



# City of Palo Alto

## City Council Staff Report

(ID # 8698)

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**Report Type: Consent Calendar**

**Meeting Date: 2/5/2018**

**Summary Title: Lucie Stern Children's Theatre Mechanical and Electrical Upgrades**

**Title: Approval of a Construction Contract With Vila Construction, Inc. in the Amount of \$2,298,376 and Approval of Amendment Number 3 to Contract Number C13148737 With Advance Design Consultants Inc. in the Amount of \$206,623 for a Not-to-Exceed Amount of \$876,890 for Construction Phase Services for the Lucie Stern Buildings Mechanical and Electrical Upgrades, Capital Improvement Program Project PE-14015**

**From: City Manager**

**Lead Department: Public Works**

### **Recommendation**

Staff recommends that Council:

1. Approve and authorize the City Manager or his designee to execute the attached contract with Vila Construction, Inc. in the amount of \$2,298,376 (Attachment A) for the Lucie Stern Children's Theatre Mechanical and Electrical Upgrades Capital Improvement Program project PE-14015;
2. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Vila Construction, Inc. for related, additional but unforeseen work which may develop during the project, the total value of which shall not exceed \$229,838; and
3. Approve and authorize the City Manager or his designee to execute the attached Amendment Number 3 to Contract C13148737 with Advanced Design Consultants, Inc. (Attachment B) in the amount of

\$206,623 and a total contract amount not-to-exceed \$876,890 for construction phase services for the Lucie Stern Mechanical and Electrical Upgrades Capital Improvement Program project PE-14015.

## **Background**

The Lucie Stern Center was constructed in 1936 and consists of four buildings located at 1305 Middlefield Road. In the past 80 years the Lucie Stern Community Center, Children's Theatre, Community Theatre, and Children's Library have been through successive remodeling.

Following an expansion to the Children's Library, the width of the fire access lane behind the Children's Theatre was reduced, limiting emergency vehicle access. To mitigate, the City of Palo Alto Fire Department requested an upgrade of the existing fire/life safety (wet sprinkler and fire alarm) system in the Children's Theatre. Additionally, other mechanical and electrical systems in the Children's Theatre are nearing the end of their useful lives. Similar deficiencies were found in the Community Theatre and Community Center. To address these issues, the Lucie Stern Mechanical and Electrical Upgrades Capital Improvement Program project PE-14015 was created and a design consultant hired to study the buildings' mechanical, electrical, and fire/life safety components and create plans to upgrade the buildings.

On June 27, 2016 Council approved a construction contract for the modified project scope of work as presented in [Staff Report 6983](#), *Lucie Stern Buildings Mechanical and Electrical Upgrades*. The electrical and mechanical upgrade components to the Children's Theatre were removed from that scope in an attempt to stay within the project's allocated budget. Additional funding for CIP PE-14015 was approved in the FY 2018 Capital Budget to cover the deferred Children's Theatre work as presented in this report.

## **Discussion**

### Scope Overview

Project scope specific to the Children's Theatre includes the electrical systems to be upgraded and/or replaced, including additional receptacles

where needed; and replacement of the mechanical systems. Also, the fire department connection to the building will be relocated to a more accessible location. Fire sprinkler installation under the exterior eaves of the entire Lucie Stern complex will also be completed during this project.

The buildings will remain occupied during the course of the project, however there may be some temporary relocation of department staff to accommodate construction. Work will be scheduled to keep systems operational during working hours and minimize the impacts of construction on staff and the public. In the Timeline section, the designated shutdown periods to accommodate overhead structural/mechanical work and the replacement of the electrical switchgear are listed.

Bid Process

On September 28, 2017, a notice inviting formal bids (IFB) for the Lucie Stern Buildings Mechanical and Electrical Upgrades project was posted to PlanetBids through the City’s web portal and sent to 375 vendors. The bidding period was 41 days. Two bids were received from qualified contractors on the November 16, 2017 due date.

Summary of Bid Process

Bid Name/Number	Lucie Stern Buildings Mechanical and Electrical Upgrades Project – IFB 169368
Proposed Length of Project	330 Days
Number of vendors notified through PlanetBids	375
Total Days to Respond to Bid	41
Pre-Bid Meeting	October 11, 2017
Number of Bids Received:	2
Base Bid Price Range	\$2,298,376 - \$2,704,738

The low bid received (\$2,298,376) is within the budget for this project and is 8% below the engineer's estimate of \$2,500,000. Staff believes that the quote is reasonable for the work included in this project.

Staff reviewed the low bid submitted and recommends that Vila Construction be awarded a construction contract for the total base bid amount of \$2,298,376.

A contingency amount of \$229,838 equal to 10 percent of the total contract is requested for unforeseen conditions, which may be discovered during construction.

Staff confirmed with the Contractor's State License Board the contractor has an active license on file. Staff checked references supplied by the contractor for previous work performed and found their projects were similar to this project and were completed to the satisfaction of the owners.

