



# AGENDA ITEM NO.

CITY OF PALO ALTO  
MEMORANDUM

COUNCIL MEETING  
12/14/2015

Received Before Meeting

**11**

TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER

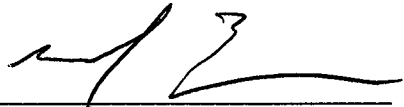
DEPARTMENT: Public Works

AGENDA DATE: December 14, 2015

ID#: 6367

**SUBJECT: Approval of Amendment Number 1 to C & S Engineers, Inc. Contract Number C151555208A to Include Required Federal Contract Provisions and to Increase the Contract by \$650,000 for a Total Not-to-Exceed Amount of \$900,000 for Professional Engineering and Design Services; Approval of Amendment Number 1 to Mead & Hunt, Inc. Contract Number C151555208B to Include Federal Contract Provisions; and Adoption a Budget Amendment Ordinance to Close the Airfield Electrical Evaluation/Study Project (AP-16001) and Reduce the Anticipated Federal Aviation Administration (FAA) Reimbursement in the Amount of \$90,000 and Restore Available Project Budget of \$123,415 to the Airport Enterprise Fund; and Establish the Airport Perimeter Fencing Project (AP-16003) in the Amount of \$179,838 and Increase the Anticipated FAA Reimbursement in the Amount of \$161,854; and Increase the Ending Fund Balance in the Airport.**

When this staff report was originally distributed, Contract Amendments 1 for C&S Engineers and Mead & Hunt, Inc. (Attachments G and H, respectively) were unavailable. Attached are the signed Contract Amendments 1 for each consultant.

  
\_\_\_\_\_  
J. Michael Sartor  
Director of Public Works

*for*  
  
\_\_\_\_\_  
James Keene  
City Manager

**AMENDMENT NO. ONE TO CONTRACT NO. C15155208A  
BETWEEN THE CITY OF PALO ALTO AND  
C & S ENGINEERS, INC.**

This Amendment No. One to Contract No. C15155208A (“Contract”) is entered into December 14, 2015, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and C & S ENGINEERS, INC., a New York corporation, located at 499 Col. Eileen Collins Boulevard, Syracuse, New York 13212 (“CONSULTANT”).

**RECITALS:**

WHEREAS, the Contract was entered into between the parties for the provision of on-call engineering services including planning, design engineering, environmental analyses, grant management and construction management; 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 1. Section 4. NOT TO EXCEED COMPENSATION is hereby amended to read as follows:

“The compensation to be paid to CONSULTANT for performance of the Services as amended above, including payment for professional services, shall not exceed Nine Hundred Thousand (\$900,000.00).”

SECTION 2. Section 19, and Sections 26-39. AIP EXHIBIT – Federal Contract language is hereby incorporated to per attached AIP Exhibit - Federal Contract language.

SECTION 3. 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.

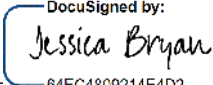
CITY OF PALO ALTO

C & S ENGINEERS, INC.

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

By:  \_\_\_\_\_  
Name: Jessica Bryan \_\_\_\_\_  
Title: Department Manager \_\_\_\_\_

Attachments:

EXHIBIT "A": AIP Federal Contract Language - Sections 19, 26-39

**SECTION 19. TERMINATION OF CONTRACT (2 CFR § 200 Appendix II (B)).**

19.1. CITY may, by written notice, suspend or terminate this Agreement, in whole or in part, at any time, either for CITY's convenience or because of failure to fulfill the Agreement obligations by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, services must be immediately discontinued (unless the notice dictates otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to CITY. ).

19.2. If the termination is for the convenience of the CITY, an equitable adjustment in the Agreement price will be made, but no amount will be allowed for anticipated profit on unperformed services.

19.3 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. 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 If the termination is due to failure to fulfill CONSULTANT's obligations, 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. CITY may take over the work and prosecute the same to completion by contract or otherwise. In such case the CONSULTANT is liable to the CITY for any additional cost occasioned to the CITY thereby.

19.5 If, after notice of termination for failure to fulfill Agreement obligations, it is determined that the CONSULTANT had not so failed, the termination will be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the Agreement price will be made as provided in paragraph 19.2.

19.6 The rights and remedies of the CITY provided in this section 19 are in addition to any other rights and remedies provided by law or under this Agreement.

19.7. 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.

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**SECTION 26. ACCESS TO RECORDS AND REPORTS (2 CFR §§ 200.326 & 200.333).**  
CONSULTANT must maintain an acceptable cost accounting system. CONSULTANT agrees to provide CITY, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers,

and records of CONSULTANT, which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. CONSULTANT agrees to maintain all books, records and reports required under this Agreement for a period of not less than three (3) years after final payment is made and all pending matters are closed.

