



City of Palo Alto

City Council Staff Report

(ID # 9688)

Report Type: Action Items

Meeting Date: 12/10/2018

Summary Title: 350 Sherman Ave Garage Construction

Title: Approval of: 1) Construction Contract C19173521 with Swinerton Builders in the Amount of \$39,395,153; 2) Amendment Number 3 to Contract C16163034 with Nova Partners, Inc. in the Amount of \$1,249,193 for Construction Management Services; 3) Amendment Number 1 to Contract S18171787 with Romig Engineers, Inc. in the Amount of \$99,000; 4) Authorization to Negotiate and Execute Four Easements for Underground Shoring Tie-backs; 5) Authorization to Negotiate and Execute a Short-term Lease for a Parking Lot from the County of Santa Clara; 6) Authorization to Negotiate and Execute a Month-to-Month Lease of Parking Stalls from Caltrain; and 7) A Budget Amendment for Capital Improvement Fund Project PE-18000 for the New California Avenue Area Parking Garage

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that Council:

1. Approve and authorize the City Manager or his designee to execute the attached contract with Swinerton Builders (Attachment A) in an amount not to exceed \$39,395,153 for the New California Avenue Area Parking Garage, Capital Improvements Program project PE-18000;
2. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Swinerton Builders for related, additional but unforeseen work which may develop during the project, the total value of which shall not exceed \$2,954,636;
3. Approve and authorize the City Manager or his designee to execute Amendment Number 3 to Contract Number C16163034 with Nova Partners, Inc. (Attachment B) to add construction management for the New

California Avenue Area Parking Garage to the scope of services and increase compensation by \$1,249,193 for a total contract amount of \$5,808,928;

4. Approve and authorize the City Manager or his designee to execute Amendment Number 1 to Contract S18171787 with Romig Engineers, Inc. (Attachment C) to increase compensation by \$99,000 for a total contract amount of \$149,000 as a sole source contract, exempt from competitive solicitation as impractical and unavailing under PAMC 2.30.360(b)(2);
5. Authorize the City Manager or his designee to negotiate and enter into easement agreements with four adjacent private property owners for shoring tie-backs beneath those properties including a total not-to-exceed compensation of \$25,000 combined;
6. Authorize the City Manager or his designee to negotiate and enter into a short-term lease agreement with the County of Santa Clara for the parking lot on the southeast corner of Grant Avenue and Birch Streets;
7. Authorize the City Manager or his designee to negotiate and enter into a month-to-month lease agreement for up to 44 parking stalls on the California Avenue Caltrain Station parking lot; and
8. Amend the Fiscal Year 2019 Budget Appropriation for the Capital Improvement Fund by:
 - a. Increasing the New California Avenue Area Parking Garage project (PE-18000) Fiscal Year 2019 appropriation by \$2,450,000; and
 - b. Decreasing the Infrastructure Reserve by \$2,450,000.

Executive Summary

Approval of the attached construction contract and amendments to consultant agreements is the next major step in the delivery of the new California Avenue Area Parking Garage and the Public Safety Building (PSB). The requested authorizations to negotiate compensation and execute four easement agreements will allow the underground excavation for the garage to commence and proceed smoothly. The requested authorizations to negotiate two lease agreements for nearby parking will lessen the impact of the temporary loss of public parking during construction of the garage.

The requested budget amendment for the new California Avenue Area Parking Garage project provides the necessary funding to execute the attached contracts and pay for related project costs such as parking mitigations, permits, and utility connection fees. Construction is anticipated to begin in early 2019 and be

completed by fall 2020. The PSB construction would begin after the new public garage is fully functional so that there are no further public parking impacts.

Background

The Public Safety Building (PSB) (PE-15001) and New California Avenue Area Parking Garage (PE-18000) were among nine key projects included in the 2014 Council Infrastructure Plan. The PSB was identified as the plan's highest priority project. In December 2015, Council selected 250 Sherman Avenue as the site for the PSB within the California Avenue Business District and identified 350 Sherman Avenue for the new public parking garage. The two projects are linked such that the new parking garage will mitigate for the loss of existing surface parking on the PSB site. A single Environmental Impact Report (EIR) for the combined project was certified by Council on June 11, 2018 ([Staff Report ID# 8967](#)). The City intends to complete the public parking garage prior to starting PSB construction.

The new parking garage will be four levels above grade and two stories below grade, serving the needs of the California Avenue business district. The garage will replace existing stalls at the two locations and provide approximately 310 new parking stalls to the California Avenue business district.

The garage construction will involve a cut-off wall to limit groundwater impact, cast-in-place post-tensioned structural concrete, and provisions for an integrated solar canopy. The height of the California Avenue Parking Garage will be approximately 49'-0" above sidewalk level to the top of future roof-mounted photovoltaic (PV) panels. Construction at this stage includes only the support structure for the PV panels. The PV panel installation on the garage is expected during the PSB construction phase. Infrastructure to feed the PV-generated electricity into the adjacent PSB is part of the plans.

On June 11, 2018, Council approved a finding that the New California Avenue Area Parking Garage project is "Substantially Complex" under Public Contract Code 7201 ([Staff Report ID# 9270](#)). This allows the City to withhold 10 percent from each payment application from the contractor (retention). Typically retention is limited to only 5 percent.

Discussion

Prequalification

Projects that require significant specialized experience or expertise or that are complex, large scale or costly warrant using a process to prequalify prospective bidders and/or subcontractors to ensure that the bidders have demonstrated the attribute of trustworthiness, quality, financial fitness, capacity, and experience to prosecute the work successfully and within the time specified by the City. The City Manager authorized the use of contractor prequalification for New California Avenue Area Parking Garage on May 9, 2018.

On June 7, 2018, a notice inviting general contractors to submit prequalification applications was posted through the City's eProcurement system. The invitation was open for 21 days. On June 28, 2018, five general contractors submitted prequalification applications. The applications were scored according to an objective set of criteria that was established prior to the published invitation. Three of the five contractors received scores high enough to be deemed prequalified.

Bid Process

On September 18, 2018, a notice inviting formal bids (IFB) for the New California Avenue Area Parking Garage Project was posted and sent to the three prequalified contractors (Swinerton Builders, McCarthy Building Companies, Inc., and Build Group, Inc.) through the City's eProcurement system. The bidding period was 36 calendar days. Bids were received from two of the prequalified contractors on October 24, 2018 as listed on the attached Bid Summary (Attachment D).

Summary of Bid Process

Bid Name/Number	New California Avenue Area Parking Garage
Proposed Length of Project	540 Calendar Days
Number of Prequalified Contractors Eligible to bid on the project	3
Total Days to Respond to Bid	36 Calendar Days
Pre-Bid Meeting?	Yes (not mandatory)
Number of Bids Received:	2
Base Bid Price Range	\$39,393,653 to \$39,750,000

The apparent low bidder was selected based upon the total of the base bid without consideration of the add alternates. Base bids ranged from \$39,393,653

to \$39,750,000 and from 5.15% to 6.10% above the engineer's estimate of \$37,465,410. Staff has reviewed all bids submitted and recommends the bid totaling \$39,393,653 submitted by Swinerton Builders be accepted and Swinerton Builders be declared the lowest responsible bidder. The recommended award amount includes the bid add-alternate item for a webcam to display and document the day-to-day construction progress. Swinerton Builders' bid for the construction webcam service is \$1,500. The webcam does not constitute a surveillance technology under the City's recently adopted "Surveillance and Privacy Protection" ordinance. It will be located on the construction site and not be capable of viewing individuals that are not on the site. PAMC §2.30.680(c)(1) excludes from the definition of a surveillance technology "any technology that collects information exclusively on or regarding city employees or contractors".

