



# City of Palo Alto

## City Council Staff Report

(ID # 9912)

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**Report Type: Consent Calendar**

**Meeting Date: 4/1/2019**

**Summary Title: Gas Circuit Breaker 2 Design-Build**

**Title: Approval of Contract Number C19174153 With Burns & McDonnell Engineering Company, Inc. in an Amount of \$633,456 for the Colorado Power Station High Voltage Circuit Breaker Implementation as part of the Colorado Power Station Equipment Upgrade Capital Project (EL-19001); Authorization to Negotiate and Execute Related Change Orders in the Amount of \$95,018, for a Total Not-to-Exceed Amount of \$728,474; and Approval of Budget Amendments in the Electric Fund**

**From: City Manager**

**Lead Department: Utilities**

**Staff recommends that Council:**

1. Approve and authorize the City Manager or his designee to execute the attached contract with Burns & McDonnell Engineering Company, Inc. (Attachment A) in an amount not to exceed of \$633,456 for purchase and installation of a new high voltage circuit breaker as part of the Colorado Power Station Equipment Upgrade Capital Project (EL-19001);
2. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Burns & McDonnell Engineering Company, Inc. for related additional, but unforeseen work which may develop during the project; the total of which shall not exceed \$95,018 or 15 percent of total contract; the total not-to-exceed amount is \$728,474 for the contract;
3. Amend the Fiscal Year 2019 Budget Appropriation Ordinance for the Electric Fund by:
  - a. Increasing the budget appropriation for the Colorado Power Station Equipment Upgrade project (EL-19001) by \$600,000
  - b. Decreasing the budget appropriation for the Underground System Rebuild project (EL-16001) by \$150,000; and
  - c. Decreasing the budget appropriation for the Wood Pole Replacement project (EL-19004) by \$300,000; and
  - d. Decreasing the budget appropriation for the SCADA System Upgrade project (EL-02010) by \$150,000; and

## **Background**

City of Palo Alto Utilities (CPAU) owns and operates the electric system serving approximately 30,000 customers. At the City's Colorado Power Station (COP), the system is fed from an 115,000 Volt (115kV) energy source which is stepped down to 60,000 Volts (60kV) as it enters the City's sub-transmission system, linking nine 12,000 and 4,000 Volt (12kV and 4kV, respectively) distribution substations. CPAU owns and operates three 115kV to 60kV electric power transformers at COP that supply all the electric power to the City of Palo Alto, COP-1, COP-2, and COP-3. The failure of the COP-2 transformer ([Staff Report 9562](#)) earlier this year has presented CPAU an opportunity to improve resiliency and reliability of the City's electrical transmission system by installing a dedicated high voltage circuit breaker for the transformer.

## **Discussion**

Currently, only two of the three 115kV transformers (COP-1 and COP-3) have high voltage gas circuit breakers. Electrical power transmission networks are protected and controlled by these high-voltage breakers. Instead of a dedicated circuit breaker, COP-2 has been relying on PG&E equipment for transformer protection. The PG&E equipment is outside of the City's control (maintenance and operations). Adding a new circuit breaker for COP-2, will provide additional protection to the City's transformer assets and improve resiliency by potentially shortening restoration time in the event of an outage. Burns & McDonnell Engineering Company, Inc. (BMcD) will procure and install an outdoor, 115kV, gas circuit breaker in front of the COP-2 transformer.

The timing of this project takes advantage of the open window for construction resulting from the failure of the adjacent COP-2 transformer. Since COP-2 transformer is out of service and incoming transmission lines have been de-energized, this is the ideal opportunity to add a new circuit breaker and perform other transmission system improvements.

This design/build implementation includes electrical schematic and wiring diagram design, structural engineering design for the foundation, procurement of the new circuit breaker itself using our utility specifications, installation, and complete testing for a turn-key implementation.

### Solicitation Process

On December 3, 2018, a notice inviting a Design/Build Request for Proposals (RFP) for the 123kV Gas Circuit Breaker (GCB-2) at Colorado Power Station was posted at City Hall and on the Planet Bids portal:

<https://www.planetbids.com/portal/portal.cfm?CompanyID=25569&BidID=56452>

The Design/Build process was selected because internal staffing and resources are not adequate to facilitate the entire process within the limited time constraint. The industry standard for the bidding period is 3-4 weeks. Bids were received from two qualified bidders on January 14, 2019.

### Summary of Solicitation Process

Proposal Title	123kV Gas Circuit Breaker (GCB-2) at Colorado Power Station	
Proposal Number	174153	
Proposed Length of Project	6 months	
Number of Proposal packages downloaded	633	
Total Days to Respond to Proposal	29	
Number of Proposals Received:	2	
Company Name	Location (City, State)	Amount
Burns & McDonnell Engineering Company, Inc.	Brea, California	\$633,456

Proposal costs ranged from \$633,456 to \$1,123,250.