**SECTION 27. BREACH OF CONTRACT TERMS (2 CFR § 200 Appendix II(A)).** Any violation or breach of terms of this Agreement on the part of CONSULTANT or its subconsultants or subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this Agreement. The duties and obligations imposed by the Agreement's documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

**SECTION 28. BUY AMERICA PREFERENCE (49 USC § 50101).** CONSULTANT agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the Federal Aviation Administration Nationwide Buy American Waivers Issued list.

**SECTION 29. CIVIL RIGHTS - GENERAL (49 USC § 47123).** CONSULTANT agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds CONSULTANT from the Request for Qualifications solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates CONSULTANT for the period during which Federal assistance is extended to the Palo Alto Airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods:

- (a) the period during which the property is used by CITY or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) the period during which CITY or any transferee retains ownership or possession of the property.

**SECTION 30. TITLE VI ASSURANCES.**

30.1 Compliance with Nondiscrimination Requirements. During the performance of this Agreement, CONSULTANT, for itself, its assignees, and successors in interest (hereinafter included in the term CONSULTANT) agrees, as follows:

- (a) **Compliance with Regulations:** CONSULTANT will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- (b) **Non-discrimination:** CONSULTANT, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. CONSULTANT will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- (c) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by CONSULTANT for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by CONSULTANT of CONSULTANT's obligations under this Agreement and the Acts and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- (d) **Information and Reports:** CONSULTANT will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by CITY or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish the information, CONSULTANT will so certify to CITY or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- (e) **Sanctions for Noncompliance:** In the event of CONSULTANT's noncompliance with the non-discrimination provisions of this Agreement, CITY will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - 1. Withholding payments to CONSULTANT under the Agreement until CONSULTANT complies; and/or
  - 2. Cancelling, terminating, or suspending the Agreement, in whole or in part.
- (f) **Incorporation of Provisions:** CONSULTANT will include the provisions of paragraphs 30.1(a) through 30.1(f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. CONSULTANT will take action with respect to any subcontract or

procurement as CITY or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if CONSULTANT becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, CONSULTANT may request CITY to enter into any litigation to protect the interests of CITY. In addition, CONSULTANT may request the United States to enter into the litigation to protect the interests of the United States.

30.2 Title VI List of Pertinent Nondiscrimination Authorities. During the performance of this Agreement, CONSULTANT, for itself, its assignees, and successors in interest (hereinafter included in the term CONSULTANT) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- (b) 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- (c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- (f) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (h) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- (i) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority

populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- (k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (“LEP”). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- (l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**SECTION 31. CLEAN AIR AND WATER POLLUTION CONTROL (49 CFR § 18.36(i)(12)).** CONSULTANT and subconsultants agree:

31.1. That any facility to be used in the performance of the Agreement or subcontract or to benefit from the Agreement is not listed on the Environmental Protection Agency (“EPA”) List of Violating Facilities;

31.2 To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

31.3. That, as a condition for the award of this Agreement, CONSULTANT or subcontractor will notify the awarding official of the receipt of any communication from the EPA, indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities; and

31.4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

**SECTION 32. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS (2 CFR § 200 Appendix II(E)).**

32.1. Overtime Requirements. No contractor or subcontractor contracting for any part of the Agreement’s work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

32.2 Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph 32.1 above, CONSULTANT and any subcontractor



responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 32.1 above.

32.3 Withholding for Unpaid Wages and Liquidated Damages. The Federal Aviation Administration or CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by CONSULTANT or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 32.2 above.

32.4 Subcontractors. CONSULTANT shall insert in any subcontracts the clauses set forth in paragraphs 32.1 through 32.4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. CONSULTANT shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 32.1 through 32.4 of this section.

**SECTION 33. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (2 CFR Part 180 (Subpart C); 2 CFR Part 1200; DOT Order 4200.5).**

33.1. Certificate Regarding Debarment and Suspension (Bidder or Offeror). By submitting a Statement of Qualifications ("SOQ") under CITY's Request for Qualifications solicitation, CONSULTANT certified that at the time it submitted its SOQ that neither it nor its principals were presently debarred or suspended by any Federal department or agency from participation in this transaction.

33.2 Certification Regarding Debarment and Suspension (Successful Bidder Regarding Lower Tier Participants). CONSULTANT, as the successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the Project is not presently debarred or otherwise disqualified from participation in this federally assisted project. CONSULTANT will accomplish this by:

- (a) Checking the System for Award Management at website: <http://www.sam.gov>.
- (b) Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
- (c) Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the Federal Aviation Administration may pursue any available remedy, including suspension and debarment.

