



City of Palo Alto

City Council Staff Report

(ID # 11518)

Report Type: Consent Calendar

Meeting Date: 11/16/2020

Summary Title: Automatic Public Toilets

Title: Approval of Contract Number C20175026 With JC Decaux San Francisco, LLC in the Amount of \$1,053,924 for a Five-year Term to Provide the Rental and Servicing of two Automatic Public Toilets, and Approval of a Fiscal Year 2021 Budget Amendment in the General Fund

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that Council:

1. Approve and authorize the City Manager or his designee to execute contract C20175026 with JC Decaux San Francisco, LLC (Attachment A) for an amount not to exceed \$1,053,924 for the continued rental of two Automatic Public Toilets (APT) for five years, with two options to extend the term for five (5) additional years each, by mutual agreement of the parties, to be exercised by future contract amendment(s) that would be brought back to Council for approval; and
2. Amend the Fiscal Year 2021 Budget Appropriation for the General Fund by:
 - a. Increasing the Public Works Department, Public Services Division operating budget by \$100,608;
 - b. Decreasing the budget stabilization reserve by \$100,608.

Background

There are currently two Automatic Public Toilets (APT) in Palo Alto. One is located at Hamilton Avenue and Waverley Street and the other near the University Avenue Caltrain Station. The original contract was for a 20-year rental term that started in January 1999. The APTs were installed to provide restroom facilities and to improve the quality of life in the downtown area.

These toilets are coin/token operated (Hamilton/Waverley APT) or free (Caltrain Station APT), are completely self-contained, and provide the user with a sanitary environment at each use, 24 hours per day. The daily average usage for the APT located at Waverley and Hamilton prior to COVID-19 was 16 and increased to 21 since April. The daily average usage for the APT

located at the University Avenue Caltrain Station prior was 109 and, subsequent to COVID-19, has decreased to 78.

The Waverley/Hamilton APT was planned to be removed as part of the Downtown Parking Garage project for that site but the project has been postponed. Despite the low historic daily usage this APT has remained open, partly to address the limited number of public restrooms available with the numerous building closures caused by the COVID-19 shelter-in-place orders. The new contract includes a provision that allows the City to remove this restroom in the future as the need for this APT is re-evaluated. The new contract allows the removal of one APT during the term of the agreement in which the contractor is responsible for cost of removal and the City responsible for the cost of site restoration such as utilities abandonment and sidewalk repairs.

Discussion

The new contract term is five years, with two five-year options to extend the term for a total contract term, if both Options Terms are exercised, not to exceed fifteen (15) years. The contract has substantially the same terms, conditions, and pricing as the previous contract. The annual rental pricing (excluding telephone charges which is incurred each time the restrooms is used and credit for coin revenue) for the last term year of 2018 (from the previous contract) was \$181,088. The new contract begins with a 2019 annual rental price of \$188,200 and provides for an annual CPI increase after contract year one, as did the previous contract.

The contract version provided in Attachment A has been reduced for printing purposes and does not include exhibits that provide location maps, restroom specification, and insurance requirements. The full contract with all exhibits can be found [here](#).

Summary of Bid Process

The contract was exempted from competitive solicitation pursuant to Palo Alto Municipal Code (PAMC) Section 2.30.360(b)(2), because the existing restroom facilities infrastructure is proprietary and belongs to the current vendor. If a formal solicitation is required and another vendor is chosen, then the existing restrooms would need to be removed and new design, site preparation work, and new proprietary restroom buildings would be required. The time to perform this work in addition to the time required for solicitation, building permits, and Council approval would interrupt service for at least one year, leaving no restroom facility at both locations, unless portable restrooms and wash stations are utilized. In addition, with the potential uncertainty of the future status of these APT's, a new solicitation is not practical. If the City were to go out to bid for APTs, during the period of solicitation and transition to a new vendor (if not awarded to the current vendor), the current vendor could choose to remove its property and end services since its original contract would have expired. A new contract with the current vendor allows for a continuation of service and continues use of the existing site work and infrastructure.

Timeline

Pending Council approval of this contract, this rental agreement is effective as of January 25, 2019. The previous contract expired during lengthy negotiations between the City and the vendor, but services have continued. The City has not been billed since the expiration date of the previous contract. Once this contract is approved, City will be billed for unpaid services rendered since January 25, 2019 to present day in Contract Year 1 and Contract Year 2 as accounted for in the table below.

Resource Impact

A re-appropriation from FY 2020 to FY 2021 of \$198,000 is recommended to the City Council as part of staff report #11526 to cover previously-provided services through the end of year one of the contract, effective as of January 25, 2019. A budget amendment of \$100,608 in FY 2021 is also recommended in this staff report to cover the difference between the funding available in the FY 2021 budget (\$197,974), plus the recommended re-appropriation, and the new contract costs through the end of FY 2021. The annual estimated budget for the subsequent contract years, as shown in the table below, will be addressed and recommended to Council through the Fiscal Year 2022 budget development process. The total contract amount of \$1,053,924 covers monthly rental costs, monthly telephone charges, and annual Consumer Price Index increases (estimated at 5 percent per year) to the rental rate for the initial 5-year term.

Contract Year 1 starts January 25, 2019 – January 24, 2020

Contract Year	APT Rental Rate (2 units)*	Annual Cost (2 units)**
1 (2019)	\$188,200	\$191,000
2 (2020)	\$197,610	\$200,410
3 (2021)	\$207,491	\$210,291
4 (2022)	\$217,865	\$220,665
5 (2023)	\$228,758	\$231,558
Total	\$1,039,924	\$1,053,924

* after contract year one, assumes up to a maximum 5 percent annual CPI increase as allowed by the contract (actual CPI per U.S. Bureau of Labor Statistics - Urban Wage Earners and Clerical Workers in San Francisco-Oakland Standard Metropolitan Statistical Area).

** includes estimated telephone charges (not included in APT Rental Rate) for budgeting purposes. Telephone charges are incurred each time the restroom is utilized and is used by the contractor to track usage and collect data from sensors monitoring the APT’s operation.

Stakeholder Engagement

Stakeholder engagement is not applicable to this contract amendment to continue existing services, but will be considered as part of any potential decision to remove one or both of the APTs.