### Cost of Services

The following criteria were used during the evaluation process to identify the successful proposer:

- Quality of the proposal
- Quality, performance and effectiveness of the solution
- Contractor's experience and past experience
- Cost to the City
- Proposer's compliance to technical specifications and commercial terms

### **Resource Impact**

Amendments to the Electric Fiber Fund are recommended in this report. As of March 5, 2019, there is \$441,000 remaining in the budget for capital project EL-19001 (Colorado Power Station Equipment Upgrade). The recommended amendment of \$600,000 to EL-19001, in addition to the remaining budget available will be sufficient to fund the circuit breaker (\$730,000), transformer pad (\$100,000), station power disconnect switch (\$100,000), and internal labor to

oversee and inspect these upgrades (\$100,000). The increase to EL-19001 will be accompanied by a reduction to other Electric Fund Capital Improvement Projects: EL-19004 (Wood Pole Replacement) in the amount of \$300,000, EL-16001 (Underground System Rebuild) in the amount of \$150,000, and EL-02010 (SCADA System Upgrade) in the amount of \$150,000. Current staffing levels to see this project through to completion prevent City staff from being able to perform this work internally. In addition, the Colorado Power Station Equipment Upgrade is one of the highest priority Electric project which is why funding and staffing are being reallocated from other capital improvement projects.

### **Policy Implications**

The approval of this Enterprise Fund professional services contract is consistent with existing City policies. This recommendation is consistent with the Council-approved Utilities 2018 Strategic Plan ([Staff Report 9022](#)), especially the strategic objectives to: “Establish a proactive infrastructure replacement program, based on planned replacement before failure to support reliability and resiliency.”

### **Environmental Review**

Approval of the attached contract is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to section 15302 (replacement or reconstruction of existing facilities) of the CEQA Guidelines.

### **Attachments:**

- Scope of Work GCB-2
- Attachment A - C19174153 Gas Circuit Breaker B1 Contract 4926 (BMcD 2.26.19 - Final) 49534989

## Scope of Work

### Design/Build of 123kV Gas Circuit Breaker (GCB-2) at Colorado Power Station (COP)

This design/build project will furnish and install an outdoor, 123 kilo-volt rated vertical, live-tank gas circuit breaker (GCB) in front of the City of Palo Alto Utility's (CPAU) Colorado Power Station COP-2 transformer. This COP-2 transformer is currently being manufactured. The incoming lines operate at a nominal 115 kilo-volts, and will be deenergized from now through installation.

This turn-key installation shall include:

- procurement of the circuit breaker, using CPAUs specification (Appendix A). Any exceptions to the specification to be approved by CPAU. The preferred circuit breaker is an ABB type LTB/DCB or PASS, or a Southern States circuit switcher, or equal. Arrangements shall be made for CPAU to participate in the procurement evaluation process and be the final decision-maker, to participate in the manufacturer submittals review and in the factory acceptance tests of all major equipment. ;
- Installing structurally sound foundations;
- Incorporating the circuit breaker into the bus differential, transformer differential, over-current, and breaker failure protection schemes, concurrently being designed and constructed;
- performance of all engineering design including wiring diagrams, AC/DC schematics, conduit layout, power supply diagrams, foundation/structural design, as-builts, and other design as necessary for a complete and full drawing set;
- installation of underground conduit the last 50' to the breaker control cabinet;
- receiving, assembling, rigging, and installing the new circuit breaker, pedestals, and foundation(s);
- installation of control wiring from the control building to the new circuit breaker cabinet;
- breaker testing.
- Maintaining a clean job site, free of debris, and without obstruction to the normal operation of the surrounding electric substation facilities.
- CPAU will make the overhead wire connection to the 115kV high voltage lines after the circuit breaker testing is complete. A joint commissioning effort will be required before final project acceptance and final retention payment by CPAU.

In order of importance, provide optional CTs on the source side of the circuit breaker, then secondly, an optional source side disconnect switch, provided space limitations are met. The new circuit breaker must fit between the driveway and the existing metering PT pedestal, the same as GCB-1 and GCB-3.

All structural steel shall be designed, detailed, and fabricated in accordance with the current codes of the American Institute of Steel Construction (AISC), the American Society for Testing and Materials (ASTM), and the American Welding Society (AWS).

All related and available electrical, civil, and structural station drawings will be made available to the successful proposer. Approximately half of those exist in electronic format. Some drawings for the sister GCB-1 are attached as appendices for reference.

- Appendix A -- Specification 115KVBKR2018
- Appendix B – Photo of old COP-2 transformer being replaced
- Appendix C – Photo of sister COP1 and COP2 115kV breakers
- Appendix D – Drawing 355-E8.7 Plan View
- Appendix E – Drawing CO-E-126 Model, sample outline drawing of the existing GCB-1
- Appendix F – Drawing CO-E-126 Interconnection, sample from GCB-1 and -3
- Appendix G -- Drawing CO-E-128 sample protection block diagram
- Appendix H – Drawing CO-E-129 sample Breaker Failure Schematic
- Appendix I -- Drawing CO-E-136 sample differential schematic

SCHEDULE:

The commissioning due date is June 15, 2019.

END



CITY OF  
**PALO  
ALTO**

**DESIGN-BUILD CONTRACT**

**Contract No. C19174153**

**City of Palo Alto**

**Gas Circuit Breaker 123kV at Colorado Power Station**

**DESIGN-BUILD CONTRACT  
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## DESIGN-BUILD CONTRACT

THIS DESIGN-BUILD CONTRACT ("Contract" or "Agreement") entered into on March 18, 2019 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and Burns & McDonnell Engineering Company, Inc. d/b/a Burns & McDonnell, a Design-Build Entity ("DBE"), 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. DBE is a corporation duly organized and in good standing in the State of Missouri, DBE's California Contractor License Number 755238. DBE represents that it is duly licensed by the State of California and has the background, knowledge, and experience to perform the obligations set forth in this Design-Build Contract.
- C. On December 13, 2018, City issued a Request for Proposals ("RFP") to DBEs for the Gas Circuit Breaker123kV at Colorado Power Station ("Project"). In response to the RFP, DBE submitted a Proposal.
- D. City and DBE desire to enter into this Design-Build Contract to provide the Design-Build Services for the Project, and other such 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 the RFP, this Design-Build Contract and/or in the General Conditions. If there is a conflict between the definitions in the RFP, this Design-Build Contract or in the General Conditions, the definitions in this Design-Build Contract shall prevail.