A second add-alternate price was provided for individual stall occupancy lights that would be tied to the Automated Parking Guidance System (APGS). Swinerton Builders' bid for the individual lights above each stall is \$180,000, and staff does not recommend this for award. The specified APGS is a camera-based system that has grouped occupancy lights in the center drive aisle to cover multiple stalls. Each camera sensor unit typically covers six stalls. If all stalls managed by a camera sensor are occupied, the light is red. If at least one stall is still available, the light above the drive aisle near that stall is green. Although the camera-based APGS can include individual stall occupancy lights at the higher cost, these systems do not typically have individual lights above each stall. In the future, the camera-based system could be used for charging hourly rates for parking based upon optional license plate reading technology. Future implementation of this feature would first require new Council policy on parking fees. In accordance with the City's Surveillance and Privacy Protection ordinance, it would also require Council approval to use the APGS as surveillance technology for a purpose, in a manner, or in a location outside the scope of prior Council approval (PAMC §2.30.630(c)). Additionally, although the APGS as currently defined would not constitute a surveillance technology, the system is a design-build component of the project and specific details about the system will be better understood pending a future submittal by the contractor. If future information indicates that the APGS would meet the definition of a surveillance technology, staff will return to Council to satisfy the requirements of the Surveillance and Privacy Protection ordinance. The camera-based APGS will be able to track the total number of stalls that are occupied, so open stall quantities can be displayed on directional signs at

the entry to the garage. The final design of the garage signage will be completed during construction and is subject to review by the Architectural Review Board (ARB).

The construction contingency amount of \$2,954,636, which equals 7.5 percent of the total contract, is requested for related, additional, but unforeseen work that may develop during the project. Typically, a 10 percent contingency is requested. The project team will strive to limit contingency use to 7.5 percent, but it may prove necessary to return to Council in the future for an increase in the contingency authorization.

Staff asked Build Group, Inc. why they did not submit a bid after applying for and receiving prequalification status. Build Group, Inc. indicated that they had committed to other projects and did not have the resources to commit to this project in 2019.

Nova Partners, Inc. Contract Amendment

On June 13, 2016, Council approved a contract with Nova Partners, Inc. for program management of the nine Council Infrastructure Plan projects ([Staff Report ID# 6809](#)). The contract included “Optional Task 5” for Construction Management (CM) services. The attached contract amendment (Attachment B) adds the necessary scope and compensation for CM services during the construction of the New California Avenue Area Parking Garage. CM services include conducting weekly OAC (Owner/Architect/Contractor) meetings to review the project schedule and open items that require resolution, reviewing contractor payment applications for level of completeness for payment, reviewing change order requests, provision of special inspections and testing, processing contract change orders, providing expert review of entitlement to changes, reviewing of project schedules, and monitoring adherence to the contract requirements and general conditions.

RossDrulisCusenbery Architecture, Inc. – Future Contract Amendment

On December 12, 2016, Council approved a contract with RossDrulisCusenbery Architecture, Inc. (RDC) in the amount of \$7,007,992 to provide Design and Environmental Assessment Services for the new PSB and the new California Avenue Area Parking Garage ([Staff Report ID# 7417](#)). A future contract amendment is needed to add the necessary scope and compensation for

additional Construction Administration (CA) work for the New California Avenue Area Parking Garage and to add funding for additional design services for the PSB. Staff plans to bring the RDC contract amendment to Council at a later date for approval once it is fully negotiated.

Romig Engineers, Inc. Contract Amendment

On April 10, 2018, the City executed contract S18171787 with Romig Engineers, Inc. (Romig) for geotechnical investigation on the parking garage property for \$50,000. Because of Romig's knowledge and experience with the site geology, cut-off wall parameters, basement design, and setting staff recommends awarding a sole-source contract amendment (Attachment C) for the geotechnical services that are required during construction. Romig is also an integral part of the design team. Ideally, Romig would be a subconsultant to RDC, however, due to liability concerns, architects do not typically want to directly subcontract for the geotechnical services. The City, therefore, now needs to extend and increase the contract amount for Romig from \$50,000 to \$149,000, which is beyond the level that normally requires a competitive solicitation. Romig is highly qualified and the best choice for this project. They were originally selected due to their work on other major nearby projects such as 385 Sherman Avenue (i.e. the Visa building directly across the street from the garage). For the above reasons, Staff is requesting an exemption from competitive solicitation as being impractical and unavailing under PAMC 2.30.360(b)(2).

Tie-Back Easements for Garage Basement Construction

Staff has been in discussions with four adjacent private property owners to negotiate easements for shoring tie-backs that are proposed to extend beneath four private properties directly across from the new garage on Jacaranda Lane. The staff recommendation includes authorization to negotiate, finalize, and execute these four easement documents including a not-to-exceed compensation amount of \$25,000 for all four easements.

Parking Mitigations During Construction

Concurrent to the parking garage design process, Staff has been planning numerous mitigations for the temporary loss of parking during the construction of the new garage. On September 12, 2018, Staff held a community meeting about the upcoming construction. Numerous ideas for parking mitigation were presented and discussed. Staff further refined the ideas, and the current

mitigation plan includes the following:

1. Reconfigure Parking Lot C-6 to add approximately 30 new stalls. Parking Lot C-6 is the site where the PSB will be constructed. Reconfiguring this parking lot before building the PSB will allow for the partial closure of the 200 block of Sherman Avenue to provide a staging area for the garage construction. The reconfiguration work is included in the contract with Swinerton Builders.
2. Lease the Santa Clara County parking lot on the southeast corner of Grant Avenue and Birch Street. Staff has been working with County personnel to draft a short-term lease to allow Palo Alto to temporarily take control of this parking lot for the purpose of providing parking for California Avenue Business District parking permit holders. The lot provides approximately 43 stalls that were part of the under-utilized parking supporting the Courthouse. The staff recommendation includes authorization to finalize negotiations and execute the lease that will then go to the County Board of Supervisors for final approval. The lease is anticipated to include payments of approximately \$150,000 for the duration of the project.
3. Lease up to 44 stalls on a month-to-month basis from Caltrain. The leased stalls are at the far end of the Cal Ave Caltrain Station parking lot. The stalls will be designated for the use of Swinerton Builders' employees and subcontractors. The stalls on this lot are currently underutilized. The staff recommendation includes authorization to finalize negotiations and execute the lease. The lease is anticipated to include payments of approximately \$75,000 for the duration of the project.

Another parking mitigation idea that is still being considered consists of the conversion of a portion of Mimosa Lane to one-way traffic. This would allow the addition of 4 to 5 new parking spaces beside Country Sun Natural Foods. Further outreach for this idea is being conducted.

In addition to these mitigations that create physical parking spaces, Staff will continue to work with the California Avenue merchants on outreach and messaging to help minimize parking impacts. A full list of expected parking impacts and mitigations is presented in Attachment E.

Timeline

Construction of the garage is expected to begin in early 2019 and be complete before fall 2020. The PSB construction would begin shortly after the garage is fully functional.

Resource Impact

Project Costs	Prior Years Actuals	FY 2019 Adopted Budget	FY 2019 Changes	FY 2019 Modified Budget	Future Years Estimated Costs	Updated Project Total
Design	\$1,488,138		\$228,271	\$228,271		\$1,716,409
Construction		\$43,603,537	\$2,450,000	\$46,053,537		\$46,053,537
Salary & Benefits		\$1,300,000		\$1,300,000	\$1,060,000	\$2,360,000
Total	\$1,488,138	\$44,903,537	\$2,678,271	\$47,581,808	\$1,060,000	\$50,129,946

On October 15, 2018, Council authorized the delivery and sale of Certificates of Participation (COPs) to finance the construction of the New California Avenue Area Parking Garage ([Staff Report ID# 9689](#)). The budgeted construction amount plus the recommended budget amendment for the garage will be provided by this financing. The debt will be serviced via transient occupancy tax (TOT) revenues that have been allocated by Council to completion of the 2014 Council Infrastructure Plan projects.