**SECTION 34. DISADVANTAGED BUSINESS ENTERPRISE (49 CFR Part 26).**

34.1 Contract Assurance (§ 26.13). CONSULTANT or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

34.1 Prompt Payment (§ 26.29). CONSULTANT agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment CONSULTANT receives from {Name of recipient}. CONSULTANT agrees further to return retainage payments to each subcontractor within {specify the same number as above} days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.

**SECTION 35. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) (29 USC § 201, et seq.).** All contracts and subcontracts that result from the RFQ solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. CONSULTANT has full responsibility to monitor compliance to the referenced statute or regulation. CONSULTANT must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

**SECTION 36. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES (40 CFR Part 20, Appendix A).** CONSULTANT certified by signing and submitting its SOQ, to the best of its knowledge and belief, that:

36.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

36.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

These certifications are material representations of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**SECTION 37. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (20 CFR Part 1910).** All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. CONSULTANT has full responsibility to monitor compliance to the referenced statute or regulation. CONSULTANT must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

**SECTION 38. RIGHTS TO INVENTIONS (2 CFR § 200 Appendix II (F)).** All rights to inventions and materials generated under this Agreement are subject to requirements and regulations issued by the Federal Aviation Administration and CITY of the Federal grant under which this Agreement is executed.

**SECTION 39. TRADE RESTRICTION (49 CFR Part 30)).** CONSULTANT or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

39.1 Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative ("USTR");

39.2 Has not knowingly entered into any contract or subcontract for this Project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

39.3 Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If CONSULTANT knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through CITY cancellation of the Agreement at no cost to the Federal Government.

Further, CONSULTANT agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. CONSULTANT may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

CONSULTANT shall provide immediate written notice to CITY if CONSULTANT learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to CONSULTANT if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that CONSULTANT or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through CITY cancellation of the Agreement or subcontract for default at no cost to the Federal Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

**AMENDMENT NO. ONE TO CONTRACT NO. C15155208B  
BETWEEN THE CITY OF PALO ALTO AND  
MEAD & HUNT, INC.**

This Amendment No. One to Contract No. C15155208B (“Contract”) is entered into December 14, 2015, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and MEAD & HUNT, INC., a Wisconsin corporation, located at 133 Aviation Boulevard, Suite 100, Santa Rosa, California 95403 (“CONSULTANT”).

**RECITALS:**

WHEREAS, the Contract was entered into between the parties for the provision of on-call engineering services including planning, design engineering, environmental analyses, grant management and construction management; 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 1.** Section 19, and Sections 26-39. AIP EXHIBIT – Federal Contract language is hereby incorporated to per attached AIP Exhibit - Federal Contract language.

**SECTION 2.** 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.

CITY OF PALO ALTO

MEAD & HUNT, INC.

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
DocuSigned by:  
*Jon Faucher*  
E1EBF44084C44B5...  
Name: Jon Faucher  
Title: Vice President

Attachments:

EXHIBIT "A": AIP Federal Contract Language - Sections 19, 26-39

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and records of CONSULTANT, which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. CONSULTANT agrees to maintain all books, records and reports required under this Agreement for a period of not less than three (3) years after final payment is made and all pending matters are closed.

**SECTION 27. BREACH OF CONTRACT TERMS (2 CFR § 200 Appendix II(A)).** Any violation or breach of terms of this Agreement on the part of CONSULTANT or its subconsultants or subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this Agreement. The duties and obligations imposed by the Agreement's documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

**SECTION 28. BUY AMERICA PREFERENCE (49 USC § 50101).** CONSULTANT agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the Federal Aviation Administration Nationwide Buy American Waivers Issued list.

**SECTION 29. CIVIL RIGHTS - GENERAL (49 USC § 47123).** CONSULTANT agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds CONSULTANT from the Request for Qualifications solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates CONSULTANT for the period during which Federal assistance is extended to the Palo Alto Airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods:

- (a) the period during which the property is used by CITY or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) the period during which CITY or any transferee retains ownership or possession of the property.

**SECTION 30. TITLE VI ASSURANCES.**



30.1 Compliance with Nondiscrimination Requirements. During the performance of this Agreement, CONSULTANT, for itself, its assignees, and successors in interest (hereinafter included in the term CONSULTANT) agrees, as follows:

- (a) **Compliance with Regulations:** CONSULTANT will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- (b) **Non-discrimination:** CONSULTANT, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. CONSULTANT will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- (c) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by CONSULTANT for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by CONSULTANT of CONSULTANT's obligations under this Agreement and the Acts and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- (d) **Information and Reports:** CONSULTANT will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by CITY or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish the information, CONSULTANT will so certify to CITY or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- (e) **Sanctions for Noncompliance:** In the event of CONSULTANT's noncompliance with the non-discrimination provisions of this Agreement, CITY will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - 1. Withholding payments to CONSULTANT under the Agreement until CONSULTANT complies; and/or
  - 2. Cancelling, terminating, or suspending the Agreement, in whole or in part.
- (f) **Incorporation of Provisions:** CONSULTANT will include the provisions of paragraphs 30.1(a) through 30.1(f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. CONSULTANT will take action with respect to any subcontract or

procurement as CITY or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if CONSULTANT becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, CONSULTANT may request CITY to enter into any litigation to protect the interests of CITY. In addition, CONSULTANT may request the United States to enter into the litigation to protect the interests of the United States.