Advanced Design Consultants, Inc. (ADC) Contract – Construction Phase Services

The contract amendment with the design consultant, ADC (Attachment B) will provide for the consultant's construction phase services consisting of general construction administration, construction management, testing, photographic records, and systems commissioning during the project work. As the designer of record, ADC will respond to design questions and issues raised by the contractor, attend meetings at the job site, make construction observations, review material submittals, review project schedules, review change order requests, answer requests for information (RFIs), review payment applications, and assist in the preparation of the record documents at the completion of construction.

The original request for proposal (RFP) and contract scope with ADC indicated that an amendment for construction phase services would be negotiated if and when the project proceeded to actual construction. Staff recommends that Council approve the attached contract amendment with ADC to provide the resources necessary to successfully manage the construction.

## **Timeline**

The construction of the upgrades to the Lucie Stern Children's Theatre project are to be completed in 330 days.

The timing for the key project phases when full or partial Children's Theatre closure will occur is as follows:

March 31, 2018 – April 8, 2018; and  
August 9, 2018 – October 9, 2018

## **Resource Impact**

Funding for this project has been allocated in Lucie Stern Buildings Mechanical and Electrical Upgrades Capital Improvement Program project PE-14015.

## **Policy Implications**

This recommendation does not represent any change to existing City policies.

## **Environmental Review**

This project is categorically exempt from California Environmental Quality Act (CEQA) under Sections 15301 and 15302 of the CEQA guidelines as an alteration to an existing facility and no further environmental review is necessary.

### **Attachments:**

- Attachment A: Vila Construction Contract C18169368 for Lucie Stern Mechanical
- Attachment B: ADC C13148737 Amendment No. 3



CITY OF  
**PALO  
ALTO**

**CONSTRUCTION CONTRACT**

**Contract No. C18169368**

**City of Palo Alto**

**“Lucie Stern Children’s Theatre Mechanical and Electrical  
Upgrades” Project**



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## CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT entered into on January 29, 2018 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and VILA CONSTRUCTION COMPANY ("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 corporation duly organized and in good standing in the State of California, Contractor's License Number 300454 and Department of Industrial Relations Registration Number 1000001795. 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 September 28, 2017, City issued an Invitation for Bids (IFB) to contractors for the "Lucie Stern Children's Theatre Mechanical and Electrical Upgrades" ("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 Contract 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 "Lucie Stern Children's Theatre Mechanical and Electrical Upgrades" Project, located at 1305 Middlefield Road, Palo Alto, CA 94301 ("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 Orders
- 3) Contract
- 4) Bidding Addenda
- 5) Special Provisions
- 6) General Conditions
- 7) Project Plans and Drawings
- 8) Technical Specifications
- 9) Instructions to Bidders
- 10) Invitation for Bids
- 11) Contractor's Bid/Non-Collusion Declaration
- 12) Reports listed in the Contract Documents
- 13) Public Works Department’s Standard Drawings and Specifications (most current version at time of Bid)
- 14) Utilities Department’s Water, Gas, Wastewater, Electric Utilities Standards (most current version at time of Bid)
- 15) City of Palo Alto Traffic Control Requirements
- 16) City of Palo Alto Truck Route Map and Regulations
- 17) Notice Inviting Pre-Qualification Statements, Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable)
- 18) Performance and Payment Bonds

#### **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      CONTRACTOR'S DUTY.**

**4.1      Contractor's Duties**

Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents, all of which are fully incorporated herein. Contractor shall provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including, but not limited to, provision of all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor also agrees to use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

**SECTION 5      PROJECT TEAM.**

**5.1      Contractor's Co-operation.**

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 Contract 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 within three hundred thirty (330) calendar days from issuance date of Notice to Proceed.

By executing this Construction Contract, Contractor expressly waives any claim for delayed early completion.

**6.4      Liquidated Damages.**

Pursuant to Government Code Section 53069.85, if Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time, including any approved extensions thereto, City may assess liquidated damages on a daily basis for each day of Unexcused Delay in achieving Substantial Completion, based on the amount of five hundred dollars (\$500) per day, or as otherwise specified in the Special Provisions. Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents, regardless of impact on the time for achieving Substantial Completion. The assessment of liquidated damages 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. The City is entitled to setoff the amount of liquidated damages assessed against any payments otherwise due to Contractor, including, but not limited to, setoff against release of retention. If the total amount of liquidated damages assessed exceeds the amount of unreleased retention, City is entitled to recover the balance from

Contractor or its sureties. Occupancy or use of the Project in whole or in part prior to Substantial Completion, shall not operate as a waiver of City's right to assess liquidated damages.

**6.4.1 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 memorialized in a Change Order approved 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 Two Million Two Hundred Ninety Eight Three Hundred Seventy Six Dollars (\$2,298,376.00).

[This amount includes the Base Bid and Additive Alternate.]

**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, except as expressly provided herein. The Contract Sum may only be adjusted for Change Orders approved in accordance with the requirements of the Contract Documents.

**SECTION 8 STANDARD OF CARE.**

**8.1 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 individually referred to as an "Indemnitee" and collectively referred to as "Indemnitees"), through legal counsel acceptable to City, from and against any and liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. Contractor shall pay City for any costs City incurs to enforce this provision. Except as provided in Section 9.2 below, 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.

