowance</td>
<td>15,000</td>
<td>15,000</td>
</tr>
<tr>
<td>10</td>
<td>Replace roof insulation, felt, replace with new</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td></td>
<td><strong>BASE BID TOTAL</strong></td>
<td><strong>$5,545,000</strong></td>
<td><strong>$5,040,000</strong></td>
</tr>
</tbody>
</table>

### Bid Alternates B

<table>
<thead>
<tr>
<th>Bid Item</th>
<th>Description</th>
<th>WA Thomas</th>
<th>Big D</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Replace Sewer line</td>
<td>15,000</td>
<td>9,800</td>
</tr>
<tr>
<td>2</td>
<td>Replace Window Glazing at lower windows to safety glass</td>
<td>45,000</td>
<td>36,000</td>
</tr>
<tr>
<td>3</td>
<td>Abate and replace flooring at studio 134</td>
<td>33,000</td>
<td>38,000</td>
</tr>
<tr>
<td></td>
<td><strong>SUB TOTAL</strong></td>
<td><strong>$93,000</strong></td>
<td><strong>$83,800</strong></td>
</tr>
</tbody>
</table>

### Bid Alternates C

<table>
<thead>
<tr>
<th>Bid Item</th>
<th>Description</th>
<th>WA Thomas</th>
<th>Big D</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Conductor to Panel A</td>
<td>12</td>
<td>4,045</td>
</tr>
<tr>
<td>2</td>
<td>Conductor to Panel C</td>
<td>18</td>
<td>5,579</td>
</tr>
<tr>
<td>3</td>
<td>Conductor to Panel E</td>
<td>19</td>
<td>6,224</td>
</tr>
<tr>
<td>4</td>
<td>Conductor to Panel F</td>
<td>10</td>
<td>4,570</td>
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<tr>
<td>5</td>
<td>Conductor to Panel G</td>
<td>18</td>
<td>8,291</td>
</tr>
<tr>
<td>6</td>
<td>Conductor to Panel H</td>
<td>9</td>
<td>5,516</td>
</tr>
<tr>
<td>7</td>
<td>Conductor to Panel O</td>
<td>10</td>
<td>4,500</td>
</tr>
<tr>
<td>8</td>
<td>Conductor to Panel A</td>
<td>24</td>
<td>2,614</td>
</tr>
<tr>
<td></td>
<td><strong>SUB TOTAL</strong></td>
<td><strong>$120</strong></td>
<td><strong>$41,339</strong></td>
</tr>
</tbody>
</table>

**Base Bid Total**  
$5,545,000  
$5,040,000  

**Add Alternates B**  
$93,000  
$83,800  

**Add Alternate C**  
$120  
$41,339  

**GRAND TOTAL**  
$5,638,120  
$5,165,139