30.2 Title VI List of Pertinent Nondiscrimination Authorities. During the performance of this Agreement, CONSULTANT, for itself, its assignees, and successors in interest (hereinafter included in the term CONSULTANT) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- (b) 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- (c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- (f) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (h) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- (i) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority

populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- (k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (“LEP”). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- (l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**SECTION 31. CLEAN AIR AND WATER POLLUTION CONTROL (49 CFR § 18.36(i)(12)).** CONSULTANT and subconsultants agree:

31.1. That any facility to be used in the performance of the Agreement or subcontract or to benefit from the Agreement is not listed on the Environmental Protection Agency (“EPA”) List of Violating Facilities;

31.2 To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

31.3. That, as a condition for the award of this Agreement, CONSULTANT or subcontractor will notify the awarding official of the receipt of any communication from the EPA, indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities; and

31.4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

**SECTION 32. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS (2 CFR § 200 Appendix II(E)).**

32.1. Overtime Requirements. No contractor or subcontractor contracting for any part of the Agreement’s work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

32.2 Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph 32.1 above, CONSULTANT and any subcontractor

responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 32.1 above.

32.3 Withholding for Unpaid Wages and Liquidated Damages. The Federal Aviation Administration or CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by CONSULTANT or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 32.2 above.

32.4 Subcontractors. CONSULTANT shall insert in any subcontracts the clauses set forth in paragraphs 32.1 through 32.4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. CONSULTANT shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 32.1 through 32.4 of this section.

**SECTION 33. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (2 CFR Part 180 (Subpart C); 2 CFR Part 1200; DOT Order 4200.5).**

33.1. Certificate Regarding Debarment and Suspension (Bidder or Offeror). By submitting a Statement of Qualifications ("SOQ") under CITY's Request for Qualifications solicitation, CONSULTANT certified that at the time it submitted its SOQ that neither it nor its principals were presently debarred or suspended by any Federal department or agency from participation in this transaction.

33.2 Certification Regarding Debarment and Suspension (Successful Bidder Regarding Lower Tier Participants). CONSULTANT, as the successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the Project is not presently debarred or otherwise disqualified from participation in this federally assisted project. CONSULTANT will accomplish this by:

- (a) Checking the System for Award Management at website: <http://www.sam.gov>.
- (b) Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
- (c) Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the Federal Aviation Administration may pursue any available remedy, including suspension and debarment.

**SECTION 34. DISADVANTAGED BUSINESS ENTERPRISE (49 CFR Part 26).**

34.1 Contract Assurance (§ 26.13). CONSULTANT or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

34.1 Prompt Payment (§ 26.29). CONSULTANT agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment CONSULTANT receives from {Name of recipient}. CONSULTANT agrees further to return retainage payments to each subcontractor within {specify the same number as above} days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.

**SECTION 35. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) (29 USC § 201, et seq.).** All contracts and subcontracts that result from the RFQ solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. CONSULTANT has full responsibility to monitor compliance to the referenced statute or regulation. CONSULTANT must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

**SECTION 36. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES (40 CFR Part 20, Appendix A).** CONSULTANT certified by signing and submitting its SOQ, to the best of its knowledge and belief, that:

36.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

36.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

These certifications are material representations of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**SECTION 37. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (20 CFR Part 1910).** All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. CONSULTANT has full responsibility to monitor compliance to the referenced statute or regulation. CONSULTANT must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

**SECTION 38. RIGHTS TO INVENTIONS (2 CFR § 200 Appendix II (F)).** All rights to inventions and materials generated under this Agreement are subject to requirements and regulations issued by the Federal Aviation Administration and CITY of the Federal grant under which this Agreement is executed.

**SECTION 39. TRADE RESTRICTION (49 CFR Part 30)).** CONSULTANT or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

39.1 Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative ("USTR");

39.2 Has not knowingly entered into any contract or subcontract for this Project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

39.3 Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If CONSULTANT knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through CITY cancellation of the Agreement at no cost to the Federal Government.

Further, CONSULTANT agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. CONSULTANT may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

CONSULTANT shall provide immediate written notice to CITY if CONSULTANT learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to CONSULTANT if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that CONSULTANT or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through CITY cancellation of the Agreement or subcontract for default at no cost to the Federal Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.