For the New California Avenue Area Parking Garage, an additional appropriation of \$2,450,000 is needed to cover the cost of the project's construction phase. Prior to bidding, Staff's total project cost estimate for the garage was \$47.9 million. The low bid for construction of the garage is the principal driver for the increased costs. The factors in the increase are summarized below:

- Construction bid (with 7.5% contingency): \$1.14 million
- Building permit cost increase: \$0.40 million
- Parking mitigation costs: \$0.24 million
- Construction management cost: \$0.27 million
- Design and construction administration cost: \$0.40 million

The increases for construction management and for design and construction

administration result primarily from the addition of the second basement level to the garage, but also account for increased costs during design that resulted from separating the garage and PSB architectural review processes. The requested budget amendment results in a new project cost estimate for the New California Avenue Area Parking Garage of \$50.1 million.

Policy Implications

The construction contract awarded in this report will require the parking in-lieu fee to be adjusted per section 16.57.030 of the City of Palo Alto Municipal Code. Staff will return to Council in the event this report is approved to present the recalculated parking in-lieu fee.

Environmental Review

An Environmental Impact Report for the PSB and the New California Avenue Area Parking Garage was prepared and was certified by Council on June 11, 2018 ([Staff Report ID #8967](#)), by adoption of Resolution No. 9772.

Attachments:

- Attachment A - Swinerton Builders Contract C19173521
- Attachment B - C16163034- Amendment 3- Final
- Attachment C - Romig Contract Amendment 1-Final
- Attachment D - IFB 173521 Bid Summary
- Attachment E - Parking Mitigation Summary Table



CITY OF
**PALO
ALTO**

CONSTRUCTION CONTRACT

Contract No. C19173521

City of Palo Alto

New California Avenue Parking Garage Project

CONSTRUCTION CONTRACT

TABLE OF CONTENTS

SECTION 1 INCORPORATION OF RECITALS AND DEFINITIONS.....	6
1.1 Recitals.....	6
1.2 Definitions.....	6
SECTION 2 THE PROJECT.....	6
SECTION 3 THE CONTRACT DOCUMENTS.....	7
3.1 List of Documents.....	7
3.2 Order of Precedence.....	7
SECTION 4 CONTRACTOR’S DUTY.....	8
4.1 Contractor's Duties.....	8
SECTION 5 PROJECT TEAM.....	8
5.1 Contractor's Co-operation.....	8
SECTION 6 TIME OF COMPLETION.....	8
6.1 Time Is of Essence.....	8
6.2 Commencement of Work.....	8
6.3 Contract Time.....	8
6.4 Liquidated Damages.....	8
6.4.1 Other Remedies.....	9
6.5 Adjustments to Contract Time.....	9
SECTION 7 COMPENSATION TO CONTRACTOR.....	9
7.1 Contract Sum.....	9
7.2 Full Compensation.....	9
SECTION 8 STANDARD OF CARE.....	9
8.1 Standard of Care.....	9
SECTION 9 INDEMNIFICATION.....	10
9.1 Hold Harmless.....	10
9.2 Survival.....	10
SECTION 10 NON-DISCRIMINATION.....	10
10.1 Municipal Code Requirement.....	10
SECTION 11 INSURANCE AND BONDS.....	10

11.1 Evidence of Coverage.....	10
SECTION 12 PROHIBITION AGAINST TRANSFERS.....	11
12.1 Assignment.....	11
12.2 Assignment by Law.....	11
SECTION 13 NOTICES	11
13.1 Method of Notice	11
13.2 Notice Recipients	11
13.3 Change of Address.....	12
SECTION 14 DEFAULT.....	12
14.1 Notice of Default.....	12
14.2 Opportunity to Cure Default.....	12
SECTION 15 CITY'S RIGHTS AND REMEDIES.....	13
15.1 Remedies Upon Default.....	13
15.1.1 Delete Certain Services.....	13
15.1.2 Perform and Withhold.....	13
15.1.3 Suspend The Construction Contract.....	13
15.1.4 Terminate the Construction Contract for Default.....	13
15.1.5 Invoke the Performance Bond.....	13
15.1.6 Additional Provisions.....	13
15.2 Delays by Sureties.....	13
15.3 Damages to City.....	14
15.3.1 For Contractor's Default.....	14
15.3.2 Compensation for Losses.....	14
15.4 Suspension by City.....	14
15.4.1 Suspension for Convenience.....	14
15.4.2 Suspension for Cause.....	14
15.5 Termination Without Cause.....	14
15.5.1 Compensation.....	15
15.5.2 Subcontractors.....	15
15.6 Contractor's Duties Upon Termination.....	15
SECTION 16 CONTRACTOR'S RIGHTS AND REMEDIES.....	16
16.1 Contractor's Remedies.....	16

16.1.1 For Work Stoppage.....	16
16.1.2 For City's Non-Payment.....	16
16.2 Damages to Contractor.....	16
SECTION 17 ACCOUNTING RECORDS.....	16
17.1 Financial Management and City Access.....	16
17.2 Compliance with City Requests.....	17
SECTION 18 INDEPENDENT PARTIES.....	17
18.1 Status of Parties.....	17
SECTION 19 NUISANCE.....	17
19.1 Nuisance Prohibited.....	17
SECTION 20 PERMITS AND LICENSES.....	17
20.1 Payment of Fees.....	17
SECTION 21 WAIVER.....	17
21.1 Waiver.....	17
SECTION 22 GOVERNING LAW AND VENUE; COMPLIANCE WITH LAWS.....	18
22.1 Governing Law.....	18
22.2 Compliance with Laws.....	18
22.2.1 Palo Alto Minimum Wage Ordinance.....	18
SECTION 23 COMPLETE AGREEMENT.....	18
23.1 Integration.....	18
SECTION 24 SURVIVAL OF CONTRACT.....	18
24.1 Survival of Provisions.....	18
SECTION 25 PREVAILING WAGES.....	18
SECTION 26 NON-APPROPRIATION.....	19
26.1 Appropriation.....	19
SECTION 27 AUTHORITY.....	19
27.1 Representation of Parties.....	19
SECTION 28 COUNTERPARTS.....	19
28.1 Multiple Counterparts.....	19
SECTION 29 SEVERABILITY.....	19
29.1 Severability.....	19
SECTION 30 STATUTORY AND REGULATORY REFERENCES	19

30.1 Amendments of Laws.....	19
SECTION 31 WORKERS' COMPENSATION CERTIFICATION.....	19
31.1 Workers Compensation.....	19
SECTION 32 DIR REGISTRATION AND OTHER SB 854 REQUIREMENTS.....	20
32.1 General Notice to Contractor.....	20
32.2 Labor Code section 1771.1(a).....	20
32.3 DIR Registration Required.....	20
32.4 Posting of Job Site Notices.....	20
32.5 Payroll Records.....	20

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT entered into on December 10, 2018 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and Swinerton Builders ("Contractor"), is made with reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. Contractor is a California corporation duly organized and in good standing in the State of California, Contractor's License Number **92** and Department of Industrial Relations Registration Number **1000000296**. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Construction Contract.
- C. **On September 18, 2018**, City issued an Invitation for Bids (IFB) to contractors for the **New California Avenue Area Parking Garage** ("Project"). In response to the IFB, Contractor submitted a Bid.
- D. City and Contractor desire to enter into this Construction Contract for the Project, and other services as identified in the Contract Documents for the Project upon the following terms and conditions.

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

SECTION 1 **INCORPORATION OF RECITALS AND DEFINITIONS.**

1.1 Recitals.

All of the recitals are incorporated herein by reference.

1.2 Definitions.

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

SECTION 2 **THE PROJECT.**

The Project is the **New California Avenue Area Parking Garage** Project, located at **350 Sherman Avenue, Palo Alto, CA 94306** ("Project").

SECTION 3 THE CONTRACT DOCUMENTS.