Pursuant to Public Contract Code Section 9201, City shall timely notify Contractor upon receipt of any third-party claim relating to the Contract.

### **9.2      Survival.**

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

## **SECTION 10      NON-DISCRIMINATION.**

### **10.1      Municipal Code Requirement.**

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.**

### **11.1      Evidence of coverage.**

Within ten (10) business days following issuance of the Notice of Award, Contractor shall provide City with evidence that it has obtained insurance and shall submit Performance and Payment Bonds satisfying all requirements in Article 11 of the General Conditions.

**SECTION 12      PROHIBITION AGAINST TRANSFERS.**

**12.1      Assignment.**

City is entering into this Construction Contract in reliance 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, and shall be deemed a substantial breach of contract and grounds for default in addition to any other legal or equitable remedy available to the City.

**12.2      Assignment by Law.**

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 to Recipients.**

All notices, demands or requests (including, without limitation, Change Order Requests and 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: Phil Ciralsky



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 sent by registered mail or certified mail with return receipt requested.

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

Vila Construction  
Henry Vila  
590 South Street 33<sup>rd</sup> Avenue  
Richmond, CA 94804

### **13.3 Change of Address.**

In advance of any change of address, Contractor shall notify City 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 DEFAULT.**

### **14.1 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, with a copy to Contractor's performance bond surety.

### **14.2 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 15 CITY'S RIGHTS AND REMEDIES.**

### **15.1 Remedies Upon Default.**

If Contractor fails to cure any default of this Construction Contract within the time period set forth above in Section 14, then City may pursue any remedies available under law or equity, including, without limitation, the following:

**15.1.1 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.

**15.1.2 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.

**15.1.3 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.

**15.1.4 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 14. 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.

**15.1.5 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.

**15.1.6 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.

## **15.2 Delays by Sureties.**

Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety shall be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety shall be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City shall have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

### **15.3 Damages to City.**

**15.3.1 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.

**15.3.2 Compensation for Losses.** In the event that City's Losses arise from Contractor's default under the Contract Documents, City shall be entitled to deduct the cost of such Losses from monies otherwise payable to Contractor. If the Losses incurred by City exceed the amount payable, Contractor shall be liable to City for the difference and shall promptly remit same to City.

### **15.4 Suspension by City**

**15.4.1 Suspension 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.

**15.4.2 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion thereof, suspended until the cause for the suspension has been eliminated to City's satisfaction. Contractor shall not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents. City's right to suspend the Work shall not give rise to a duty to suspend the Work, and City's failure to suspend the Work shall not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

### **15.5 Termination Without Cause.**

City may, at its sole discretion and without cause, terminate this Construction Contract in part or in whole upon written notice to Contractor. Upon receipt of such notice, Contractor shall, at City's expense, comply with the notice and take all reasonable steps to minimize costs to close out and demobilize. The compensation allowed under this Paragraph 15.5 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. Termination pursuant to this provision does not relieve Contractor or its sureties from any of their obligations for Losses arising from or related to the Work performed by Contractor.

**15.5.1 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 15.5.1, 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:
- (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.
- .4 Profit Allowance.** An allowance for profit calculated as four percent (4%) of the sum of the above items, provided Contractor can prove a likelihood that it would have made a profit if the Construction Contract had not been terminated.

**15.5.2 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.

## **15.6 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.

Upon termination, whether for cause or for convenience, the provisions of the Contract Documents remain in effect as to any Claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

**SECTION 16      CONTRACTOR'S RIGHTS AND REMEDIES.**

**16.1      Contractor's Remedies.**

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

**16.1.1      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.

**16.1.2      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.

**16.2      Damages to Contractor.**

In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Paragraph 15.5.1 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 17      ACCOUNTING RECORDS.**

**17.1      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.

## **17.2 Compliance with City Requests.**

Contractor's compliance with any request by City pursuant to this Section 17 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 17.1 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 18 INDEPENDENT PARTIES.**

### **18.1 Status of parties.**

Each party is acting in its independent capacity and not as agents, employees, partners, or joint ventures' 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 19 NUISANCE.**

### **19.1 Nuisance Prohibited.**

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 20 PERMITS AND LICENSES.**

### **20.1 Payment of Fees.**

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 21 WAIVER.**

### **21.1 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 22      GOVERNING LAW AND VENUE; COMPLIANCE WITH LAWS.**

**22.1      Governing Law.**

This Construction Contract shall be construed in accordance with and governed by the laws of the State of California, and venue shall be in a court of competent jurisdiction in the County of Santa Clara, and no other place.

**22.2      Compliance with Laws.**

Contractor shall comply with all applicable federal and California laws and city laws, including, without limitation, ordinances and resolutions, in the performance of work under this Construction Contract.

**22.2.1      Palo Alto Minimum Wage Ordinance.** Contractor shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as it may be amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, Contractor shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, Contractor shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.