Policy Implications

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

Environmental Review

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

Attachments:

- Attachment A: JCDECAUX - REVISED VERSION OF ORIGINAL AGREEMENT_20200722

RENTAL AGREEMENT
for
PUBLIC TOILETS
between the
CITY OF PALO ALTO
and
JC DECAUX SAN FRANCISCO, LLC
(CONTRACT NO. C20175026)

THIS, RENTAL AGREEMENT FOR PUBLIC TOILETS (this "Agreement") is entered into by and between the CITY OF PALO ALTO, a California charter city and municipal corporation, hereinafter referred to as the "CITY", and JCDECAUX SAN FRANCISCO, LLC, a California Limited Liability Company (successor in interest to JCDECAUX SAN FRANCISCO, INC., a California corporation), hereinafter referred to as "CONTRACTOR", effective as of January 25, 2019 (the "Effective Date").

Recitals

WHEREAS, CITY and JCDECAUX SAN FRANCISCO, INC. entered into that certain agreement entitled the "Rental Agreement for Automatic Public Toilets" as of January 25, 1999 with a twenty-year term (hereinafter referred to as the "Original Agreement");

WHEREAS, CONTRACTOR assumed the Original Agreement as successor in interest to JCDECAUX SAN FRANCISCO, INC. in 2001;

WHEREAS, the term of the Original Agreement expired as of January 24, 2019;

WHEREAS, CITY and CONTRACTOR, each by their conduct, continued their contractual relationship consistent with the Original Agreement, despite the passing of the expiration date; and

WHEREAS, CITY and CONTRACTOR desire to memorialize their continued contractual relationship by entering into this Agreement on substantially the same terms and conditions as the Original Agreement with regard to the two (2) existing Automatic Public Toilets;

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Agreement, CITY and CONTRACTOR agree as follows:

1. Definitions.

In addition to terms defined elsewhere in this Agreement, where any word or

phrase defined below is used in any part of this Agreement, it shall have the meaning herein set forth:

- A. "Agreement" means this contract, as originally executed and as amended or extended from time to time.
- B. "Automatic Public Toilet" or "APT" means a free-standing enclosure containing an automatic self-cleaning toilet available for use by the general public as provided herein.
- C. "City" means the City of Palo Alto, California.
- D. "PW Director" means the Director of the Department of Public Works of the City of Palo Alto.
- E. "Facilities Management" means the Manager of the Facilities Management Division of Public Works Department.
- F. "Reference Rate" means the interest rate charged by the Bank of America, NT & SA, San Francisco, California, to its best corporate clients at the beginning of each month, or if such rate is discontinued, then the Reference Rate shall be the Prime Rate published in The Wall Street Journal as being the rate on corporate loans posted by at least 75% of the nation's largest banks.
- G. "Vandalism" means willful or malicious damage or destruction of an APT or any part thereof caused by a party other than CONTRACTOR or CITY but shall exclude graffiti, ordinary wear and tear, and any damage caused during riots and other declared civil emergencies.

2. Term of Agreement: Options to Extend.

- A. The "Term Commencement Date" of this Agreement shall be the Effective Date. The term shall continue from the Term Commencement Date, subject to Subsection 2.B and Section 18 hereof, for five (5) years until the "Termination Date" unless earlier terminated as provided for in this Agreement.
- B. If this Agreement shall not have been previously terminated and CITY is not in default under this Agreement at the time of the giving of notice as described below (or, if CITY is in default, but CITY is diligently proceeding to cure said default), and is not in default at the Termination Date or the expiration date of the First Option Term (as hereinafter defined), as appropriate (or, if CITY is in default but CITY is diligently proceeding to cure said default), then CITY shall have the option, with the consent of Contractor, to extend the term of this Agreement on the same terms and conditions for an additional term (the "Option Term") as follows:

(1) An additional term of five (5) years from the Termination Date (the "First Option Term"); and

(2) An additional term of five (5) years from the expiration date of the First Option Term (the "Second Option Term");

provided, however, that such option, as to each Option Term, may be exercised only by the delivery of written notice by CITY to CONTRACTOR delivered at least six (6) months in advance of the Termination Date or the expiration date of the First Option Term, as the case may be.

3. Equipment.

A. Subject to all terms and conditions of this Agreement, CONTRACTOR has, in accordance with the provisions of the Original Agreement, installed and pursuant to this Agreement shall continue to rent to, operate, and maintain for the CITY under the terms and conditions of this Agreement two (2) APTs at the locations shown on Exhibit A (APT Locations) attached hereto and incorporated herein.

B. [RESERVED BY AGREEMENT OF THE PARTIES.]

4. Ownership of Equipment.

All APTs constructed, installed and maintained pursuant to this Agreement, and all intellectual property rights embodied in and/or related to such APTs, shall be and remain the property of CONTRACTOR.

5. Rent.

A. Rent. Subject to Section 6 below, CITY agrees to pay CONTRACTOR an annual rent for each APT in the amount of Ninety Four Thousand and One Hundred Dollars (\$94,100.00) (the "Rent"). The Rent commencement date shall be as of the Effective Date. Rent shall be increased or decreased annually as provided in Subsection B below, but in no event shall Rent be decreased below the amount of \$94,100.00 per year per APT. The parties further acknowledge that the amount of Rent payable hereunder may also be reduced from time to time by credits and/or offsets as provided in Subsection C below.

B. CPI Changes. The Rent shall be adjusted annually on each January 1st ("Rent Adjustment Date") following the initial Term Commencement Date of this Agreement as follows: the Rent shall be adjusted based on the percentage change in the most recently published Consumer Price Index (CPI) (Urban Wage Earners and, Clerical Workers in San Francisco – Oakland Standard Metropolitan Statistical Area (1982 - 84 = 100)) as calculated from the Effective

Date. The annual CPI adjustment shall be limited to a maximum of five (5) percent.