3.1 List of Documents.

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

- 1) Change Orders
- 2) Field Orders
- 3) Contract
- 4) Bidding Addenda
- 5) Special Provisions
- 6) General Conditions
- 7) Project Plans and Drawings
- 8) Technical Specifications
- 9) Instructions to Bidders
- 10) Invitation for Bids
- 11) Contractor's Bid/Non-Collusion Declaration
- 12) Reports listed in the Contract Documents
- 13) Public Works Department’s Standard Drawings and Specifications (most current version at time of Bid)
- 14) Utilities Department’s Water, Gas, Wastewater, Electric Utilities Standards (most current version at time of Bid)
- 15) City of Palo Alto Traffic Control Requirements
- 16) City of Palo Alto Truck Route Map and Regulations
- 17) Notice Inviting Pre-Qualification Statements, Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable)
- 18) Performance and Payment Bonds

3.2 Order of Precedence.

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

SECTION 4 CONTRACTOR'S DUTY.

4.1 Contractor's Duties

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

SECTION 5 PROJECT TEAM.

5.1 Contractor's Co-operation.

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

SECTION 6 TIME OF COMPLETION.

6.1 Time Is of Essence.

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

6.2 Commencement of Work.

Contractor shall commence the Work on the date specified in City's Notice to Proceed.

6.3 Contract Time.

Work hereunder shall begin on the date specified on the City's Notice to Proceed and shall be completed

☐

not later than _____.

☒

within Five Hundred Forty calendar days (**540**) after the commencement date specified in City's Notice to Proceed.

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

6.4 Liquidated Damages.

Pursuant to Government Code Section 53069.85, if Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time, including any approved extensions thereto, City may assess liquidated damages on a daily basis for each day of Unexcused Delay in achieving Substantial Completion, based on the amount of **Nine thousand dollars (\$9,000)** per day, or as otherwise specified in the Special Provisions. Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents, regardless of impact on the time for achieving Substantial Completion. The assessment of liquidated damages is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer by delay in completion of the Work. The City is entitled to setoff the amount of liquidated damages assessed against any payments otherwise due to Contractor,

including, but not limited to, setoff against release of retention. If the total amount of liquidated damages assessed exceeds the amount of unreleased retention, City is entitled to recover the balance from Contractor or its sureties. Occupancy or use of the Project in whole or in part prior to Substantial Completion, shall not operate as a waiver of City's right to assess liquidated damages.

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

6.5 Adjustments to Contract Time.

The Contract Time may only be adjusted for time extensions approved by City and memorialized in a Change Order approved in accordance with the requirements of the Contract Documents.

SECTION 7 COMPENSATION TO CONTRACTOR.

7.1 Contract Sum.

Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of **Thirty Nine Million Three Hundred Ninety Five Thousand One Hundred Fifty Three Dollars (\$39,395,153).**



[This amount includes the Base Bid and Additive Alternates #11.]

7.2 Full Compensation.

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

SECTION 8 STANDARD OF CARE.

8.1 Standard of Care.

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

SECTION 9 INDEMNIFICATION.

9.1 Hold Harmless.

To the fullest extent allowed by law, Contractor will defend, indemnify, and hold harmless City, its City Council, boards and commissions, officers, agents, employees, representatives and volunteers (hereinafter individually referred to as an "Indemnatee" and collectively referred to as "Indemnitees"), through legal counsel acceptable to City, from and against any and liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnatee. Contractor shall pay City for any costs City incurs to enforce this provision. Except as provided in Section 9.2 below, nothing in the Contract Documents shall be construed to give rise to any implied right of indemnity in favor of Contractor against City or any other Indemnatee.

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

9.2 Survival.

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

SECTION 10 NON-DISCRIMINATION.

10.1 Municipal Code Requirement.

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

SECTION 11 INSURANCE AND BONDS.

11.1 Evidence of coverage.

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

SECTION 12 PROHIBITION AGAINST TRANSFERS.

12.1 Assignment.

City is entering into this Construction Contract in reliance upon the stated experience and qualifications of the Contractor and its Subcontractors set forth in Contractor's Bid. Accordingly, Contractor shall not assign, hypothecate or transfer this Construction Contract or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any assignment, hypothecation or transfer without said consent shall be null and void, and shall be deemed a substantial breach of contract and grounds for default in addition to any other legal or equitable remedy available to the City.

12.2 Assignment by Law.

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

SECTION 13 NOTICES.

13.1 Method of Notice.

All notices, demands, requests or approvals to be given under this Construction Contract shall be given in writing and shall be deemed served on the earlier of the following:

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

13.2 Notice to Recipients.

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

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

Copy to: ☒ City of Palo Alto
 Public Works Administration
 250 Hamilton Avenue
 Palo Alto, CA 94301
 Attn: Matt Raschke

AND

☒ Nova Partners, Inc.
207 Moffet Blvd.
Mountain View, CA 94043
Attn: Hans de Roos

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

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

All Claims shall be sent by registered mail or certified mail with return receipt requested.

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

Swinerton Builders
260 Townsend Street
San Francisco, CA 94107
Attn: Terry McKellips

13.3 Change of Address.

In advance of any change of address, Contractor shall notify City of the change of address in writing. Each party may, by written notice only, add, delete or replace any individuals to whom and addresses to which notice shall be provided.

SECTION 14 DEFAULT.

14.1 Notice of Default.

In the event that City determines, in its sole discretion, that Contractor has failed or refused to perform any of the obligations set forth in the Contract Documents, or is in breach of any provision of the Contract Documents, City may give written notice of default to Contractor in the manner specified for the giving of notices in the Construction Contract, with a copy to Contractor's performance bond surety.

14.2 Opportunity to Cure Default.

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

SECTION 15 CITY'S RIGHTS AND REMEDIES.

15.1 Remedies Upon Default.

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

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

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

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

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

15.1.5 Invoke the Performance Bond. City may, with or without terminating the Construction Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

15.1.6 Additional Provisions. All of City's rights and remedies under this Construction Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not waive the City's authority to designate other breaches as material nor limit City's right to terminate the Construction Contract, or prevent the City from terminating the Agreement for breaches that are not material. City's determination of whether there has been noncompliance with the Construction Contract so as to warrant exercise by City of its rights and remedies for default under the Construction Contract, shall be binding on all parties. No termination or action taken by City after such termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all liquidated damages and Losses suffered by City.

15.2 Delays by Sureties.

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

liable for any additional cost incurred by City to complete the Work following termination. In addition, City shall have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

15.3 Damages to City.

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

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

15.4 Suspension by City

15.4.1 Suspension for Convenience. City may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time. The order shall be specifically identified as a Suspension Order by City. Upon receipt of a Suspension Order, Contractor shall, at City's expense, comply with the order and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order. During the Suspension or extension of the Suspension, if any, City shall either cancel the Suspension Order or, by Change Order, delete the Work covered by the Suspension Order. If a Suspension Order is canceled or expires, Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. A Suspension Order shall not be the exclusive method for City to stop the Work.

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

15.5 Termination Without Cause.

City may, at its sole discretion and without cause, terminate this Construction Contract in part or in whole upon written notice to Contractor. Upon receipt of such notice, Contractor shall, at City's expense, comply with the notice and take all reasonable steps to minimize costs to close out and demobilize. The compensation allowed under this Paragraph 15.5 shall be the Contractor's sole and exclusive compensation for such termination and Contractor waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind resulting from termination without cause. Termination pursuant to this provision does not relieve Contractor or its sureties from any of their obligations for Losses arising from or related to the Work performed by Contractor.

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

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

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

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

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

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

15.6 Contractor's Duties Upon Termination.

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

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

Upon termination, whether for cause or for convenience, the provisions of the Contract Documents remain in effect as to any Claim, indemnity obligation, warranties, guarantees,

submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

SECTION 16 CONTRACTOR'S RIGHTS AND REMEDIES.