**SECTION 23      COMPLETE AGREEMENT.**

**23.1      Integration.**

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 24      SURVIVAL OF CONTRACT.**

**24.1      Survival of Provisions.**

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 25      PREVAILING WAGES.**

This Project is not subject to prevailing wages. Contractor is not required to pay prevailing wages in the performance and implementation of the Project in accordance with SB 7, if the public works contract does not include a project of \$25,000 or less, when the project is for construction work, or the contract does not include a project of \$15,000 or less, when the project is for alteration, demolition, repair, or maintenance (collectively, 'improvement') work.

Or

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 (“DIR”). Copies of these rates may be obtained at the Purchasing Division’s 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 all sections, including, but not limited to, Sections 1775, 1776, 1777.5, 1782, 1810, and 1813, of the Labor Code pertaining to prevailing wages.

**SECTION 26      NON-APPROPRIATION.**

**26.1      Appropriations.**

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 27      AUTHORITY.**

**27.1      Representation of Parties.**

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 28      COUNTERPARTS**

**28.1      Multiple Counterparts.**

This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.

**SECTION 29      SEVERABILITY.**

**29.1      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.

**SECTION 30      STATUTORY AND REGULATORY REFERENCES.**

**30.1      Amendments to Laws.**

With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that the Contract was awarded by City, unless otherwise required by law.

**SECTION 31      WORKERS’ COMPENSATION CERTIFICATION.**

**31.1      Workers Compensation.**

Pursuant to Labor Code Section 1861, by signing this Contract, Contractor certifies as follows:



"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

**SECTION 32      DIR REGISTRATION AND OTHER SB 854 REQUIREMENTS.**

**32.1      General Notice to Contractor.**

City requires Contractor and its listed subcontractors to comply with the requirements of SB 854.

**32.2      Labor Code section 1771.1(a)**

City provides notice to Contractor of the requirements of California Labor Code section 1771.1(a), which reads:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

**32.3      DIR Registration Required.**

City will not accept a bid proposal from or enter into this Construction Contract with Contractor without proof that Contractor and its listed subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work, subject to limited exceptions.

**32.4      Posting of Job Site Notices.**

City gives notice to Contractor and its listed subcontractors that Contractor is required to post all job site notices prescribed by law or regulation and Contractor is subject to SB 854-compliance monitoring and enforcement by DIR.

**32.5      Payroll Records.**

City requires Contractor and its listed subcontractors to comply with the requirements of Labor Code section 1776, including:

- (i)      Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, Contractor and its listed subcontractors, in connection with the Project.
  
- (ii)     The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of Contractor and its listed subcontractors, respectively.

(iii) At the request of City, acting by its project manager, Contractor and its listed subcontractors shall make the certified payroll records available for inspection or furnished upon request to the project manager within ten (10) days of receipt of City's request.

City requests Contractor and its listed subcontractors to submit the certified payroll records to the project manager at the end of each week during the Project.

(iv) If the certified payroll records are not produced to the project manager within the 10-day period, then Contractor and its listed subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and City shall withhold the sum total of penalties from the progress payment(s) then due and payable to Contractor. This provision supplements the provisions of Section 15 hereof.

(v) Inform the project manager of the location of contractor's and its listed subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to the project manager within five (5) business days of any change of location of those payroll records.

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

**CITY OF PALO ALTO**

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney or designee

APPROVED:

\_\_\_\_\_  
Public Works Director

**VILA CONSTRUCTION**

Officer 1

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Officer 2

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**AMENDMENT NO. THREE TO CONTRACT NO. C13148737  
BETWEEN THE CITY OF PALO ALTO AND  
ADVANCED DESIGN CONSULTANTS, INC.**

This Amendment No. THREE (this “Amendment”) to contract no. C13148737 is entered into on this 29<sup>th</sup> day of January, 2018, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and ADVANCED DESIGN CONSULTANTS, INC, a California corporation, located at 998 Park Avenue, San Jose, CA 95126 (“CONSULTANT”).

**RECITALS**

A. The Contract (as defined below) was entered into between the parties for the provision of design services for the Lucie Stern Theatre Mechanical/Electrical Upgrades project.

B. The parties wish to amend the Contract to increase the scope of services to include Full Construction Administration and Construction Management Services for the Lucie Stern Children’s Theatre, increase the total not-to-exceed amount of compensation by \$187,839 for professional services, including any reimbursable expenses, and by \$18,784 for Additional Services, and to extend the Contract term through December 31, 2019, as detailed herein.

C. For clarity, the parties hereby acknowledge and agree that the Exhibit A, entitled “Scope of Services”, Exhibit B, entitled “Schedule of Performance”, and Exhibit C, entitled “Compensation”, of Amendment No. 1, replaced in the entirety, respectively, the Exhibit A, entitled “Scope of Services”, Exhibit B, entitled “Schedule of Performance”, and Exhibit C, entitled “Compensation”, of the original contract (contract no. C13148737).

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

**SECTION 1. Definitions.** The following definitions shall apply to this Amendment:

a. **Contract.** The term “Contract” shall mean contract no. C13148737 between CONSULTANT and CITY, as amended by:

Amendment No. 1, dated December 2, 2013, and

Amendment No. 2, dated June 26, 2016.

b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Contract.