### **SECTION 2**      **THE PROJECT.**

**The project is the Gas Circuit Breaker123kV at Colorado Power Station, located at Colorado Power Station, 1082 Colorado Avenue, Palo Alto, California.**

### **SECTION 3**      **THE CONTRACT DOCUMENTS.**

#### **3.1**      **List of Documents.**

The Contract Documents (sometimes collectively referred to as "Agreement" or "Contract") consist of the following documents which are hereby incorporated by reference.

- 1) Change Orders

- 2) Field Orders
- 3) Design-Build Contract
- 4) Scope of Work/DBE's Final Proposal/Non-Collusion Affidavit
- 5) RFP Addenda
- 6) Special Provisions [Not Applicable]
- 7) General Conditions
- 8) Approved Design Documents (to be developed by DBE)
- 9) Bridging Documents
- 10) Performance and Payment Bonds
- 11) Instructions to Proposers
- 12) Request for Proposals (except form Agreement included therein)
- 13) Reports listed in the Contract Documents
- 14) Public Works Department's Standard Drawings and Specifications (most current version at time of Proposal)
- 15) Utilities Department's Water, Gas, Wastewater, Electric Utilities Standards (most current version at time of Proposal)
- 16) City of Palo Alto Traffic Control Requirements
- 17) City of Palo Alto Truck Route Map and Regulations
- 18) Pre-Qualification Questionnaire [Not applicable]

### **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      DBE'S DUTY.**

**4.1 Relationship of Trust and Confidence.** DBE accepts the relationship of trust and confidence established between it and City by this Contract. DBE agrees to furnish the Design-Build Services necessary for the design and completion of the Project and agrees to furnish efficient business administration and superintendence, and to use its reasonable efforts to complete the Project in a sound way and in the most efficient and economical manner consistent with the best interest of City, all in accordance with prudent industry practices.

4.1.1 DBE represents that it is an independent contractor and that it is familiar with the type of Design-Build Services it is undertaking.

4.1.2 Neither DBE nor any of its agents or employees shall act on behalf of or in the name of City unless authorized in writing by City's Representative.

4.1.3 DBE shall perform its obligations with integrity, ensuring at a minimum that conflicts of interest, including but not limited to conflicts of interests on the part of any Design Professionals employed by DBE, shall be avoided to the best of its knowledge.

**4.2 Scope of Services.** DBE shall be responsible for procuring or providing the Design-Build Services for the Project consistent with the Contract Documents. DBE shall exercise reasonable skill and judgment in the procurement and provision of the Design-Build Services, consistent with the applicable industry practices and the terms and conditions of the Contract Documents.

### **4.3 Design Services.**

**4.3.1 Architectural and Engineering Services.** Architectural and engineering services must be provided by licensed, independent Design Professionals retained by DBE or by licensed employees of DBE, or as permitted by the law of the State of California. DBE may not engage the services of any Design Professional for this Project without obtaining the City's prior written approval, which approval will not be unreasonably withheld. City's approval will not be deemed to create any contractual relationship between City and any such Design Professional. DBE must bind its Design Professionals in the same manner as DBE is bound to the City under this Contract, including, but not limited to, the insurance and indemnity requirements set forth herein. All Design Services must be guided by the Bridging Documents and Design Documents which are approved by City. Because the Bridging Documents, Plans, and Drawings were prepared by the City or its Design Consultant, the DBE has a right to rely upon the Bridging Documents, Plans, and Drawings without independent verification. DBE shall notify the City if it discovers any defects in the Bridging Documents, Plans, or Drawings, but the DBE shall not be liable for such documents or any warranties related thereto.

**4.3.2 Project Schedule.** Within 15 days following the Notice to Proceed, DBE must prepare and submit for City's review and approval a preliminary Project Schedule showing the timing and sequencing of the Design-Build Services required to complete the Project. Unless otherwise specified by City, the preliminary Project Schedule should include the major phases for the Design Services and for the Construction Services, including, but not limited to, completion of Design Development Documents; Construction Documents; procurement of Subcontractors; construction; final close out; as well as any other milestones applicable to this Project. The Project Schedule shall be updated for City's review and approval upon completion of each milestone included in the Project Schedule.

**4.3.3 Design Development Documents.** DBE shall prepare and submit for City's review and approval the Design Development Documents consistent with the timeframes in the Project Schedule set forth in the Scope of Work. The Design Development Documents must be based on the Bridging Documents, as may be modified by the use permit from or design approvals by City, but must further define the Project, including drawings and

outline specifications fixing and describing the Project size, character and site relationships, and other appropriate elements describing, as applicable, the structural, architectural, mechanical and electrical systems. The Design Development Documents shall include, as applicable, plans, sections and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When submitting the Design Development Documents, the DBE shall identify in writing, for City's approval, all material changes and deviations that have taken place since approval of the Bridging Documents and the Project Schedule. Two printed sets and one electronic/reproducible set of Design Development Documents must be provided to the City.