C. Credits and Offsets.

(1) The parties agree that to the extent CITY has paid Rent in advance for an APT, and such APT is not operational throughout the period for which such Rent was paid, CITY shall have the right to reduce future Rent payments due to CONTRACTOR by an appropriate pro rata amount for such non-operational period; provided, however, that CITY shall only be able to so reduce such future Rent payments if CITY has given notice to CONTRACTOR that an APT is not operational, the APT continues to be non-operational twenty-four (24) hours after such notice, and only to the extent the APT (after such initial 24-hour period) is non-operational for more than twelve (12) hours in any one day; provided, however, that Rent shall not be so reduced in any case where an APT is non-operational due to the fault of the CITY; and provided, further, that notice by CITY to CONTRACTOR shall not be required in order for CITY to exercise its right of Rent reduction in the case of the destruction of an APT and such period of Rent reduction shall commence immediately upon such destruction.

(2) CITY's option, to the extent CITY is owed amounts under Section 5.C.(1), 10.D.(2), 12.D., 13.D., and/or 18.B. hereof, which amounts have not been paid by CONTRACTOR within the time allowed therefor; with written notice to CONTRACTOR, CITY shall have the right to offset Rent payments that become due by such amounts due and not paid by CONTRACTOR, plus interest thereon as provided herein. Except as provided in this Subsection 5. C. (2), CITY shall not have the right to offset any other amounts due or claimed to be due to CITY hereunder unless CITY has obtained a final judgment against CONTRACTOR with respect to a claim under this Agreement.

6. Payment of Rent.

A. CITY shall make Rent payments to CONTRACTOR quarterly in advance for each APT. For this purpose, January 1, April 1, July 1 and October 1 shall be deemed "Quarterly Payment Dates".

B. The first Rent payment for each APT shall be due within thirty (30) days after the execution of this Agreement; provided however, that the first Rent payment shall be prorated and shall cover the period from the Effective Date to the day before the next Quarterly Payment Date.

7. Late Payments.

Payments due hereunder, including without limitation Rent, which are not

received within thirty (30) days after such amount becomes due shall bear interest at the Reference Rate plus two percent (2%), from and after the date said payment was due until the date paid.

8. Installation Schedule.

CONTRACTOR has delivered and installed two (2) APTs in accordance with the Original Agreement.

9. Modifications of APTs.

Without limiting any other obligations of CONTRACTOR set forth in this Agreement, and subject to all the terms and conditions of this Agreement, CONTRACTOR shall effect at its cost such technical improvements or alterations to the APTs as, in the course of its business, it may introduce from time to time to such model and which may be introduced without modification of the basic design, including the shell and other major components of the APT. No improvement or alteration shall be made without the written consent of CITY if such alteration would cause the APT to deviate from the plans and specifications attached as Exhibit B (Plans and Specifications) to the Original Agreement, would violate any requirement of this Agreement, or would alter the exterior appearance of the APT. The CITY will not unreasonably withhold or delay its consent to any improvement or alteration for which its consent is required; provided, however, it shall not be considered unreasonable to withhold approval of any alteration which would materially adversely affect the operation of the APTs. After any such improvement or alteration, this Agreement shall continue as if any improved or altered APT was one of the original APTs supplied under this Agreement.

10. Installation of APTs.

A General.

(1) CONTRACTOR has installed the two (2) APTs in accordance with the requirements of the Original Agreement. CONTRACTOR shall be and shall keep fully informed of the City Charter, codes, ordinances and regulations and of all state, local and federal laws in any manner affecting the performance of this Agreement and the operation of the APTs and shall at all times comply with applicable codes. Citation of any specific code sections in this Agreement shall not excuse CONTRACTOR from its obligation to comply with all applicable local, state, federal laws and ordinances. It is the understanding of CONTRACTOR and CITY as of the Effective Date that the City's building code does not apply to the APTs, however Plumbing and Electrical permits are required for the installation of Utility services (laterals).

(2) CONTRACTOR agrees that it shall neither have nor acquire any possessory

interest in any property on which an APT has been installed pursuant to this Agreement.

(3) Change in Laws. If the CITY, the State of California, the federal government or any other governmental agency should adopt a change in laws or regulations applicable to the APTs so as to require significant alteration of or a significant increase in the cost of the operation of the APTs, then at the request of CONTRACTOR, CITY and CONTRACTOR shall negotiate in good faith possible modifications to this Agreement to compensate for the effect of such change. In no event shall CITY be required to agree to any particular modification of this Agreement. If no modification of this Agreement satisfactory to both CONTRACTOR and CITY is agreed upon within one hundred twenty (120) days after CONTRACTOR's request to CITY, CONTRACTOR may, at its option, elect to terminate this Agreement upon ninety (90) days' notice to CITY. For purposes of this provision the term significant shall mean an alteration cost or an operational cost increase equal to at least five percent (5%) of the then remaining Rent due to CONTRACTOR under this Agreement, as extended.

B. Regulatory Approvals Required for APTs. CONTRACTOR has submitted construction drawings and supporting documents necessary to obtain all required approvals from permitting authorities with jurisdiction over the APT locations and paid all related fees, subject to Subsection A.(1) above, in connection with installation of the APTs in accordance with the provisions of the Original Agreement.

C. Locations and Sites of APTs. CONTRACTOR has installed the APTs at locations designated and approved in accordance with this Subsection.

(1) Locations. A list of locations for the two (2) APTs is attached as Exhibit A.

(2) Additional APT Locations. [intentionally omitted].

(3) Review and Approval of APT Locations. If City directs a relocation pursuant to Section D, CITY and CONTRACTOR shall inspect the proposed locations and exchange information regarding the suitability of each such location for an APT. CITY acknowledges that the installation of the APTs requires clear space of at least three and one-half feet (3-1/2') below the surface of the slab. If a proposed location will not provide the clear space necessary for the installation of the APT, CONTRACTOR may disapprove the location and CITY shall designate a substitute location. CONTRACTOR in its sole discretion shall determine if the APT structure is feasible to relocate.

(4) Reimbursement of Cost of Foundations and Utility Laterals. In connection with a relocation, CITY shall reimburse CONTRACTOR for the cost of installation of the foundations of each APT and extension of utility laterals to

each APT, including without limitation, costs of site preparation, trenching, and street restoration required in connection with the installation of foundations and extension of utility laterals. Utility laterals covered by the foregoing shall include, without limitation, sanitary sewer, electrical, water and telephone/communication services to each APT.