SECTION 2. Section 1, SCOPE OF SERVICES, of the Contract is hereby amended to read as follows:

“CONSULTANT shall perform the Services described in the attached Exhibit “A”, entitled “SCOPE OF SERVICES”, Exhibit “A-1”, entitled “SCOPE OF SERVICES”, and Exhibit “A-2”, entitled “SCOPE OF SERVICES”, 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 3. Section 2, TERM, of the Contract is hereby amended to read as follows:

“The term of this Agreement shall be from the date of its full execution through December 31, 2019 **unless** terminated earlier pursuant to Section 19 of this Agreement.”

Section 4. Section 3, SCHEDULE OF PERFORMANCE, of the Contract is hereby amended to read as follows:

“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”, entitled “SCHEDULE OF PERFORMANCE”, Exhibit “B-1”, entitled “SCHEDULE OF PERFORMANCE”, and Exhibit “B-2”, entitled “SCHEDULE OF PERFORMANCE”, each of which is, by this reference, hereby attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement 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 5. Section 4, NOT TO EXCEED COMPENSATION, of the Contract is hereby amended to read as follows:

“The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit “A”, entitled “SCOPE OF SERVICES”, Exhibit “A-1”, entitled “SCOPE OF SERVICES”, and Exhibit “A-2”, entitled “SCOPE OF SERVICES”, including both payment for professional services and reimbursable expenses, shall not exceed seven hundred ninety-seven thousand one hundred seventy-two dollars (\$797,172), as detailed in Exhibit “C”, entitled “COMPENSATION”, Exhibit “C-2”, entitled “COMPENSATION”, and Exhibit “C-4”, entitled “COMPENSATION”, as applicable. CONSULTANT agrees to complete all such services, including reimbursable expenses, within this amount. In the event Additional Services are authorized, the total compensation for professional services, reimbursable expenses, and such Additional Services shall not exceed eight hundred seventy-six thousand eight hundred ninety dollars (\$876,890). The applicable rates and schedule of payment for such Additional Services are set out in Exhibit “C-1”, entitled “HOURLY RATE SCHEDULE”, or (as applicable) Exhibit “C-3”, entitled “HOURLY RATE SCHEDULE”.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C," Exhibit "C-2," or (as applicable) Exhibit "C-4". 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," Exhibit "A-1," or (as applicable) Exhibit "A-2".

All exhibits referenced in this Section 4, NOT TO EXCEED COMPENSATION, are hereby attached and incorporated into this Agreement by reference as though fully set forth herein."

SECTION 6. The first two paragraphs of Exhibit "B-1," Schedule of Performance, of the Contract shall be amended to read as follows:

"CONSULTANT shall perform the Services so as to complete each task within the number of days/weeks specified below. The time to complete each task 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. CONSULTANT shall coordinate and provide a detailed schedule of work consistent with the contractor's construction schedule within 2 weeks of receipt of the notice to proceed (NTP)."

SECTION 7. The following exhibit(s) to the Contract is/are hereby added to read as set forth in the attachment(s) to this Amendment, and which are hereby attached and incorporated in full by this reference:

- a. Exhibit "A-2" entitled "SCOPE OF SERVICES".
- b. Exhibit "B-2" entitled "SCHEDULE OF PERFORMANCE".
- c. Exhibit "C-4" entitled "COMPENSATION".

SECTION 8. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Contract, including any exhibits thereto, shall remain unchanged and in full force and effect.

SECTION 9. Incorporation of Recitals. The recitals set forth above are terms of this Amendment and are hereby fully incorporated herein by this reference.

**SIGNATURES OF THE PARTIES**

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Amendment on the date first above written.

**CITY OF PALO ALTO**

**ADVANCED DESIGN CONSULTANTS,  
INC.  
Officer 1**

\_\_\_\_\_  
City Manager (Contract over \$85k)

DocuSigned by:  
By: Lorenzo Rios  
B11D46B64413463...  
Name: Lorenzo Rios  
Title: CFO

APPROVED AS TO FORM:

**Officer 2 (Required for Corp. or LLC)**

\_\_\_\_\_  
City Attorney or designee  
(Contract over \$25k)

DocuSigned by:  
By: Karenal' B' Neal  
459E9890A8505AB4E6...  
Name: Karenal' B' Neal  
Title: Vice President

**Attachments:**

- Exhibit "A-2" entitled "SCOPE OF SERVICES".
- Exhibit "B-2" entitled "SCHEDULE OF PERFORMANCE".
- Exhibit "C-4" entitled "COMPENSATION".

**EXHIBIT “A-2”  
SCOPE OF SERVICES  
AMENDMENT NO. 3**

**CONSTRUCTION PHASE SERVICES**

Construction Phase Services for the Lucie Stern Children's Theatre Mechanical and Electrical Upgrades project are required at this time and the parties are entering into a contract amendment for these services.

The Consultant’s services shall include full construction administration and construction management services as required to assist City staff in the management of the construction of the project, as well as with any claims or other contract disputes that may arise. All work performed by Consultant shall be in accordance with the professional standard and quality that prevail among professional construction managers in the Peninsula region.