**4.3.4 Construction Documents.** DBE shall prepare and submit for City's review and approval the Construction Documents consistent with the timeframes in the Project Schedule set forth in the Scope of Work. DBE's submitted Construction Documents shall set forth in detail the quality levels of and the requirements for construction of the Project, and consist of drawings and specifications that comply with applicable codes, laws, and regulations in effect at the time of their preparation at the location of the Project. When submitting the Construction Documents, the DBE shall identify in writing all for City's approval, all material changes and deviations that have taken place since approval of the Design Development Documents and Project Schedule. Two printed sets and one electronic/reproducible set of Construction Documents must be provided to the City.

**4.3.5 Ownership of Documents.**

**4.3.5.1 Ownership of Tangible Documents.** City shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information prepared, provided or procured by DBE, as part of the Design Services which are identified as final deliverables.

**4.3.5.2 Use of Documents in Event of Termination.** In the event of a termination of this Contract, City shall have the right to use and to reproduce the Design Documents to complete the Project, regardless of whether there has been a transfer of copyright to City. In the event of termination by the City for any reason prior to completion of all Design Documents and Construction Documents contemplated by the Contract Documents, except when documents are marked "FOR CONSTRUCTION" or other marking with similar meaning, the City releases DBE from any liability for such incomplete documents and waives all claims, causes of action, or suits against the City that are related to the use of such incomplete documents (including as may be modified or completed by third-party consultants).

**4.3.5.3 City's Use of Documents After Completion of Project.** After completion of the Project, City may reuse or reproduce the Design Documents solely for the purposes of maintaining, operating, or repairing the Project. Should the City or any third party obtaining such Design or Construction Documents through the City either use the Documents for any reason other than for the construction, operation, maintenance, or repair of the project for which they were prepared and intended, or modify such Documents, it shall be at the City's sole risk and DBE shall have no obligation, responsibilities or liabilities relating to such use or modification.

**4.3.5.4** All intellectual property in the deliverables (including the Design Documents) arising from the performance of the Work under this Contract shall be and remain the property of DBE, and may not be used by the City for any purpose other than as contemplated by this Contract for the Project without the express prior written permission of DBE. Nothing contained in this Contract shall be construed as limiting or depriving DBE of its right to use its basic knowledge and skill to design or carry out other projects or work for itself or others, whether or not such projects are similar to the Work to be performed under this Contract. DBE hereby grants to the City an irrevocable (except in the event of a breach of this license), non-exclusive, royalty-free license to

utilize DBE's intellectual property prepared for or provided to the City as part of the Work and deliverables to the extent necessary for the construction, operation, maintenance, or repair of the Project for which they were prepared and intended. City shall not acquire any rights to any of DBE's or its Subcontractors' proprietary computer software that may be used in connection with the Work except as separately agreed. DBE shall obtain from its Subcontractors and Design Professionals rights and rights of use that correspond to the rights given by DBE to City in this Contract and DBE shall provide evidence that such rights have been secured.

#### **4.4 Construction Services.**

4.4.1 DBE shall provide all labor, materials, equipment and services necessary to perform and timely complete the Construction Services in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of City in accordance with prudent industry standards.

4.4.2 DBE is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. DBE is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work, except to the extent that the Contract Documents provide other specific instructions.

4.4.3 DBE shall provide sufficient and competent Subcontractors, administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents.

4.4.4 DBE shall, at all times during performance of the Work, provide a qualified full-time superintendent, acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed.

4.4.5 DBE must, at all times, perform the Work in a good workmanlike manner and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

4.4.6 DBE is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of DBE or its Subcontractors.

4.4.7 DBE shall promptly correct, at DBE's sole expense, any Work that is deficient or defective in workmanship, materials, and equipment.

4.4.8 DBE shall keep such full and detailed accounts as may be necessary for proper financial management under this Contract. City shall be afforded access to all DBE's financial records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to Change Order work performed on a reimbursable basis. DBE shall preserve all such records for a period of three years after the Final Payment or longer where required by law. Notwithstanding anything to the contrary herein, in no event shall the City be entitled to audit the composition of any agreed upon fixed rates or percentage multipliers set forth in this Contract, nor shall it be entitled to audit any rates, charges, costs, hours worked, or expenses related to Services performed on a lump sum or fixed price basis.

4.4.9 DBE shall provide periodic written reports to City on the progress of the Work in such detail as is required by City and as agreed to by City and DBE.

#### **4.5 DBE's Subcontractors.**

4.5.1 All Work which is not performed by DBE with its own duly licensed forces shall be performed by Subcontractors. DBE must provide each Subcontractor with a complete set of the Construction Documents and any approved modifications thereto.

4.5.2 DBE shall require every Subcontractor and material supplier to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's or material supplier's portion(s) of the Work, and to likewise bind their Subcontractors or material suppliers. City reserves the right to reject any Subcontractor or material supplier based upon City's reasonable belief that the Subcontractor or material supplier is not adequately qualified, or whose performance is unacceptable to the City, or who has a history of unacceptable performance on other public works projects. If a Subcontractor or material supplier is rejected after they begin performance of Work due to previous approval by the City, DBE shall be entitled to a change order to replace such Subcontractor or material supplier. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor or material supplier and City.

4.5.3 If the Contract is terminated, each subcontract agreement shall be assigned by DBE to City, subject to the prior rights of any surety, provided that the City accepts such assignment by written notification, and assumes all rights and obligations of DBE pursuant to each such subcontract agreement.

4.5.4 All Subcontractors bidding on contracts for the Work shall be afforded the applicable protections contained in the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.).

**4.6 Coordination of Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. DBE is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and shall avoid hindering, delaying, or interfering with the work of other contractors. The City shall require similar coordination and avoidance of delay by its personnel or separate contractors with DBE and its Work. To the full extent permitted by law, DBE shall hold harmless and indemnify City against any and all claims arising from or related to DBE's negligent or willful hindrance of, delay to, or interference with the work of another contractor or City's own forces at the Project site. The roles, obligations, and liabilities of the City's Design Consultant, separate contractors, and the City's employees or agents who perform work or services related to DBE's Work or the Project site remain solely with those parties with respect to such work or services. DBE does not guarantee the performance of or warrant the work, work product, deliverables, materials, or equipment of the City, its Design Consultant or separate contractors, or any employees or agents of any of them.

**4.7 DBE's Representative.** DBE shall designate a person who shall be DBE's authorized representative, subject to City's approval, which shall not unreasonably be withheld.

## **SECTION 5 PROJECT TEAM.**

In addition to DBE, City has retained, or may retain, a Design Consultant or other consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Contract requires that DBE 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 for performance of the Work set forth in the Contract Documents.

### **6.2 Commencement of Work.**

DBE shall commence the Design-Build Services on the date(s) specified in City's Notice to Proceed.

### **6.3 Contract Time.**

The Design-Build Services must begin on the date specified on the City's Notice to Proceed and shall be completed in accordance with the Project Schedule set forth in the Scope of Work.

By executing this Design-Build Contract, DBE expressly waives any claim for delayed early completion.

**6.4 Liquidated Damages.**

Pursuant to Government Code Section 53069.85, if DBE 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 (\$500.00) per day, subject to a maximum aggregate liability of an amount equal to 10% of the Contract Sum. Such liquidated damages shall serve as the City's sole and exclusive remedy for DBE's failure to achieve Substantial Completion due to an Unexcused Delay. 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 set off the amount of liquidated damages assessed against any payments otherwise due to DBE, 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 DBE or its sureties.

**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 DBE's failure to achieve Substantial Completion of the entire Work within the Contract Time, except to the extent expressly limited by the terms of this Contract.

**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 DBE.**

**7.1 Contract Sum.**

DBE shall be compensated for satisfactory completion of the Design-Build Services in compliance with the Contract Documents the Contract Sum of Six Hundred Thirty Three Thousand Four Hundred Fifty Six Dollars (\$633,456.00). [This amount includes the Base Proposal and Additive Alternates.]

**7.2 Full Compensation.**

The Contract Sum shall be full compensation to DBE for all Design-Build Services provided by DBE and, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all Losses arising out of the nature of the Design-Build Services or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Design-Build Services until its Acceptance by City, all known or discoverable risks connected with the Design-Build Services, and any and all expenses incurred due to suspension or discontinuance of the Design-Build Services caused by DBE's fault, 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.**

DBE agrees that the Design-Build Services shall be performed by qualified, experienced and well-supervised personnel. All Design-Build Services performed in connection with this Design-Build Contract shall be performed in a manner consistent with the professional 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; LIMITATION OF LIABILITY.**

**9.1      Hold Harmless.**

To the fullest extent permitted by law, and except as set forth below in Section 9.2, DBE shall protect, indemnify, defend and hold harmless City, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys' fees, experts fees, court costs and disbursements ("Claims") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the DBE, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

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

DBE shall pay City for any costs City incurs to enforce this provision. Nothing in the Contract Documents shall be construed to give rise to any implied right of indemnity in favor of DBE against City or any other Indemnitee.

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

**9.2      Professional Indemnity.**

DBE agrees, to the fullest extent permitted by law, to indemnify each Indemnified Party against costs, damages, or losses, including, without limitation, reasonable attorneys' fees and expert fees resulting from claims by third parties for personal injury (including death) or property damage to the extent caused by the negligence, recklessness, or willful misconduct of the DBE, its officers, employees, agents or subcontractors in the performance of professional design and engineering services as part of the Work under the Contract Documents. The indemnity obligation under this Section 9.2 shall not include a duty to defend, and DBE shall not be obligated to indemnify any Indemnified Party for its respective negligence or willful misconduct.

**9.3      Limitation of Liability.**

To the fullest extent permitted by law, and notwithstanding any other provision of this Contract, the total aggregate liability of DBE, its officers, directors, employees, agents, and subcontractors, or any of them, to the City and anyone claiming by, through or under the City, for any first-party claims, losses, costs or damages whatsoever resulting from or in any way related to the Project or this Contract, from any cause including, but not limited to, negligence, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied), shall not exceed the sum of Three Million Dollars (\$3,000,000).

**9.4      Survival.**

The acceptance of DBE's services and duties by City shall not operate as a waiver of the right of indemnification. The provisions of this Section 9 shall survive the expiration or early termination of this Agreement.

**SECTION 10      NONDISCRIMINATION.**

As set forth in Palo Alto Municipal Code section 2.30.510, DBE 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. DBE 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.**

Within ten (10) business days following issuance of the Notice of Award, DBE shall provide City with evidence satisfactory to the City that DBE has obtained insurance by providing a valid certificate of insurance; and has sufficient bonding capacity to provide Performance and Payment Bonds, by providing copies of the required bonds, satisfying all requirements in Article 11 of the General Conditions, or as otherwise approved by the City's Risk Manager.

**SECTION 12      PROHIBITION AGAINST TRANSFERS.**

City is entering into this Design-Build Contract in reliance upon the stated experience and qualifications of the DBE and its Subcontractors as set forth in DBE's Proposal. Accordingly, DBE shall not assign, hypothecate or transfer this Design-Build 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.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of DBE or of any general partner or joint venturer or syndicate member of DBE, if the DBE is a partnership or joint venture or syndicate or co-tenancy, shall result in changing the control of DBE, shall be construed as an assignment of this Design-Build 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 Design-Build Contract shall be given in writing and shall be deemed served on the earlier of the following:

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

13.2      Notice Recipients.

All notices, demands or requests (including, without limitation, Change Order Requests and Claims) from DBE to City shall include the Project name and the number of this Design-Build 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

AND

Copy To:

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

In addition, copies of all Claims by DBE under this Design-Build Contract shall be provided to the following:

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

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

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

DBE Name: Marianne Goldsborough  
Title: T&D Project Manager  
Address: 140 S. State College Blvd, Ste. 100  
Brea, CA, 92821  
Phone/Fax: 562-237-9396  
Email: mlgoldsborough@burnsmcd.com

**13.3 Change of Address.**

In advance of any change of address, DBE 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 DBE 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 DBE in the manner specified for the giving of notices in the Design-Build Contract, with a copy to DBE's performance bond surety.

**14.2 Opportunity to Cure Default.**

Except for emergencies, DBE 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, DBE will commence to cure the breach within two (2) Days (or such longer time as City and DBE may reasonably agree) and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than twenty (20) Days after the agreed upon time, unless expressly authorized by City.

**SECTION 15 CITY'S RIGHTS AND REMEDIES.**

**15.1 Remedies Upon Default.**

If DBE fails to cure any default of this Design-Build 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 Design-Build Contract, delete certain portions of the Design-Build Services, reserving to itself all rights to Losses related thereto.

**15.1.2 Perform and Withhold.**

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

**15.1.3 Suspend the Design-Build Contract.**

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

**15.1.4 Terminate the Design-Build Contract for Default.**

City shall have the right to terminate this Design-Build Contract, in whole or in part, upon the failure of DBE to promptly cure any default as required by Section 14. City's election to terminate the Design-Build Contract for default shall be communicated by giving DBE a written notice of termination in the manner specified for the giving of notices in the Design-Build Contract. Any notice of termination given to DBE by City shall be effective immediately, unless otherwise provided therein.

**15.1.5 Invoke the Performance Bond.**

City may, with or without terminating the Design-Build 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 Design-Build Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity, except as expressly set forth herein. 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 Design-Build Contract, or prevent the City from terminating the Agreement for its convenience for breaches that are not material. City's determination of whether there has been noncompliance with the Design-Build Contract so as to warrant exercise by City of its rights and remedies for default under the Design-Build 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 DBE to recover all liquidated damages and Losses suffered by City.

**15.2 Delays by Sureties.** [Intentionally omitted.]

**15.3 Damages to City.**

**15.3.1 For DBE's Default.**

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

**15.3.2 Compensation for Losses.**

In the event that City's undisputed Losses arise from DBE's default under the Contract Documents, City shall be entitled to deduct the cost of such Losses from monies otherwise payable to DBE. If the undisputed Losses incurred by City exceed the amount payable, DBE shall be liable to City for the difference and shall promptly remit same to City. City may withhold payment for any disputed Losses consistent with the process set forth in the General Conditions.

#### **15.4 Suspension by City**

##### **15.4.1 Suspension for Convenience.**

City may, at any time and from time to time, without cause, order DBE, in writing, to suspend, delay, or interrupt the Design-Build Services 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, DBE shall, at City's expense, comply with the order and take all reasonable steps to minimize costs allocable to the Design-Build Services 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 Design-Build Services covered by the Suspension Order. If a Suspension Order is canceled or expires, DBE shall resume and continue with the Design-Build Services. 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 Design-Build Services.

##### **15.4.2 Suspension for Cause.**

In addition to all other remedies available to City, if DBE fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Design-Build Services, or any portion thereof, suspended until the cause for the suspension has been eliminated to City's satisfaction. DBE shall not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by DBE's fault. City's right to suspend the Design-Build Services shall not give rise to a duty to suspend the Design-Build Services, and City's failure to suspend the Design-Build Services shall not constitute a defense to DBE'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 Design-Build Contract in part or in whole upon written notice to DBE. Upon receipt of such notice, DBE 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 DBE's sole and exclusive compensation for such termination and DBE 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 DBE or its sureties from any of their obligations for Losses arising from or related to the Design-Build Services performed by DBE.

##### **15.5.1 Compensation.**

Following such termination and within forty-five (45) Days after receipt of a billing from DBE seeking payment of sums authorized by this Paragraph 15.5.1, City shall pay the following to DBE as DBE's sole compensation for performance of the Design-Build Services:

**.1 For Services Performed.** The amount of the Contract Sum allocable to the portion of the Design-Build Services properly performed by DBE as of the date of termination, less sums previously paid to DBE.

**.2 For Close-out Costs.** If termination is effective after the Construction Services have commenced on the site, reasonable costs of DBE 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, or such items not yet delivered but which cannot be cancelled or returned by DBE.

**.4 Profit Allowance.** An allowance for overhead and profit calculated as ten percent (10%) of the sum of the above items listed in 15.5.1.2 and 15.5.1.3.