Prior to performing such work, CONTRACTOR shall obtain a minimum of three (3) competitive quotes from licensed contractors for performance of this work, unless the PW Director in writing agrees that such competitive quotes are not required. CONTRACTOR shall submit to CITY for CITY's review and approval, which approval will not be unreasonably withheld, the proposed contract with the selected contractor, along with a summary of the, other competitive quotes received. Any disapproval shall be accompanied by a detailed explanation of the reasons for disapproval and shall automatically extend on a day-for-day basis, the dates for installation of the APTs until such a contract has been approved' by CITY. If CITY fails to respond within ten (10) days after submission of the required information, the contract shall be deemed approved. CITY shall reimburse CONTRACTOR for costs incurred for the subject work in accordance with the approved contracts within thirty (30) days of submission by CONTRACTOR to CITY of an invoice therefor, accompanied by evidence of amounts paid to the contractor.

D. Relocation of APTs.

- (1) CONTRACTOR may not relocate or remove an APT during the term of this Agreement without the CITY's approval which shall not be unreasonably withheld, except that the new location for any relocated APT shall be subject to the CITY's approval in its sole discretion; provided however, that if Contractor in its sole opinion determines that it is not practical to refurbish or repair an APT, then Contractor shall remove such APT in accordance with the provisions of Section 13.D (Repair and Replacement). Without limiting the foregoing, the parties acknowledge that unless CITY approves the new location for any APT, which approval shall be in CITY's sole discretion, relocation of APTs shall not be allowed under this Agreement.
- (2) The CITY may direct the relocation of up to one (1) APT during the term of this Agreement for which CONTRACTOR shall bear the full cost of removal and relocation of the APT structure. CITY shall, in accordance with the procedures described in Section 10.C(4), reimburse CONTRACTOR for the cost of installation of the foundation and extension of utility laterals for each new location and for restoration of the street at the prior location. In the event CONTRACTOR fails to remove and relocate an APT within a reasonable time following approval by CITY of all permits for installation of the APT at the new location and of the contract for work to be reimbursed by CITY pursuant to Section 10.C(4), then CITY may, at its sole discretion, cause the removal and storage or relocation of said APT and recover any and all costs incurred from

CONTRACTOR, for which the CONTRACTOR would have been responsible. Such costs shall be paid directly to CITY by CONTRACTOR upon the invoice therefor.

- (3) CITY may also direct CONTRACTOR to relocate more than one (1) APT during the term of this Agreement but only if CITY bears all removal and relocation costs, or, at CITY's option CITY requires a third party to bear such costs.
- (4) Pursuant to Subsection 13.E., CONTRACTOR may, with CITY's approval, elect to relocate and remove any APT, for which CONTRACTOR shall bear the full cost of removal and relocation, including sidewalk and curb restoration if the same is affected by the removal. The new location of any such relocated APT shall be determined in accordance with Subsections 10.C. and 10.D.(1).
- (5) Removal During the Term. The CITY may direct the removal of up to one (1) APT during the term (while retaining at least one APT under this Agreement) for which CONTRACTOR shall bear the full cost of removal of the APT structure. CITY shall, in accordance with the procedures described in Section 10.C(4), reimburse CONTRACTOR for restoration of the street at the removal location (including restoration of sidewalks, streets, walkways, parking lots, walls and curbs, and disconnection or capping of utility service laterals). In the event CONTRACTOR fails to remove the APT within one hundred twenty (120) days following approval by CITY of all permits for removal of the APT and of the contract for work to be reimbursed by CITY pursuant to Section 10.C(4), then CITY may, at its sole discretion, cause the removal and storage or disposal of said APT and recover any and all costs incurred from CONTRACTOR, for which the CONTRACTOR would of been responsible. Such costs shall be paid directly to CITY by CONTRACTOR upon the invoice therefor.

- E. Clearance Requirements for APTs. After the installation of an APT, CITY shall use its best efforts to assure that new structures or obstacles are not placed in the area which would obstruct the access to such APT.
- F. APT Design. CONTRACTOR has I designed, constructed, and installed the APTs contracted for under this Agreement in conformity with the requirements of the Original Agreement. and inconformity with the plans and specifications attached to the Original Agreement as Exhibit B (Plans and Specifications). Such plans and specifications may be modified by the CONTRACTOR only with the prior written approval of the CITY. Such approval shall not be unreasonably withheld if the proposed change does not materially affect the external appearance or the disabled access requirements of the APTs or adversely affect the operation of the APTs. The design cost for Utility installation and foundation work shall be borne by the CITY. However, CONTRACTOR shall arrange for an Engineer to

prepare the necessary documents. The CONTRACTOR will Work with the CITY to arrange for appropriate design fees. No work shall start until CITY has approved for such fees.

- G. Location Drawings and Construction Engineering Plans for APTs. All construction work shall be done in accordance with, Department of Public Works Standard Specifications and Details, most current version, and all other applicable codes. Location drawings shall contain twenty feet (20') to one inch (17 scale representation of the proposed APT site and shall cover the area from the property line to the street centerlines at the nearest intersection. Mid-block sites can be shown with broken line ties. The drawings also shall give all necessary street dimensions, such as sidewalk width and street width, and denote all surface and subsurface structures, including hydrants, utility poles and catch basins, subsidewalk, basements, transit shelters, and bus stops and their accurate positions. After approval of a particular location, CONTRACTOR shall also submit to the Department of Public Works engineering plans showing sewer connections, water service connections, electrical service connections, telephone/communications service connections, and foundation details for each APT, which plans shall be stamped and signed by an engineer registered with the State of California. CONTRACTOR is responsible for identifying all utility lines located beneath the APT and for showing all such utility lines on the location drawing and notifying underground service alert prior to any excavation. Under this Agreement, the City must approve the location and engineering drawings and issue encroachment and excavation approvals before CONTRACTOR may commence work on a particular site or location.
- H. Electrical, Sewage, Telephone and Water Services; Utility Connection. Subject to Subsection 10.C(4), the installation of utility laterals from existing mains to the APT sites will be installed by the CITY. All service lines shall be underground. CONTRACTOR shall arrange for and bear the full cost of the internal APT components and perform all APT utility hook-up procedures to these laterals at the APT units in accordance with all laws.
- I. Operating Charges for Utilities. CITY shall bear the full cost for monthly operating charges for water, electrical, sanitary sewer and telephone/communications services to each APT. All such services shall be in CITY's name and CITY shall pay such charges directly to the providers thereof. CITY shall provide CONTRACTOR with copies of invoices received by CITY for such services, for CONTRACTOR's records.
- J. Installation Hours. CONTRACTOR shall perform installation of all APTs only during hours approved in writing in advance by the PW Director and in accordance with all other reasonable requirements of the PW Director with regard to such installation activities.
- K. Clean-Up of Sites. When each APT installation is complete, CONTRACTOR shall

as part of the construction, restore the site, remove all excess materials, and clean up the site. Without limiting the foregoing, CONTRACTOR shall, as necessary, reconstruct sidewalks; curbs, gutters and/or walkways; repair street and/or parking lot paving; and replant any disturbed plantings. All restoration shall be subject to the inspection and reasonable approval of the PW Director.

- L. Notice of Completion. With regard to each APT, CONTRACTOR has notified CITY in writing of that date when the APT had been completely installed in accordance with the provisions of the Original Agreement.

11. [Intentionally Omitted.]

12. Entrance Fees.

- A. The entrance fee ("Entrance Fee") for the APT at the Hamilton/Waverly location shall be either (i) fifty cents (\$.50), or (ii) a token ("APT Token"). The APT at the Train Depot location does not require a fee.
- B. CONTRACTOR shall supply CITY, at no charge to CITY, with as many APT Tokens as CITY may reasonably request from-time to time.
- C. The parties agree that CITY shall be entitled to all Entrance Fees as may be paid for entrance to the APTs.
- D. CONTRACTOR shall be responsible for collection of all Entrance Fees. CONTRACTOR shall collect the Entrance Fees at least weekly and shall keep detailed records of the cash and APT tokens collected at each APT. After the end of each quarter, CONTRACTOR shall apply the amount collected from the prior quarter to the outstanding quarterly balance and bill for the remainder amount. A monthly report shall be transmitted to the CITY within fifteen (15) days after the end of each month.
- E. At CITY's option, CITY may increase (but need not decrease) the cash amount of the Entrance Fee based upon CPI increases as described in Subsection 5.B., but no more often than once per year and only in multiples of five cents (\$.05). Costs for any adaptation - of the equipment in connection with such an increase in Entrance Fee shall be at CONTRACTOR's expense. The CITY may also change the amount of the Entrance Fee based upon CITY policy or due to unfavorable economic conditions. Any such adaptation of the equipment shall be performed by the CONTRACTOR at the CITY's expense.

13. Maintenance and Operation.

- A. Maintenance and Operation. CONTRACTOR shall at its own cost clean, repair and maintain each APT so that each APT is operational, well maintained, and supplied with all products and materials required for its efficient and convenient

use.

- B. Hours of Operation. Each APT shall be operational twenty-four (24) hours every day, unless otherwise agreed to in writing by CONTRACTOR and CITY.
- C. Services to be Furnished by CONTRACTOR. CONTRACTOR, its employees or authorized subcontractors, shall provide the following services in connection with the maintenance and operation of the APTs during the term of this Agreement:
- (1) Continuously maintain in a clean, graffiti-free, safe, and first-class condition, in a manner consistent with all terms and provisions of this Agreement, all APTs;
 - (2) Maintain an office in Santa Clara County at 2075 Bering Drive, Unit E, San Jose, CA 95131, telephone (408) 436-3028 or another location agreed to by CITY where CONTRACTOR personnel who will supervise and care for the APTs shall be based;
 - (3) Provide a posted telephone number on each APT for 24-hour reporting of service and maintenance complaints;
 - (4) Provide the necessary personnel to assure the maintenance of the APTs as provided herein; without limiting the foregoing, CONTRACTOR shall maintain at its office in Santa Clara County full-time technicians qualified and trained to perform all expected APT maintenance;
 - (5) Refurbish and recondition any APT that is not functioning in accordance with the standards set forth in this Agreement; provided however, that if in CONTRACTOR'S sole opinion if it is not practical to refurbish or recondition such APT, then CONTRACTOR may instead remove such APT in accordance with the provisions of Section 13.D (Repair and Replacement) below. Provided further that if the City desires that Contractor replace it with a materially equivalent APT, Contractor agrees to negotiate in good faith with the City to amend this Agreement to reflect the economic cost of such replacement by providing for financial terms and /or an extension of this Agreement as may be necessary to allow Contractor to recoup its capital expense (or "CapEx"); and provided further that if the parties are unable to reach an agreement that Contractor shall under no circumstances, be obligated to replace such removed APT.
 - (6) Inspect each APT at least twice per day every day; provided, however, that CONTRACTOR shall inspect any site more frequently if conditions at that site so require; At the time of every inspection, CONTRACTOR shall, if necessary, clean and wash each APT, inside and/or outside. In addition, CONTRACTOR shall inspect all fixtures at each site and, if needed, shall replace defective fixtures within the time frames provided in Subsection D

below. CONTRACTOR shall remove all graffiti, stickers, unauthorized posters and flyers, litter, dust, dirt and weeds and other rubbish from each APT. CONTRACTOR shall also keep the sidewalk area five(5) feet around the perimeter of each APT odor-, stain- and refuse-free; provided, however, that in no event shall CONTRACTOR be responsible for any repair or replacement of the sidewalk within five (5)feet of the perimeter of an APT that is necessary due to damage caused from stains caused by entities other than CONTRACTOR, nor shall CONTRACTOR be obligated to indemnify the CITY under Section 15 of this Agreement for CONTRACTOR's failure to keep the sidewalk area within five (5) feet of the perimeter of an APT odor-, stain- and refuse-free. Notwithstanding any other provision of this Agreement, CONTRACTOR shall not be required to provide security personnel at the site of the APTs.