If at any time, the City is not satisfied with the performance of Consultant’s staff, the City reserves the right to request the services of a different individual. If for any reason Consultant proposes a change of staffing during the course of the project, the City reserves the right to approve any new staff. Staffing changes must be approved a minimum of 21 calendar days in advance of any staffing changes, in writing, by the City’s Project Manager (PM).

Office space, computers, cell phones, furnishings and other equipment needed for Consultant’s staff shall be provided by Consultant.

**Task 1: Construction Phase Services**

Consultant shall in accordance with the professional standard and quality that prevail among professional construction managers in the Peninsula region:

Consultant shall be the point of contact for the City’s construction contractor, Vila Construction, Inc. (“Contractor”) and shall enforce compliance with all of Contractor’s contractual requirements, as follows:

Daily Construction Management: Consultant shall oversee the day-to-day construction work performed by the Contractor. Consultant shall track the construction process, logistics, Request for Information (RFI), Architect’s Supplemental Information (ASI), Change Order (CO) and other information or requests. Consultant shall oversee the construction activities and ensure that all aspects of the building permit construction requirements are followed and documented and shall work closely with the project's Commissioning Agent, who is a direct consultant to the City.

Consultant shall work with the Contractor and any involved parties to implement logistical and communications measures to minimize any impacts to the nearby residential neighborhood, park, fire station, and the various schools in the vicinity. Consultant shall implement expeditious methods for resolving conflicts. Consultant shall handle the coordination between the City staff, Commissioning Agent, Contractor, and design staff.

If night time, holiday or weekend work is required to minimize building occupant impacts or due to delay in the schedule, Consultant services shall still be required in full effect.

Establishment of deadlines: Consultant shall coordinate with City staff, Contractor, and design staff to establish deadlines for submittal of and response to RFI's, deferred submittals, construction coordination drawings, construction schedules, inspection requests, change order requests, and claims. Consultant shall track all such requests and submittals to ensure compliance with deadlines. Consultant shall track all requests and submittals in a format acceptable to City staff, and shall make the tracking document available to City staff through electronic file sharing. Consultant shall increase its project staffing in a timely manner if needed to process requests and submittals in accordance with the established deadlines and to avoid delays.

Outreach: Consultant shall provide bi-monthly construction updates, including project construction cost-tracking, and shall attend quarterly meetings with the building user stakeholders. At these meetings, Consultant shall discuss project progress, distribute recent jobsite photos and answer questions that might arise.

Consultant shall respond within 24 hours to resident questions and complaints. Consultant shall provide updates suitable for uploading onto the City's website or other information site.

Printing of any needed flyers, presentation boards, advertisement and other related outreach material costs shall be considered a Reimbursable expense, the cost for which shall be approved in writing in advance by the PM.

Meetings: Throughout the construction process, Consultant shall be prepared to address comments and concerns of the Contractor, PM, City Staff, and the general public on an as-needed basis. Consultant shall set up and conduct weekly progress meetings and any other meetings necessary to facilitate the project work. City will provide the administrative support to provide a meeting room and invite attendees. Consultant shall write and distribute the meeting agendas and meeting minutes, including: commissioning meetings, regular site meetings, and meetings with the City staff, contractors, various City departments, and the public. The meeting minutes will explicitly track who has the responsibility for each action item with expected completion dates.

Field Inspection and Supervision: Consultant shall provide a CM Field Superintendent (CMFS) who shall maintain a field presence whenever work is under way by the Contractor. The role of the CMFS will be to enforce the Construction Contract daily in the field to ensure that the work is being constructed in compliance with the contract documents, the approved shop drawings, the current RFI answers, and other Construction Contract documents, and in general, to protect the interest of the City daily in the field. The CMFS will also observe and report daily field problems with respect to quality, cost and schedule. The CMFS will develop and maintain deficiency, incomplete work item, and preliminary punch list reports and will maintain a daily construction report, as the daily history of the project, to include significant jobsite field events that occur each day. The CMFS will periodically monitor any 'time and materials' work performed by the Contractor to ensure that the work being performed is being charged appropriately to Field Order and not to contract work. The CMFS will not be responsible for



means and methods of the Contractor, nor for safety of any of the Contractor's employees, but will have the authority, although not the responsibility, to observe and report concerns with regard to such issues.

Documentation: Consultant shall oversee, manage and track the Contractor's preparation and/or review of all necessary documentation for the project including, but not limited to: daily logs and inspection progress reports, photos/videos, RFI, ASI, correspondence, and shop drawings. Consultant shall maintain all files and documentation related to managing the project. Responses, approvals, and decisions relative to Contractor's documents shall be provided in a timely manner and as required in the construction documents.

Consultant shall review and comment on any project-related correspondence as requested by the City. Routine correspondence that is related to product information or minor design issues may be prepared and answered by Consultant on its letterhead, with a copy of the response directed to PM and design staff. Correspondence requiring City response, including but not limited to correspondence with residents, cost or contractual issues, may be drafted by Consultant, but shall be signed only by City.