16.1 Contractor's Remedies.

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

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

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

16.2 Damages to Contractor.

In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Paragraph 15.5.1 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

SECTION 17 ACCOUNTING RECORDS.

17.1 Financial Management and City Access.

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

17.2 Compliance with City Requests.

Contractor's compliance with any request by City pursuant to this Section 17 shall be a condition precedent to filing or maintenance of any legal action or proceeding by Contractor against City and to Contractor's right to receive further payments under the Contract Documents. City may enforce Contractor's obligation to provide access to City of its business and other records referred to in Section 17.1 for inspection or copying by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

SECTION 18 INDEPENDENT PARTIES.

18.1 Status of parties.

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

SECTION 19 NUISANCE.

19.1 Nuisance Prohibited.

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

SECTION 20 PERMITS AND LICENSES.

20.1 Payment of Fees.

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

SECTION 21 WAIVER.

21.1 Waiver.

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

SECTION 22 GOVERNING LAW AND VENUE; COMPLIANCE WITH LAWS.

22.1 Governing Law.

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

22.2 Compliance with Laws.

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

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

SECTION 23 COMPLETE AGREEMENT.

23.1 Integration.

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

SECTION 24 SURVIVAL OF CONTRACT.

24.1 Survival of Provisions.

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

SECTION 25 PREVAILING WAGES.

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

Or

☒ Contractor is required to pay general prevailing wages as defined in Subchapter 3, Title 8 of the California Code of Regulations and Section 16000 et seq. and Section 1773.1 of the California Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work

in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the Director of the Department of Industrial Relations (“DIR”). Copies of these rates may be obtained at the Purchasing Division’s office of the City of Palo Alto. Contractor shall provide a copy of prevailing wage rates to any staff or subcontractor hired, and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of all sections, including, but not limited to, Sections 1775, 1776, 1777.5, 1782, 1810, and 1813, of the Labor Code pertaining to prevailing wages.

SECTION 26 NON-APPROPRIATION.

26.1 Appropriations.

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

SECTION 27 AUTHORITY.

27.1 Representation of Parties.

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

SECTION 28 COUNTERPARTS

28.1 Multiple Counterparts.

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

SECTION 29 SEVERABILITY.

29.1 Severability.

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

SECTION 30 STATUTORY AND REGULATORY REFERENCES.

30.1 Amendments to Laws.

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

SECTION 31 WORKERS’ COMPENSATION CERTIFICATION.

31.1 Workers Compensation.

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

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

SECTION 32 DIR REGISTRATION AND OTHER SB 854 REQUIREMENTS.

32.1 General Notice to Contractor.

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

32.2 Labor Code section 1771.1(a)

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

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

32.3 DIR Registration Required.

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

32.4 Posting of Job Site Notices.

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

32.5 Payroll Records.

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

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

- (iii) At the request of City, acting by its project manager, Contractor and its listed subcontractors shall make the certified payroll records available for inspection or furnished upon request to the project manager within ten (10) days of receipt of City's request.
- ☐ City requests Contractor and its listed subcontractors to submit the certified payroll records to the project manager at the end of each week during the Project.
- (iv) If the certified payroll records are not produced to the project manager within the 10-day period, then Contractor and its listed subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and City shall withhold the sum total of penalties from the progress payment(s) then due and payable to Contractor. This provision supplements the provisions of Section 15 hereof.
- (v) Inform the project manager of the location of contractor's and its listed subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to the project manager within five (5) business days of any change of location of those payroll records.

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

CITY OF PALO ALTO

☐ Purchasing Manager
☒ City Manager

APPROVED AS TO FORM:

City Attorney or designee

APPROVED:

Public Works Director

CONTRACTOR

Officer 1

By: _____

Name: _____

Title: _____

Date: _____

Officer 2

By: _____

Name: _____

Title: _____

Date: _____

**AMENDMENT NO. 3 TO CONTRACT NO. C16163034
BETWEEN THE CITY OF PALO ALTO AND
NOVA PARTNERS, INC.**

This Amendment No. 3 (this "Amendment") to contract no. C16163034 is entered into as of December 10, 2018, by and between the **CITY OF PALO ALTO**, a California chartered municipal corporation ("CITY"), and **NOVA PARTNERS, INC.**, a California corporation, formerly located at 855 El Camino Real, Suite 307, Palo Alto, CA 94302 and now located at 201 Moffett Boulevard, Mountain View, CA 94043 ("CONSULTANT"). City and Consultant are referred to herein collectively as the "Parties".

RECITALS

A. The Contract (as defined below) was entered into between the parties for the provision of Program Management Services for nine major projects including the New California Avenue Area Parking Garage.

B. The Parties desire to amend the Contract to add Construction Management (CM) Services for the New California Avenue Area Parking Garage project to the scope of services and to increase the compensation by One Million Two-Hundred Forty-nine Thousand One Hundred Ninety-three dollars (\$1,249,193), from Four Million Five Hundred Fifty-nine Thousand Seven Hundred Thirty-five Dollars (\$4,559,735) to a new not-to-exceed amount of Five Million Eight Hundred Eight Thousand Nine Hundred Twenty-eight Dollars (\$5,808,928).

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

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

- a. **Contract.** The term "Contract" shall mean contract no. C16163034 between CONSULTANT and CITY, as amended by:

Amendment No. 1, dated November 27, 2017, and
Amendment No. 2, dated February 21, 2018.

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

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

"CONSULTANT shall perform the Services described at Exhibit "A", entitled "SCOPE OF SERVICES", and Exhibit "A-1", entitled "PROFESSIONAL SERVICES TASK ORDER", as approved by City, Exhibit

"A-1", entitled "SCOPE OF SERVICES, AMENDMENT NO. 1", and Exhibit "A-2", entitled "SCOPE OF SERVICES, AMENDMENT NO. 3, ADDED", in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY."

SECTION 3. Section 2, "TERM", of the Contract is hereby amended to read as follows:

"The term of this Agreement shall be from the date of its full execution through completion of the services in accordance with the Schedule of Performance exhibits attached at Exhibit "B", Exhibit "B-1" and Exhibit "B-2", as applicable, unless terminated earlier pursuant to Section 19 of this Agreement".

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

"Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit "B", Exhibit "B-1" and/or Exhibit "B-2", as applicable. Each such exhibit is hereby attached to and made a part of this Agreement by this reference as though fully set forth herein. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT."

SECTION 5. Section 4, "NOT TO EXCEED COMPENSATION", of the Contract is hereby amended to read as follows:

"The compensation to be paid to CONSULTANT for performance of the services described in Exhibit "A", entitled "SCOPE OF SERVICES"; Exhibit "A-1", entitled "PROFESSIONAL SERVICES TASK ORDER", as approved by City; Exhibit "A-1", entitled "SCOPE OF SERVICES, AMENDMENT NO. 1"; and Exhibit "A-2", entitled "SCOPE OF SERVICES, AMENDMENT NO. 3, ADDED" (collectively, "Basic Services"); and any reimbursable expenses specified in Exhibit "C" shall not exceed Five Million Two-Hundred Eighty Eight Hundred Forty-Four Dollars (\$5,280,844). CONSULTANT agrees to complete all Basic Services, including such reimbursable expenses, within this amount. In the event Additional Services (defined below) are authorized, the total compensation for Basic Services, Additional Services and reimbursable expenses shall not exceed Five Million Eight Hundred Eight Thousand Nine Hundred Twenty-Eight Dollars (\$5,808,928). The applicable rates and schedule of payment are set out at Exhibit "C-1", entitled "SCHEDULE OF RATES" or Exhibit "C-2", entitled "SCHEDULE OF RATES, AMENDMENT NO.3", as applicable. Each such exhibit is hereby attached to and made a part of this Agreement in full by this reference. Any work performed or expenses

incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. "Additional Services" shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit "A", Exhibit "A-1", or Exhibit "A-2".

SECTION 6. Exhibits The following exhibits to the Contract are hereby added or amended, as indicated below in this Section, to read as set forth in the attachments to this Amendment, which are hereby incorporated into this Amendment, and into the Contract, in full by this reference:

- a. Exhibit "A-2" entitled "SCOPE OF SERVICES, AMENDMENT No. 3" – Added
- b. Exhibit "B-2" entitled "SCHEDULE OF PERFORMANCE, AMENDMENT No. 3" – Added
- c. Exhibit "C" entitled "COMPENSATION, AMENDMENT No. 3"- Amended, replaces previous
- d. Exhibit "C-2" entitled "SCHEDULE OF RATES, AMENDMENT NO.3"- Added

SECTION 7. Legal Effect. Except as herein modified, all other provisions of the Contract, including any exhibits thereto, shall remain in full force and effect.

SECTION 8. Incorporation of Recitals. The recitals set forth above are terms of this Amendment and are hereby fully incorporated herein by this reference.

(SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.)

SIGNATURES OF THE PARTIES

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

CITY OF PALO ALTO

City Manager (Contract over \$85k)

APPROVED AS TO FORM:

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

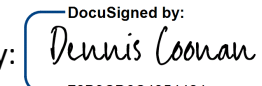
NOVA PARTNERS, INC.

Officer 1

By: 
42E6A67E5533425...
Name: David Marks

Title: Vice President

Officer 2 (Required for Corp. or LLC)

By: 
78B3CD6C4354424...
Name: Dennis Coonan

Title: CFO

Attachments:

EXHIBIT "A-2": SCOPE OF SERVICES, AMENDMENT NO. 3-ADDED
EXHIBIT "B-2": SCHEDULE OF PERFORMANCE, AMENDMENT NO. 3-ADDED
EXHIBIT "C": COMPENSATION, AMENDMENT NO. 3-AMENDED-REPLACES PREVIOUS
EXHIBIT "C-2": SCHEDULE OF RATES, AMENDMENT NO. 3-ADDED

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

Task 5.2: Construction Management Services for the New California Avenue Area Parking Garage

The Consultant shall provide construction management (CM) services for the New California Avenue Area Parking Garage Project. CM services consist of monitoring and managing the construction contract while coordinating the progress of the work with the City and the project architect and the architect's team of subconsultants.

1. Construction management for the New California Avenue Area Parking Garage shall include the following:

- a. Review general contractor's baseline project schedule and monitor continuously during project duration, advising on schedule adherence and status.
- b. Review general contractor's monthly project schedule updates and monthly application for payment.
- c. Conduct weekly Owner/Architect/Contractor (OAC) meetings and document/publish meeting minutes.
- d. Monitor Requests for Information (RFI's), response times, submittal approvals, and change requests during construction to maintain the project schedule.
- e. Manage project change orders, review for validity, and process requests on appropriate City forms to allow for City approval. Consultant will create and manage the change order log for the project.
- f. Review all payment applications for accuracy to allow City to issue payment.
- g. Review invoices and add service requests from Architect for validity.
- h. Review field progress and maintain open communication between project team members during the construction phase.
- i. Publish a monthly construction report summarizing progress. Report shall be submitted to City for inclusion on the City web site.
- j. Manage Basecamp file storage for project files.
- k. Provide Special Testing and Inspection services (geotechnical excluded).
- l. Provide photo documentation consisting of monthly interior and exterior progression images and major slab concrete pours and Mechanical, Electrical, and Plumbing (MEP) installations.

2. CM Services for the New California Avenue Area Parking Garage does not include:

- a. Preparation of permit applications or permit fees
- b. Air fare, per diem or other out of town travel expenses
- c. Geotechnical Services, Waterproofing Inspections, or Commissioning
- d. Blueprinting or major copying services
- e. Contracts of equipment vendors, design consultants, and contractors.

3. Special Inspection and Testing Scope:

Exhibit A: Special Inspection and Testing Proposed Scope

Special Inspection and Testing Services will be provided by Consolidated Engineering Laboratories. The following Special Inspection and Testing Scope is included:

SHORING / TIE-BACK INSPECTION / SOILS CEMENT PLACEMENT		
Mix Design Review	2	Each
Field Welding Inspection - 24 visits x 4 hours per visit	96	Hours
Tie-Back Grout Sampling - 24 visits x 4 hour per visit	96	Hours
Grout Compression Tests - 2 sets x 3 samples per day	144	Each / 48 Sets
Cement Soil Placement - 46 visits x 4 hours per visit	184	Hours
Soils Cement Compression Tests - 1 set x 3 samples per day	276	Cylinders / 46 Sets
Sample Pick-Ups	94	Trips
ON SITE INSPECTIONS		
Resident Inspector - Reinforced Concrete, Shotcrete, Post-Tensioned Placement, Masonry	1400	Hours
Assistant Inspector - Inspecting on PT Stressing Days	96	Hours
ACI Concrete Sampling Technician	356	Hours
Post-Tensioned Stressing Inspection	96	Hours
Structural Steel Field Welding Inspection	200	Hours
Miscellaneous Field Welding Inspection	160	Hours
Placement of Expansion Anchors/Proofload/Torque Testing	80	Hours
OFF SITE INSPECTIONS		
Structural Steel Shop Fabrication Inspection	200	Hours
Miscellaneous Shop Fabrication Inspection	160	Hours
LABORATORY TESTING		
Concrete Compression Tests	664	Cylinders / 101 Sets
Post-Tensioned Concrete Compression Tests	192	Cylinders / 24 Sets
Post Tension - Tendon Tests	10	Each
Production Panel Compression Tests (3 cores per panel)	144	Cores
Pre-Production Panel Tests: (Including Laboratory Coring)	4	Each
Non-Shrink Grout Compression Tests	12	Each / 4 Sets
Concrete Mix Design - Drying Shrinkage Tests (3 bars per set)	10	Sets
Masonry Prisms	3	Each
Grout Compression Tests	24	Each
Mortar Compression Tests	24	Each
MISCELLANEOUS		
Mix Design Review	10	Each
Welding Procedure Specification Review	4	Each
Sample Pick-Ups	112	Trips
Final Affidavit	1	per permit

* Please note, any additional special inspection visits/hours and/or associated materials testing will be an additional cost. Nova will track special inspector hours and materials testing and will advise the City at the earliest opportunity if the above estimated numbers are likely to be exceeded.

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

CONSULTANT shall commence performance of Task 5.2 (Construction Management Services for the New California Avenue Area Parking Garage) of Exhibit “A-2”, upon issuance of Notice to Proceed. These services shall be performance for the duration of the project unless earlier terminated by CITY in its sole discretion. For information purposes, Task 5.2 is expected to be performed from January 1, 2019 through July 31, 2020 and consist of a total duration of 19 months from commencement of construction; however, that timeframe may be modified by CITY as project needs require.

**EXHIBIT “C”
COMPENSATION, AMENDMENT NO. 3
(AMENDED – REPLACES PREVIOUS)**

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the schedule of rates attached as Exhibit “C-1” and Exhibit “C-2”, up to the not to exceed budget amount for each task set forth below.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY’s Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, including reimbursable expenses, and the total compensation for Additional Services do not exceed the amounts set forth in Section 4 of this Agreement.

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are:

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto’s policy for reimbursement of travel and meal expenses for City of Palo Alto employees.

B. Long distance telephone service charges, cellular phone service charges, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$1,000 shall be approved in advance by the CITY’s project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide Additional Services (defined in Section 4, “Not to Exceed Compensation”) only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY’s project manager’s request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT’s proposed maximum compensation, including reimbursable expense, for such services based on the rates set forth in Exhibit “C-1” and/or Exhibit “C-2”. The Additional Services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY’s Project Manager and CONSULTANT prior to commencement of such services. Payment for Additional Services is subject to all requirements and restrictions in this Agreement.

(Continued on the next page.)

BUDGET SCHEDULE

DESCRIPTION	NOT-TO-EXCEED AMOUNT			
BASIC SERVICES	Year 1	Year 2	Year 3	Total
Task 1.1: Project Management, Planning, and Coordination (Projects 1-9)	\$140,898	\$140,898	\$140,898	\$422,694
Task 1.2: Project Management System (Projects 1-9)	\$175,000	\$100,000	\$100,000	\$375,000
Task 2: Acquisition and management of project consultants (Projects 1-3)	\$144,975	\$144,975	\$144,975	\$434,925
Task 3: Design/Document reviews (Projects 1-3)	\$206,762	\$206,762	\$206,762	\$620,286
Task 4: Pre-Construction services (Projects 1-3)	\$283,650	\$283,650	\$283,650	\$850,950
Task 5.1: Construction Management services for Fire Station 3 Replacement	\$0	\$326,604	\$0	\$326,604
Task 5.2: Construction Management services for New California Avenue Area Parking Garage	\$0	\$0	\$1,135,630	\$1,135,630
Task 6: Budget and schedule management (Projects 1-9)	\$63,985	\$63,985	\$63,985	\$191,955
Task 7.1: On-call services for Transportation Projects	\$333,400	\$253,400	\$0	\$586,800
Task 7.2: On-call services (allowance)	\$100,000	\$100,000	\$100,000	\$300,000
TOTAL BASIC SERVICES	\$1,448,670	\$1,620,274	\$2,175,900	\$5,244,844
REIMBURSABLE EXPENSES	\$12,000	\$12,000	\$12,000	\$36,000
TOTAL BASIC SERVICES AND REIMBURSABLES	\$1,460,670	\$1,632,274	\$2,187,900	\$5,280,844
ADDITIONAL SERVICES – 10% OF ABOVE	\$146,067	\$163,227	\$218,790	\$528,084
TOTAL NOT-TO-EXCEED AMOUNT	\$1,606,737	\$1,795,501	\$2,406,690	\$5,808,928

**EXHIBIT “C-2”
SCHEDULE OF RATES
AMENDMENT NO. 3, ADDED**

2018

1. Principal	\$196 per hour
2. Sr. Project Manager	\$181 per hour
3. Project Manager	\$160 per hour
4. Sr. Estimator / Sr. Cost Mgr	\$181 per hour
5. Estimator & Peer Reviews	\$165 per hour
6. Project Accountant/ Admin	\$155 per hour
7. Scheduler	\$181 per hour

2019

1. Principal	\$202 per hour
2. Sr. Project Manager	\$187 per hour
3. Project Manager	\$165 per hour
4. Sr. Estimator / Sr. Cost Mgr	\$187 per hour
5. Estimator & Peer Reviews	\$170 per hour
6. Project Accountant/ Admin	\$160 per hour
7. Scheduler	\$187 per hour

2020

1. Principal	\$209 per hour
2. Sr. Project Manager	\$193 per hour
3. Project Manager	\$170 per hour
4. Sr. Estimator / Sr. Cost Mgr	\$193 per hour
5. Estimator & Peer Reviews	\$175 per hour
6. Project Accountant/ Admin	\$165 per hour
7. Scheduler	\$193 per hour

**AMENDMENT NO. 1 TO CONTRACT NO. S18171787
BETWEEN THE CITY OF PALO ALTO AND
ROMIG ENGINEERS, INC.**

This Amendment No. 1 (this "Amendment") to contract no. S18171787 ("Contract" as defined below) is entered into as of December 10, 2018 by and between the **CITY OF PALO ALTO**, a California chartered municipal corporation ("CITY"), and **ROMIG ENGINEERS, INC.**, a California corporation, DIR Registration #1000056882, located at 1390 El Camino Real, San Carlos, CA 94070 ("CONSULTANT").

RECITALS

A. The Contract was entered into between the parties for the provision of geotechnical investigation services for the California Avenue Area Parking Garage proposed on Lot C-7 ("Project").

B. The parties wish to amend the Contract in order to (i) increase the compensation from Fifty Thousand Dollars (\$50,000) to a new not-to-exceed amount of One Hundred Forty Nine Thousand Dollars (\$149,000), (ii) expand the scope of services to include geotechnical consulting, observation of construction, witness load tests, perform soil tests, report on findings, and the other tasks detailed in Exhibit "A-1" added here, and (iii) extend the term by an additional 1.5 years through October 9, 2020, as detailed in this Amendment.

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

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

- a. **Contract.** The term "Contract" shall mean contract no. S18171787 between CONSULTANT and CITY, dated April 10, 2018.
- b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Contract.

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

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

SECTION 3. Section 2, "TERM", of the Contract is hereby amended to read as follows:

"The term of this Agreement shall be from the date of its full execution through completion of the services in accordance with the Schedule of Performance attached at Exhibit "B" and Exhibit "B-1" but in no event later than October 9, 2020 unless terminated earlier pursuant to Section 19 of this Agreement."

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

"Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit "B" and Exhibit "B-1", attached to and made a part of this Agreement. Consultant is not responsible for delays due to causes beyond their responsible control. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT."

SECTION 5. Section 4, "NOT TO EXCEED COMPENSATION", of the Contract is hereby amended to read as follows:

"The compensation to be paid to CONSULTANT for performance of the Basic Services and any authorized Optional Services described in Exhibit "A" and Exhibit "A-1", as provided for therein, shall not exceed One Hundred Thirty-six Thousand Eight Hundred Dollars (\$136,800) as detailed in Exhibit "C" ("Compensation"). CONSULTANT agrees to complete all such Basic Services and any authorized Optional Services within this amount. In the event Additional Services (defined below) are authorized, the total compensation for Basic Services, Optional Services and Additional Services shall not exceed One Hundred Forty-nine Thousand Dollars (\$149,000), as detailed in Exhibit "C" ("Compensation"). The applicable schedule of rates is set out at Exhibit "C-1", entitled "SCHEDULE OF RATES," which is attached to and made a part of this Agreement. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. "Additional Services" shall mean any work that is determined by CITY to be

necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit "A" or Exhibit "A-1".

SECTION 6. Exhibits. The following exhibit(s) to the Contract are hereby added or amended, as indicated below in this Section, to read as set forth in the attachments to this Amendment, which are incorporated into this Amendment, and into the Contract, in full by this reference:

- a. Exhibit "A-1" entitled "SCOPE OF SERVICES, AMENDMENT NO.1" (ADDED)
- b. Exhibit "B-1" entitled "SCHEDULE OF PERFORMANCE, AMENDMENT NO.1" (ADDED)
- c. Exhibit "C" entitled "COMPENSATION" (AMENDED-REPLACES PREVIOUS)

SECTION 7. Legal Effect. Except as herein modified, all other provisions of the Contract, including any exhibits, shall remain in full force and effect.

SECTION 8. Incorporation of Recitals. The recitals set forth above are terms of this Amendment and are hereby fully incorporated herein by this reference.

(SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.)

SIGNATURES OF THE PARTIES

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

CITY OF PALO ALTO

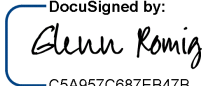
City Manager (Contract over \$85k)

APPROVED AS TO FORM:

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

ROMIG ENGINEERS, INC.

Officer 1

By: 
Name: Glenn Romig

Title: President

Officer 2 (Required for Corp. or LLC)

By:

Name:

Title:

Attachments :

EXHIBIT "A-1" entitled "SCOPE OF SERVICES, AMENDMENT NO.1" (ADDED)

EXHIBIT "B-1" entitled "SCHEDULE OF PERFORMANCE, AMENDMENT NO.1" (ADDED)

EXHIBIT "C" entitled "COMPENSATION, AMENDMENT NO.1" (AMENDED – REPLACES PREVIOUS)

EXHIBIT “A-1”
SCOPE OF SERVICES, AMENDMENT NO.1
(ADDED)

The following Geotechnical Engineering services shall be provided by CONSULTANT to support construction of the New California Avenue Area Parking Garage at 350 Sherman Avenue, Palo Alto, California.

<u>Task</u>	<u>Description</u>
A-1	Review design/build shoring plans; summarize results in letter
A-2	Up to 10, 4-hour site visits for intermittent construction observation of seepage cut-off wall
A-3	Up to 4, 4-hour site visits for intermittent construction observation during installation of soldier beams in cut-off wall
A-4	Review and respond to up to 12 Requests for Information (RFIs) from contractor
A-5	Up to 12, 4-hour site visits for intermittent construction observation during the installation and grouting of tie-back anchors
A-6	Up to 6, 5-hour site visits to witness load testing of tie-back anchors and review contractor installation and load testing records
A-7	Prepare summary letter re tie-back installation and load testing
A-8	Up to 4, 3-hour site visits to observe and test lower-level mat subgrade
A-9	Up to 6, 4-hour site visits to observe and test miscellaneous structural fill and backfill
A-10	Up to 12, 3-hour site visits to observe and test utility trench backfill
A-11	Up to 6, 3-hour site visits to observe and test foundation subgrades for at-grade improvements
A-12	Up to 12, 3-hour site visits to observe and test subgrade and aggregate base (AB) for on-site and off-site pavements
A-13	Miscellaneous geotechnical consultation as requested by City, Construction Manager, or Architect
A-14	Up to 8, 3-hour site visits by and engineering support by project engineers
A-15	Project coordination, scheduling and management
A-16	Prepare construction observation summary letter at completion

The following tasks shall be considered “Optional Services”. CONSULTANT will provide the Optional Services below if requested and authorized by the City’s project manager:

<u>Task</u>	<u>Description</u>
O-1	Near full-time construction observation of seepage cut-off wall
O-2	Near full-time construction observation of tie-back installation and grouting

**EXHIBIT “B-1”
SCHEDULE OF PERFORMANCE, AMENDMENT NO. 1
(ADDED)**

Geotechnical Services for construction of the New California Avenue Area Parking Garage) is expected to proceed from January 2019 through July 2020 and consist of a total duration of 19 months from commencement of construction.

EXHIBIT “C”
COMPENSATION, AMENDMENT NO. 1
(AMENDED – REPLACES PREVIOUS)

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the hourly rate schedule attached as exhibit C-1 up to the not to exceed budget amount for each task set forth below.

CONSULTANT shall perform the tasks and categories of work as outlined and budgeted below. The CITY’s Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below provided the total compensation for Basic Services, Optional Services, and Additional Services does not exceed the amounts set forth in Section 4 of this Agreement.

BUDGET SCHEDULE	NOT TO EXCEED AMOUNT
Task 1 (Pre-Proposal Consultation with Project Team)	\$1,900
Task 2 (Project Coordination/Mark Borings and CPTs/Notify USA)	\$2,500
Task 3 (Santa Clara Valley Water District (SCVWD) Permit Application and Fees (Drilling and CPT)	\$1,450
Task 4 (Exploratory Borings/ Grouting/Drum Spoils)	\$17,600
Task 5 (CPTs/Grouting/Coordination)	\$7,300
Task 6 (Laboratory Testing, not including environmental testing of spoils)	\$4,050
Task 7 (Report of Findings and Testing Summary Report)	\$3,800
Tasks A-1 through A-16 (Geotechnical Engineering services to support construction)	\$60,000

Sub-total Basic Services	\$98,600
Reimbursable Expenses	\$0
Total Basic Services and Reimbursable Expenses	\$98,600
Additional Services (Not to Exceed)	\$12,200
Optional Services	
Task 8 (Utility Locator Service)	\$850
Task 9 (Chemical Testing and Off-Haul of Soil and Drums Time and Expense for normal lab turnaround time)	\$3,750
Task 10 (Post Report Geotechnical Consultation – Time and Expense)	\$3,600
Task O-1 (Near full-time construction observation of seepage cut-off wall)	\$15,000
Task O-2 (Near full-time construction observation of tie-back installation and grouting)	\$15,000
Sub-total Optional Services	\$38,200
Maximum Total Compensation	\$149,000

ADDITIONAL SERVICES

The CONSULTANT shall provide Additional Services (as defined in Section 4, “NOT TO EXCEED COMPENSATION” of this Agreement) only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY’s project manager’s request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT’s proposed maximum compensation for such services based on the rates set forth in Exhibit C-1. The Additional Services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY’s project manager and CONSULTANT prior to commencement of the services, pursuant to a written amendment to this Agreement per Section 27.4 of this Agreement. Payment for Additional Services is subject to all requirements and restrictions in this Agreement.

Bid Summary Results for Project New California Avenue Area Parking Garage (IFB 173521)

Issued on 09/18/2018

Bid Due on October 24, 2018 3:00 PM (Pacific)

Item Number	Description	Swinerton Builders	McCarthy Building Companies, Inc.
1	BASE BID - All work shown on the New Parking Garage drawings and technical specifications and with reference to IFB appendices and the reconfiguration of the adjacent Parking Lot C-6 to included tree removals, clearing and grubbing, partial demolition, light fixture relocation, slurry seal, striping, and signage.	\$38,858,653	\$39,215,000
2	Allowance for Unforeseen Utilities	\$50,000	\$50,000
3	Allowance for Dewatering	\$300,000	\$300,000
4	Allowance for Removal and Disposal of Hazardous Materials	\$75,000	\$75,000
5	Allowance for Construction Noise Reduction Measures per EIR Mitigation Requirements	\$20,000	\$20,000
6	Allowance for Design and Installation of Emergency Responder Radio System - Antenna, amplifiers / distribution equipment, monitoring equipment, permit etc. (Conduit and Infrastructure to be included in base bid)	\$20,000	\$20,000
7	Allowance for Code Signage and Parking Directional Signage (signage not called out in the drawings or technical specifications)	\$5,000	\$5,000
8	Allowance for Illuminated Monument Signage - Structural and Electrical provision to be included in base bid per drawings and technical specifications. Allowance is for sign manufacture and installation.	\$50,000	\$50,000
9	Allowance for registration of of project in SMARTS and development of project SWPPP plan	\$15,000	\$15,000
BASIS OF AWARD:		\$39,393,653	\$39,750,000
ADD ALTERNATES			
10	Provide individual LED lights above each parking stall in conjunction with the specified Parking Guidance System (PGS). [Note: The Base Bid includes the PGS without individual LED lights above each stall.]	\$180,000	\$300,000
11	Provide construction webcam per technical specification (Contractor must also submit the bid form)	\$1,500	\$50,000
Total with all Add Alternate Items		\$39,575,153	\$40,100,000

Parking Mitigation Summary Table

Item	Description	Spaces Lost / New Demand	Spaces Gained / Demand Reduction	Notes
-	Garage Construction on Lot C-7	143		Existing surface parking
-	Garage Construction Staging around C-7	22		On-street parking that will be unavailable during construction
1	Reconfigure Lot C-6		30	Net gain from added stalls and re-sizing sub- standard stalls.
2	Lease Courthouse Lot B		43	
3	Lease Caltrain Lot for Contractor Parking	44	44	Proposed contractor parking. Monday-Friday.
4	Make Mimosa Lane one-way and add on-street parking		5	Requires updated signage and striping.
5	Improve demarcation of existing on-street parking to improve efficiency		5	Several potential locations identified in Cal Ave Business District.
6	Allow non-EV parking in EV spaces during peak hours (11am-2pm)		4	
7	Stanford Shuttle Service		20	Estimated demand reduction. Started in Sept. 2018.
	TOTAL	209	151	Net loss = 58 (less impact than recent solar canopy work)