- D. Repair and Replacement. Upon observing or receiving notification of any deficiency, damage, Vandalism, or graffiti in, on or around any APT, CONTRACTOR shall commence to repair or replace said damage, Vandalism or graffiti, within twenty-four (24) hours. If an APT is destroyed, or if in CONTRACTOR'S sole judgement such APT cannot be repaired, CONTRACTOR shall within twenty-four (24) hours secure or remove the remains of the APT and shall replace the APT at that site only if the parties have reached an agreement in accordance with the provisions of Section 13.C(5) above. In the event the Contractor determines an APT is not practical to refurbish, repair or recondition under Section 10.D(1), Section 13.C(5), or Section 13.E, and the CONTRACTOR will instead remove the APT, CONTRACTOR will provide detailed cost sheets comparing repair versus removal in order for the CITY to understand the reasoning behind the decision within 15 business days of CONTRACTOR's written notification to CITY of such determination. In conjunction with such removal, CONTRACTOR shall, at its own expense, restore the affected sidewalk and curb area to a safe, finished condition. If CONTRACTOR does not maintain inspections as scheduled and remedy existing deficiencies within such time periods, CITY shall be entitled, upon twenty-four (24) hours' notice to CONTRACTOR (or such shorter notice as may be feasible in an emergency), to make the repairs and to bill CONTRACTOR for the work performed. Such costs shall be paid directly by CONTRACTOR to CITY upon submission of an invoice therefor, with reasonable documentation, by CITY to CONTRACTOR. Subject to an extension for force majeure, if any APT is out of operation for forty-eight (48) consecutive hours, or if any APT is destroyed and has not been replaced within six (6) months, then CONTRACTOR shall pay to the CITY the sum of Twenty Dollars (\$20.00) per each day thereafter that such APT remains out of operation. Such payment by CONTRACTOR shall be in addition to CITY's right to reduce its Rent payments because of such lack of operation as set forth in Subsection 5.C.(1). For purposes of this Agreement, "force majeure" shall mean delays in CONTRACTOR's performance of its obligations hereunder due to acts of God, riots, fires, floods, community wide strikes, or criminal acts of third parties preventing the reinstallation of the APTs, freight embargoes, and/or unusually

severe weather.

E. Vandalism of APTs. In the event that CONTRACTOR's aggregate cost of repair of APTs due to Vandalism during any year of operation should exceed an average of Two Thousand Dollars (\$2,000) per APT, CONTRACTOR may, by notice to CITY, request that CITY negotiate in good faith possible modifications of this Agreement to reduce such cost (provided, however, that if the Vandalism has in the sole judgment of the Contractor made it impracticable to repair such APT, the CONTRACTOR may remove the APT in accordance with the provisions of Section 13.D above). Such modifications may include relocation of APTs for which Vandalism is a particular problem (if in the reasonable mutual judgement of CONTRACTOR and CITY such relocation is feasible), change in hours of operation, additional lighting or other security measures, or any other modification which would reduce such costs. In no event shall CITY be required to agree to any particular modification of this Agreement. Nothing in this Agreement shall be construed to impose on CITY any responsibility or liability for costs incurred by CONTRACTOR on account of Vandalism.

F. Reports and Logs.

(1) CONTRACTOR shall prepare and maintain a maintenance log for each APT, copies of such logs shall be provided upon the request of the CITY and/or the Manager of Facilities Management.

(2) CONTRACTOR shall also furnish to the CITY and the Manager of Facilities Management within thirty (30) days after the end of each calendar quarter a narrative summary, by APT, of the maintenance operations during the preceding quarter, noting problem areas, corrective actions taken, and the number and nature of repairs attributable to Vandalism: Such quarterly report shall include actual year-to-date cost figures for repairs attributable to Vandalism to the extent then known by CONTRACTOR.

(3) CONTRACTOR shall maintain and make available to the CITY and the Manager of Facilities Management a written complaint log in a format reasonably acceptable to CITY. The purpose of this log will be to record complaints and/or incidents that occur with respect to the APTs. In addition to the date, time, location, etc., the log shall include disposition and final resolution of the complaint. Copies of this document shall be submitted to the CITY and/or Director upon request.

14. Information Displays.

A. CITY may display information posters ("posters") containing information about public events, events at public facilities, or other information of general interest to the public, on the two (2) external display panels on each APT. Such posters shall be a standard size of 4 ft. x 6ft. and shall be clean and of fresh appearance,

and any sponsorship information included in such posters shall be limited to an aggregate of up to ten percent (10%) of the surface area of the poster in the case of any sponsors other than the CITY. CONTRACTOR agrees to install and display such posters as provided by CITY at no cost to CITY. CITY agrees (1) that such display panel space shall not be used for commercial advertising, and, (ii) that CONTRACTOR shall not be liable for any damage or destruction of such posters by third parties while the posters are on display on an APT. The display panels shall be illuminated as provided in the specifications.

- B. CONTRACTOR shall not have any right to place any informative and/or advertising materials on or inside the APTs, without CITY advance written approval which shall be given or withheld in CITY's sole discretion. Notwithstanding the foregoing, CITY shall reasonably approve the display of any informative materials related to the use and operation of the APTs. CONTRACTOR agrees that all such informative materials shall be provided in two (2) languages: English and Spanish.
- C. The parties acknowledge and agree that the display of posters on the APTs shall be subject to and shall conform with all sign laws of the City of Palo Alto.

15. Hold Harmless and Indemnification.

- A. CONTRACTOR shall indemnify, defend, and hold harmless CITY, and their employees, officers and agents from and against any claim, loss, damages, injury, expense, judgment or liability associated with the APTs to the extent such claim, loss, damages, injury, expense, judgment or liability is caused either by defects in products supplied by CONTRACTOR hereunder or by the willful or negligent act or omission of CONTRACTOR, its employees, officers and/or agents.
- B. CITY shall indemnify, defend, and hold harmless CONTRACTOR, its employees, officers and agents from and against any claim, loss, damages, injury, expense, judgment or liability associated with the APTs to the extent such claim, loss, damages injury, expense, judgment or liability is caused by the willful or negligent act or omission of CITY, its employees, officers and/or agents.
- C. The provisions of this Section 15 shall survive the expiration or earlier termination of this Agreement.

16. Minimum Wage; Prevailing Wages; DIR Registration.

- A. 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.

B. 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 prevailing wage laws (including without limitation SB 7), if the Agreement is not a public works contract; or if Agreement is for a public works construction project of \$25,000 or less, or for a public works alteration, demolition, repair, or maintenance project of \$15,000 or less, per Labor Code section 1782(d)(1).

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 Section 1773 of the California Labor Code, the City 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 Agreement for this Project from the Director of the Department of Industrial Relations ("DIR"). Copies of these rates may be obtained at the Purchasing Division 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 1720, 1771, 1771.1, 1774, 1775, 1776, 1777.5, 1782, 1810, and 1813, of the Labor Code pertaining to prevailing wages and applicable provisions of the California Code of Regulations.

C. DIR Registration. With regard to any public work construction, alteration, demolition, repair or maintenance work, CITY will not accept a bid proposal from or enter into this Agreement 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. City requires CONTRACTOR and its listed subcontractors to comply with the requirements of SB 854.

CITY hereby 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 Agreement is awarded.”

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.

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

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.

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.

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.

[For state- and federally-funded projects] 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.

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.

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.

17. Employment Laws.

CONTRACTOR, upon request, shall furnish to CITY adequate evidence of compliance with employment laws, such as but not limited to Social Security and Unemployment Compensation laws.

18. Termination of Agreement.

- A. Termination Upon Expiration. This Agreement shall terminate five (5) years from the Term Commencement Date, as provided in Section 2, unless the Agreement has been extended as provided herein, including without limitation in Subsection 2.B., or unless terminated earlier as provided in this Section.
- B. Removal and Restoration Upon Termination. Upon termination of this Agreement, CONTRACTOR shall remove its APTs at CONTRACTOR's sole cost and expense CITY shall be responsible for the cost of all site restoration work, including restoration of sidewalks, streets, walkways, parking lots, walls and curbs, and disconnection or capping of utility service laterals. At the request of CITY, such work shall be performed under the supervision of CONTRACTOR and reimbursed by CITY, in accordance with the procedures described in Section 10.C(4) above. All such restoration shall be subject to the approval of the PW Director. CONTRACTOR shall complete such APT removal within one hundred twenty (120) days of CONTRACTOR's receipt of all necessary advance approvals and/or permits. If CONTRACTOR fails to complete such APT removal within said one hundred twenty (120) day period, CITY, without further notice, and at CONTRACTOR's cost and expense may remove the APTs.
- C. Termination for Default. In the event of any uncured default by either party to this Agreement, as provided in Section 19 hereof, the non-breaching party shall have the option to terminate the Agreement as provided therein.
- D. [Intentionally Omitted].
- E. Termination without Cause. CITY may terminate this Agreement without cause after thirty (30) days' notice to CONTRACTOR and payment to CONTRACTOR of twenty-five, percent (25%) of the remaining Rent then due to CONTRACTOR under this Agreement (as extended, if extended); provided, however, that during the last three (3) years of the term of this Agreement (as extended, if extended) such payment to CONTRACTOR shall be in the amount of fifteen percent (15%)

of the remaining Rent then due to CONTRACTOR under this Agreement (as extended, if extended).

19. Event of Default; Remedies.

- A. Default of Contractor. In the event that CONTRACTOR shall fail to comply with or carry out any material term, covenant, or condition set forth in this Agreement, CITY may serve upon CONTRACTOR a first notice of default specifying the basis for such claim of default ("First Notice of Default"). If CONTRACTOR fails to cure such default within thirty (30) days after receipt of said First Notice of Default, or, if such default is not capable of being cured within such period, if CONTRACTOR fails to commence to cure within such thirty (30) days and thereafter diligently pursue such cure to completion, then CITY may serve upon CONTRACTOR a second notice of default ("Second Notice of Default"). If CONTRACTOR fails to cure such default within twenty (20) days, after receipt of said Second Notice of Default, or if such default cannot be cured within such period, CONTRACTOR does not commence to cure such default and thereafter diligently pursue such cure to completion, then CITY may terminate this Agreement upon notice of termination to CONTRACTOR. Termination shall be effective immediately upon receipt of such notice of termination. CONTRACTOR shall undertake no new work after the date of receipt of any notice of termination.
- B. Bankruptcy or Reorganization Proceedings. CONTRACTOR shall be deemed to be in default of this Agreement in the event that CONTRACTOR shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state of these United States or any other foreign country relating to the insolvency or the protection of rights of creditors; then, in the case of any of the foregoing events, at the option of CITY, the CITY shall have the right to terminate this Agreement forthwith and CONTRACTOR or its successor in interest by operation of law or otherwise shall thereafter have no rights in or to this Agreement or to any of the rights herein conferred.
- C. Default of CITY. In the event that CITY shall fail to comply with or carry out any material term, covenant or condition set forth in this Agreement, CONTRACTOR may serve upon CITY a First Notice of Default. If CITY fails to cure such default within thirty (30) days after receipt of said First Notice of Default, or, if such default is not capable of being cured within such period, if CITY does not commence to cure within such thirty (30) days and thereafter diligently pursue such cure to completion, then CONTRACTOR may serve upon CITY a Second Notice of Default. If CITY fails to cure such default within twenty (20) days after receipt of said Second Notice of Default or if such default cannot be cured within such period, CITY does not commence to cure such default and thereafter diligently pursue such cure to completion, then CONTRACTOR may terminate

this Agreement upon notice of termination to CITY. Termination shall be effective immediately upon receipt of such notice of termination.

- D. Remedies. In case of default, each party shall have available to it any of the remedies provided for in this Section as well as all remedies available in law and equity.
- E. Rights of Parties Accrued Prior to Termination. Termination of this Agreement shall not in any way affect the rights and obligations of the parties which have accrued prior to such termination, including without limitation, with respect to damages or amounts payable to the other party.
- F. Other Remedies. The exercise of the remedies provided for in this Section 19, shall be cumulative and shall in no way affect any other remedy the parties may have available in law or equity. The exercise by either party of any of the options set forth in this Section by commencement of legal proceedings, audit, or otherwise, shall not be deemed a waiver of its right to exercise any other option provided herein.

20. Insurance.

CONTRACTOR agrees to have and maintain the policies of insurance set forth in EXHIBIT C, entitled "Insurance Requirements", which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the CITY Risk Manager as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. It is agreed that the required insurance coverage maybe increased in proportion to the CPI Changes as described in paragraph 5.B. However, any such increase in required insurance coverage shall be applied in minimum \$250,000 increments based on the cumulative 'multi-year' CPI Change. CONTRACTOR agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

21. Nondiscrimination.

As set forth in Palo Alto Municipal Code section 2.30.510, CONTRACTOR certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, 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 agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

22. Taxes.

CITY shall pay all lawful sales or use taxes, if any, levied on the rent payments and all possessory interest taxes or personal property taxes from time to time levied or assessed upon CONTRACTOR in connection with the APTs provided pursuant to this Agreement. CONTRACTOR shall pay any other taxes with respect to this Agreement, including, without limitation, personal property taxes for personal property other than the APTs, any federal or state income, franchise, sales, use, or similar taxes, business license taxes, and any taxes related to CONTRACTOR'S right to do business. CONTRACTOR shall promptly upon receipt thereof provide CITY with copies of any bills received by CONTRACTOR for any taxes payable by CITY pursuant to this Section. Notwithstanding the foregoing, CITY shall have the right at its option to contest the validity or amount of any taxes payable by CITY pursuant to this Section by appropriate legal proceedings.

23. Conflict of Interest.

CONTRACTOR, and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to CONTRACTOR's services under this Agreement including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government code Section 1090.

24. Governing Law.

CITY and CONTRACTOR agree that the law governing this Agreement shall be that of the State of California.

25. Compliance with Laws.

CONTRACTOR and the APTs shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments, including without limitation the Americans with Disabilities Act (ADA), in the performance of CONTRACTOR's obligations hereunder.

26. No Third-Party Beneficiaries.

Nothing in this Agreement shall be construed to create any duty to anyone not a party hereto and no third party shall be deemed a third-party beneficiary of any of the provisions hereof.

27. Independent Contractor.

CONTRACTOR shall be deemed at all times to be an independent contractor hereunder and shall be wholly responsible for the manner in which

CONTRACTOR performs the service required of CONTRACTOR by the terms of this Agreement. Nothing contained herein shall be construed as creating an employment, partnership, joint venture or agency relationship between CITY and CONTRACTOR. Terms in this Agreement referring to direction from CITY shall be construed as providing for direction as to policy and the result of CONTRACTOR's work only and not as to the means by which such a result is obtained.

28. Waiver.

CONTRACTOR agrees that waiver by CITY of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONTRACTOR shall not be deemed to be a waiver of any term or condition of this Agreement.

29. Contractor's Books and Records.

- A. CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, supplies, materials, or equipment provided to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this Agreement.
- B. CONTRACTOR shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at, any time during regular business hours, upon written request by any of the following CITY officers: the City Attorney and/or Director of Administrative Services, and/or any of the following City officers: the City Auditor, City Manager, and/or the Director; or a designated representative of any of such officers. Copies of such documents shall be provided to CITY for inspection at the CITY office when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONTRACTOR's address indicated for receipt of notices in this Agreement.
- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and

documents be maintained at the CITY office. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

30. Gifts.

- A. CONTRACTOR is familiar with CITY's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in the Palo Alto Municipal Code.
- B. CONTRACTOR agrees not to offer any City officer or designated employee any gift prohibited by said Code.
- C. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by CONTRACTOR. In addition to any other remedies CITY may have in law or equity, CITY may terminate this Agreement for such breach as provided in Section 23 of this Agreement.

31. Notices.

All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with Verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To: Director, Department of Public Works
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

with a copy to:

Facilities Manager, Dept. of Public Works, Public Services Division
Facilities Management Section
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

To CONTRACTOR:

JCDecaux San Francisco
Attention: Jean-Francois Nion
81 Dorman Avenue, Suite B
San Francisco, CA 94124

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against CITY, its officers or employees shall also be served in the manner specified above to the following address:

City of Palo Alto – City Attorney’s Office
250 Hamilton Avenue
Palo Alto, CA 94301

Notice shall be deemed given on the date of personal delivery by hand, or the date of receipt of facsimile transmission (with verification of receipt), or on the date delivery is refused, if applicable.

32. Venue.

In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara or, where appropriate, in the United States District Court for the Northern District of California, San Jose, California.

33. Prior Agreements and Amendment of this Agreement.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may only be modified by a written instrument duly executed by the duly authorized and delegated parties to this Agreement and approved as required under Palo Alto Municipal Code. Any unchecked boxes in this Agreement do not apply to this Agreement.

34. Assignment.

- A. This Agreement may not be assigned by CONTRACTOR without the prior written consent of CITY, which consent shall not be unreasonably withheld, except that CITY’s consent shall not be required for (i) assignments requested in connection with the sale of substantially all of CONTRACTOR’s assets or operations, such as but not limited to consolidations or mergers, or (ii) assignments to entities more than fifty percent (50%) owned by, or under common ownership with, CONTRACTOR; provided, in either case, that the assignee assumes in writing all of CONTRACTOR’s obligations hereunder.
- B. CITY, in its sole discretion with written notice to CONTRACTOR, may assign all or part of its interest in this Agreement to any other governmental entity.

35. Severability.

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

36. Headings.

Section and subsection headings used herein are for convenience of reference only and are not intended to define or limit the scope of any provision hereof.

37. Incorporation of Recitals.

The Recitals first set forth above are terms of this Agreement and are hereby incorporated into this Agreement in full by this reference.

38. Exhibits.

The following Exhibits are attached to and hereby made part of this Agreement in full by this reference:

- (i) Exhibit A – Location of APTs (2 pages)
- (ii) Exhibit B – Plans and Specifications (22 pages)
- (iii) Exhibit C – Insurance Requirements (2 pages)

(SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.)

CONTRACT No. C20175026 SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement, effective as of the date first above written (the Effective Date).

CITY OF PALO ALTO

CONTRACTOR

City Manager or Designee

DocuSigned by:

Francis Nion

J. Francis Nion

Executive Vice President

DocuSigned by:

Alan Sullivan

Alan Sullivan

Co-Chief Executive Officer

APPROVED AS TO FORM:

DocuSigned by:

Cassie Coleman

Cassie Coleman

Assistant City Attorney

DocuSigned by:

Sandra Boisseau

Sandra Boisseau

Chief Financial Officer