Submittals: Consultant shall manage, log and track all project submittals (i.e. shop drawings, product information, substitution request, and samples) for approval in a timely manner as required by the construction documents and in order to prevent any delays to the project. Comments from different reviewers of the submittal shall be compiled before being returned to the Contractor for revisions. All submittals shall be sent directly between the Contractor and design staff, with copies, documentation and management reports submitted to and managed by the Consultant.

Electronic file sharing: Consultant shall contract with, host and maintain an electronic file sharing internet site, like Box or Sharepoint, in order for the Consultant, City staff, design staff, Contractor, commissioning agent, and others as appropriate to post project documents for shared viewing. Documents shall include: plans and specifications, submittals, RFI's, ASI's, inspection logs, schedules, meeting agendas and minutes, and any other project documents requested to be posted by City or that will benefit the various parties involved.

Construction Schedule: Consultant shall review the Contractor's construction schedule. Consultant shall analyze, monitor, and request updates for the master schedule as the project progresses. Consultant shall analyze the schedule for construction constraints, level of critical activities and to verify progress in conjunction with the analysis of pay applications. Consultant shall review Contractors' individual Critical Path Method (CPM) schedules, monitor Contractor's progress, notify the City of any slippage, and coordinate Contractor recovery plans.

Progress Payments: Consultant shall review progress payment requests submitted by Contractor within five (5) days of receipt and verify the accuracy and percentage of completion against the schedule and resolve any discrepancies in the invoices. Consultant shall review the invoices and backup for completeness and compliance with contract documents and make a recommendation to PM for payment of the progress payment requests.

Change Order Monitoring and Processing: Consultant shall review all change order requests submitted to the City for accuracy, completeness, appropriateness, and compliance with the City contract documents. Consultant shall work with design staff to determine the validity of change order requests, however, the design staff will not be expected to provide input on the validity of the dollar value of the claim, only input as to whether the work is indeed 'extra'. In instances when the work is determined to be extra, Consultant shall make recommendations to the City on the pricing of the change orders using compensation methodologies specified in the Construction Contract. If necessary or if requested by the City, Consultant shall prepare an independent estimate of the value of the additional work to verify the reasonableness of fixed price change order requests. Consultant shall reject change order requests that are determined to be invalid. Consultant shall process change order requests according to the schedule developed under "Establishment of deadlines", and shall coordinate response with the City.

Claims: Consultant shall analyze any claims from the Contractor (i.e., compensation and delay) as to whether they are excusable, inexcusable, or compensable and prepare a response for City. Consultant shall process claims according to the schedule developed under "Establishment of deadlines".

Quality Control and Assurance: Consultant shall monitor and document the Contractor's work for any deviations in scope, schedule, or performance and keep the City informed of and assist in resolving any issues that may arise.

Record Drawings: Consultant shall coordinate the preparation of record drawings with the Contractor and design staff on a regular basis, both during the construction and post-construction phases, and review the drawings for "as-built" accuracy.

Commissioning: Consultant shall work with the commissioning agent, design staff, and the Contractor 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.

Substantial Completion: As per the construction contract, once the Contractor requests substantial completion and it is determined to be warranted, Consultant shall prepare and compile a project punch list with the assistance from the City and design staff to be forwarded to the Contractor. Consultant shall oversee the completion of the punch list items before the final notice of completion is issued.

Close Out: Consultant shall ensure completion and delivery of all required close out documents including operation and maintenance (O&M) manuals, record drawings, and warranties. Consultant shall review all these materials for compliance with the contract documents and for completeness and report any deficiencies or discrepancies to Contractor for corrections and re-submittal. Consultant shall work under the direction of the PM to resolve any contract claim issues that may arise (stop work notices, bonding, delays, extra work, etc). As-Built drawings shall be scanned by Consultant for archiving by City.

Files: Consultant shall consolidate and deliver all project files and documentation to be retained by the City.

## **Task 2: Photographic Recording**

Project Documentation – Photographic Record: Based upon a build period of 10 months, Consultant shall provide a photographic record of the following: pre-construction site-survey of existing conditions; as completed exterior progressions; interior progressions; as completed interior mechanical, electrical and fire sprinkler; and finished condition prior to occupancy.

All documentation shall include consultations with City identifying project-specific needs, appropriate photographic intervals, schedules, determination of optimal locations based on the site plans, a representative number of digital photographs at such intervals and for such durations and at the specified milestones; linking each photo set to the appropriate location on the site plans and floor plans; and two USB, CD or DVD ROM copies of the entire photo documentation upon completion.

## **Task 3: Allowance for Testing**

Testing and Special Inspections: If needed, a testing and inspection agency(s) shall be under contract with and paid for by the Consultant. Consultant shall coordinate with the Contractor in scheduling the testing agency services for materials testing and special inspections needed for the life of the project. This testing includes, but is not limited to, soils tests, concrete strength and weld inspection. Consultant shall ensure that all required sign-offs are reviewed and distributed and are in compliance with the specifications and the California Building Codes.

Consultant shall list an allowance of \$10,000 for this task. This allowance shall only be expended if authorized in advance, in writing, by the City's Project Manager.