**.5 Emergency Termination.** The compensation provided in this provision does not apply to termination for emergency pursuant to Section 2.6 of the General Conditions.

#### **15.5.2 Subcontractors.**

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

#### **15.6 DBE's Duties Upon Termination.**

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

- (i) Immediately discontinue the Design-Build Services 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 Design-Build Services 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 DBE 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 Design-Build Services as may be necessary to preserve and protect Design-Build Services 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 Documents, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

### **SECTION 16 DBE'S RIGHTS AND REMEDIES.**

#### **16.1 DBE's Remedies.**

DBE may terminate this Design-Build Contract only upon the occurrence of one of the following:

##### **16.1.1 For Work Stoppage.**

The Work is stopped for thirty (30) consecutive Days, through no act or fault of DBE, any Subcontractor, or any employee or agent of DBE 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 pay DBE undisputed sums within sixty (60) Days after receipt of notice from DBE, DBE may terminate the Design-Build Contract thirty (30) days following a second notice to City of DBE's intention to terminate the Design-Build Contract.

**16.2 Damages to DBE.**

In the event of termination for cause by DBE, City shall pay DBE the sums provided for in Paragraph 15.5.1 above. DBE 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.**

DBE shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Design-Build Contract in accordance with generally accepted accounting principles and practices. City and City's accountants during normal business hours, may inspect, audit and copy DBE's financial 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. DBE 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. Notwithstanding anything to the contrary herein, in no event shall the City be entitled to audit the composition of any agreed upon fixed rates or percentage multipliers set forth in this Contract, nor shall it be entitled to audit any rates, charges, costs, hours worked or expenses related to Services performed on a lump sum or fixed price basis.

**17.2 Compliance with City Requests.**

DBE'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 DBE against City and to DBE's right to receive further payments under the Contract Documents. City may enforce DBE's obligation to provide access to City of its business and other records referred to in Section 17.1 for inspection 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. Provided, however, that this Section 17 shall not be used by the City in contravention of the applicable rules of civil procedure and discovery in any litigation between the parties.

**17.3 Confidential or Proprietary Information.**

To the extent City desires a copy of any of the above information which DBE deems proprietary or confidential information, City and DBE shall execute a non-disclosure agreement to prevent disclosure of the information to third parties, to the extent allowed by law.

**SECTION 18 INDEPENDENT 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 DBE or its respective agents, employees, subconsultants, or Subcontractors, except as herein set forth.

**SECTION 19 NUISANCE.**

DBE shall not maintain, commit, nor permit the maintenance or commission of any nuisance (as defined by applicable law) in connection in the performance of services under this Design-Build Contract.

**SECTION 20 PERMITS AND LICENSES.**

DBE 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 Design-Build Services; provided, however, that the Parties understand as of the Execution Date that no permits are required to be provided by Contractor or included in the Contract Sum. Payment of all costs and expenses for any Contractor licenses required by applicable law for this Work shall be included in the Contract Sum.

**SECTION 21 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.**

This Design-Build 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.

**SECTION 23 COMPLETE AGREEMENT.**

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

**SECTION 24 SURVIVAL OF CONTRACT.**

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

**SECTION 25 PREVAILING WAGES.**

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

Pursuant to Labor Code section 1771.1, for any public works contract subject to Chapter 1 of Part 7 of Division 2 of the California Labor Code, for any Proposal submitted on or after March 1, 2015 and for any contract entered into on or after April 1, 2015, a contractor or subcontractor shall not be qualified to bid on or to be listed in a bid proposal subject to the requirements of section 4104 of the California Public Contract Code, unless that contractor or subcontractor is currently registered and qualified to perform public work pursuant to section 1725.5 of the California Labor Code. **Notice: Pursuant to California Labor Code section 1771.4, this Project, if awarded on or after January 15, 2015, is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.**



**SECTION 26      NONAPPROPRIATION.**

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 Design-Build 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. Any termination of this Contract due to non-appropriation shall be considered a termination for the City's convenience.

**SECTION 27      AUTHORITY.**

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

**SECTION 28      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.**

In case a provision of this Design-Build 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.**

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.**

Pursuant to Labor Code Section 1861, by signing this Contract, DBE 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      SPECIAL TERMS.**

Notwithstanding anything to the contrary in the Contract Documents, the following shall terms shall apply and govern:

**32.1 Costs.** All references to costs (including "Allowable Costs") for DBE's performance of Work shall include the agreed all-inclusive hourly rates for DBE's direct employees and agents. Any references to direct costs, prevailing wages, certified payrolls, labor classifications, and similar terms shall only apply to trade laborers of construction Subcontractors. The DBT Markup shall be 10% on reimbursable expenses, and the Subcontractor Markup shall be 10% of Subcontractors' Allowable Costs. Section 7.2.5 of the General Conditions shall not apply, but DBE agrees that all such items listed therein shall not be double-charged to City within the total of Allowable Costs, DBT Markup, and Subcontractor Markup.

**32.2 Delays.** All Excusable Delays shall allow DBE to seek and provide evidence for a reasonable Change Order for a Compensable Delay. Excusable Delays shall include delays caused by City or its Separate Contractors for their work related to DBE's Work at the Site.

**32.3 Beneficial Occupancy.** The parties agree that Beneficial Occupancy is not an applicable concept to this Contract.

**32.4 Proposal.** All references in the Contract Documents to DBE's Proposal shall be considered to mean the final Scope of Work agreed in this Contract, conditions existing as of the date of execution of the Contract, or the final Contract Sum agreed in this Contract, as the context allows.

**32.5 Notices.** All references to the timeframe to provide notice of a claim, dispute, incident, or change for either Party, particularly related to Change Order Requests and incident reports, shall commence upon the date when such party first discovered or obtained knowledge of the occurrence resulting in a potential claim, dispute, incident, or change.

**32.6 Warranties.**

.1 "Defective Work" (or any references to defect or defective, whether or not capitalized) shall mean Work by DBE that is faulty, omitted, incomplete, or deficient because it does not conform to the Applicable Code Requirements, the Contract Documents, or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

.2 The Standard of Care set forth in Section 8 of the Design-Build Contract shall be the only standard and warranty applied to Design Services provided by DBE as part of the Work. The Warranty set forth in Section 3.5 of the General Conditions shall not be in addition to the terms of Article 12 of the General Conditions, but shall be consistent with the following: The Construction Services and equipment procured by DBE for permanent installation into the Work shall be performed in a good and workmanlike manner, free from defects, and in accordance with the technical specifications. Article 12 sets forth the remedies for DBE's breach of any warranty expressly stated in the Design-Build Contract or Section 3.5 of the General Conditions. The one-year Guarantee to Repair Period shall commence upon Substantial Completion of the Work, and shall not be extended. Ordinary wear and tear, abuse or neglect by City's operations and maintenance, and damage or defect caused by City's separate work related to the Project are excepted from this guarantee.

.3 THE EXPRESS REPRESENTATIONS AND WARRANTIES PROVIDED IN THIS CONTRACT ARE EXCLUSIVE AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ARISING FROM COURSE OF DEALING OR TRADE USAGE) SHALL APPLY. THE REMEDIES SET FORTH IN ARTICLE 12 OF THE GENERAL CONDITIONS ARE THE SOLE AND EXCLUSIVE REMEDIES OF CITY FOR ANY FAILURE BY DBT TO COMPLY WITH ITS CORRECTION OBLIGATIONS FOR DEFECTIVE WORK SET FORTH IN SUCH ARTICLE 12.

.4 All references to "intended purpose" or similar phrases in the Contract Documents shall mean for the purpose as specified in the Contract Documents or in accordance with the technical specifications in the Contract Documents, as the context allows.

.5 All references to a "best" or "highest" standard in the Contract Documents shall mean the standard of care described in Section 8 of Design-Build Contract.

**32.7 Environmental Controls and Project Site.**

.1 DBE has a right to reasonably rely on the geological report and other site conditions and subsurface information provided by the City without independent verification. During the initial phase of engineering for the Work, if DBE determines that additional geological investigation is required, DBE shall promptly request additional information from the City and the City shall provide the additional information at City's expense. Any material changes to the scope, schedule, or cost of the Work resulting from additional subsurface information or differing conditions shall be incorporated via mutually agreed Change Order.

.2 The City is responsible for notifying "Underground Services Alert", and shall provide DBE with

reasonable access to the Site for performance of the Work. DBE is only responsible for hazardous materials it or its Subcontractors bring onto the Site; and has no responsibility for pre-existing hazardous materials discovered on the Site, or for hazardous materials brought by Separate Contractors or other third parties. DBE shall at no time be considered a generator, storer, arranger, or transporter under applicable law, nor provide remediation of any pre-existing hazardous materials even by Change Order.

.3 No SWPPP or dust control measures are applicable to this Scope of Work.

**32.8 Drawing Submittals/Reviews.** The City shall provide feedback within ten (10) days following the Contractor's submittal of draft drawings for review. There will only be one review period with the City.

**32.9 Payments and Completion.**

.1 Progress Payments. If the City identifies any issues for which it may withhold funds from any of Contractor's progress payments per the Contract, City shall notify Contractor promptly after receiving an Application for Payment to allow Contractor a reasonable chance to cure such issues prior to withholding.

.2 Final Payment and Final Completion. After Contractor achieves Substantial Completion of the Work per the Contract, the City shall have two (2) Business Days to complete its separate testing related to the Project. If Contractor has met all other conditions for Final Completion of the Work per the Contract and the only delay is related to the City's failure to complete its separate testing through no fault of Contractor, the Contractor shall have a right to submit its application for Final Payment no later than thirty (30) days after Substantial Completion.

**32.10 Subcontractors:** DBE will be responsible for the performance of the Work, whether by its own forces or through its Subcontractors. DBE will include portions of the Contract Documents in its subcontracts which are applicable to each Subcontractor's portion of Work. The City shall be a beneficiary of the indemnities, additional insured coverage, and warranties of Subcontractors, but shall not be a full third-party beneficiary of subcontracts. Subcontracts shall be assignable to City upon a termination of DBE's Work or Contract for cause.

**32.11 Royalties and Patents:** Any indemnity by DBE for its or its Subcontractors' infringement of patent or other intellectual property rights shall be for damages suffered by the City resulting from claims by third parties, and not for any claims related to specified designs (including the Bridging Documents) or modifications by the City or others to DBE's Design Documents or Construction Documents.

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

CITY OF PALO ALTO

DBE

\_\_\_\_\_  
City Manager or  
Designee

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

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

APPROVED AS TO FORM:

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

\_\_\_\_\_  
City Attorney or Designee

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

APPROVED:

\_\_\_\_\_  
Utilities Director

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

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

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

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