## **Task 4: Allowance for Commissioning Agent**

Commissioning: A Commissioning Agent shall be under contract with and paid for by the Consultant. Consultant shall coordinate with the Contractor in scheduling all commissioning activities including but not limited to testing, trending, operation verification, etc. Consultant shall ensure that all required sign-offs are reviewed and distributed and are in compliance with the specifications and City requirements.

Consultant shall list an allowance of \$15,000 for this task. This allowance shall only be expended if authorized in advance, in writing, by the City's Project Manager.

## **Task 5: Post Construction Services**

Record Drawings and Close-Out: Within 60 calendar days after the "Notice of Completion to the Contractor", Consultant shall:

- Coordinate the preparation of record drawings with the Contractor and review these drawings for "as-built" accuracy
- Ensure completion and delivery of all Contractor required close-out documentation including O&M manuals, record drawings, warranties, etc.
- Consolidate all project files and documentation maintained by the CM to be retained by the City

- 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
- 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
- Consultant shall, as requested by the City's Project Manager, respond to and coordinate with the Contractor or responsible party to repair and/or replace defective work items that are included in the project's 1-year warranty period, which may extend to one year from the Notice of Completion.

Post Construction and Warranty Services: Consultant shall meet with building occupants and Public Works staff monthly for three months commencing after the building is open to the public in order to complete any remaining punch-list items and/or to contact the Contractor for any warranty issues that might arise. After the initial three month period, Consultant shall contact the Staff quarterly for a period of nine months to determine whether any new systems issues have been identified. Systems deficiencies that cannot be resolved by the Contractor shall be reported to the Commissioning Agent, design staff and City.

Commissioning Verification: Consultant shall participate in the post-construction activities of the Commissioning Agent as follows:

Participate in an off-season testing (i.e., testing the heating system prior to winter) session and work with the Contractor to correct any deficiencies.

Compile the final testing documentation for inclusion in the Commissioning Record and in the O&M manuals.

12 Month Warranty Follow Up: Consultant shall return to the site at month 10 of the 12 month warranty period and review operating conditions with City facility staff and the Commissioning Agent in order to identify any outstanding issues related to the original and seasonal commissioning. The Commissioning Agent will interview facility staff and identify problems or concerns that they have with operating the building as originally intended. The Commissioning Agent will make suggestions for improvements and for recording these changes in the O&M manuals. The Commissioning Agent will identify areas that may come under warranty or under the original construction contract. The Consultant shall work with the Contractor to resolve any warranty issues.

**EXHIBIT “B-2”  
SCHEDULE OF PERFORMANCE  
AMENDMENT NO. 3**

CONSULTANT shall perform the Services as detailed in Exhibit “A-2” so as to complete each task within the number of days/weeks specified below. The time to complete each task may be increased or decreased by mutual written agreement of the project managers for CONSULTANT and CITY so long as all such work is completed within the term of the Agreement. CONSULTANT shall coordinate and provide a detailed schedule of work consistent with the Contractor’s construction schedule within 2 weeks of receipt of the notice to proceed (NTP).

**Tasks**

**Completion**

**Task 1 - Construction Phase 1 Services**

- Construction Start
- Children’s Theatre

Concurrent with Construction NTP  
Completion 340 days following NTP

**Task 2 - Photographic Recording**

on-going during construction

**Task 3 - Additional Testing**

on-going during construction

**Task 4 – Commissioning**

on-going during construction

- Project Close-Out

30 days following notice of  
completion (NOC) of construction  
contract

**Task 5 - Post-Construction Phase Services**

- Warranty Period

12 months following NOC of  
construction contract

**EXHIBIT “C-4”  
COMPENSATION  
AMENDMENT NO. 3**

The CITY agrees to compensate the CONSULTANT for the Services performed in accordance with the terms and conditions of this Agreement, as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule set forth in Exhibit C-3 up to the not-to-exceed budget amount for each task set forth below.

The compensation to be paid to CONSULTANT under this Agreement for all professional services described in Exhibit “A-2”, including any reimbursable expenses specified below, shall not exceed \$187,839. CONSULTANT agrees to complete all such services, including reimbursable expenses, within this amount. In the event CITY authorizes any Additional Services, the maximum compensation shall not exceed \$18,784. 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 professional services, including any reimbursable expenses specified below, does not exceed \$187,839 and the total compensation for Additional Services does not exceed \$18,784.

<b>BUDGET SCHEDULE</b>	<b>NOT TO EXCEED AMOUNT</b>
Task 1 (Construction Phase Services)	\$132,960
Task 2 (Photographic Recording)	\$15,377
Task 3 (Allowance: Additional Testing)	\$10,000
Task 4 (Allowance Commissioning)	\$15,000
Task 5 (Post-Construction Phase Services)	\$14,502
Sub-total professional services	<b>\$187,839</b>
Reimbursable Expenses	\$0
Total professional services and reimbursable expenses	\$187,839
Additional Services (Not to Exceed)	\$18,784
<b>Total Amendment No. 3 Not To Exceed Compensation</b>	<b>\$206,623</b>

**ADDITIONAL SERVICES**

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit C-3. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement.