



City of Palo Alto

City Council Staff Report

(ID # 9111)

Report Type: Action Items

Meeting Date: 5/21/2018

Summary Title: Award of Charleston-Arastradero Corridor Construction Projects

Title: Approval of: (1) a Construction Contract With O'Grady Paving, Inc. in the Amount of \$4,336,298 for the Charleston-Arastradero Corridor Project - Phase 1, Capital Improvement Projects PE-13011; (2) Construction Contract With O'Grady Paving, Inc. Contractor in the Amount of \$4,434,347 for the Charleston-Arastradero Corridor Project Phase 2, Capital Improvement Projects PE-13011; (3) Contract Amendment Number 2 to Contract C14150694 With Mark Thomas & Company in the Amount of \$145,419; (4) General Services Contract With TrafficWare Group, LLC. in the Amount of \$181,287 for Purchase of SynchoGreen Adaptive Traffic Control System for Charleston-Arastradero Corridor Project, Capital Improvement Project PE-13011; and (5) Budget Amendments in the Capital Improvement Fund, Charleston/Arastradero Transportation Impact Fee Fund, and Storm Drain Fund

From: City Manager

Lead Department: Public Works

Recommended Motion

Staff recommends that Council:

1. Approve and authorize the City Manager or his designee to execute the attached contract with O'Grady Paving, Inc. (Attachment C) in an amount not to exceed \$4,336,298 for the Charleston-Arastradero Corridor Project – Phase 1 (Capital Improvement Program (CIP) Project PE-13011);
2. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with O'Grady Paving, Inc. for related additional but unforeseen work that may develop during the project, the total value of which shall not exceed \$433,630;
3. Approve and authorize the City Manager or his designee to execute the

attached contract with O'Grady Paving Inc. (Attachment E) in an amount not to exceed \$4,434,347 for the Charleston-Arastradero Corridor Project – Phase 2 (CIP Project PE-13011);

4. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with O'Grady Paving, Inc. for related additional but unforeseen work that may develop during the project, the total value of which shall not exceed \$443,435;
5. Approve and authorize the City Manager or his designee to execute the attached Amendment No. 2 to Contract C14150694 with Mark Thomas & Company (Attachment G) for construction administration services for Charleston-Arastradero Corridor Project (CIP PE-13011) in the amount \$145,419 for the base contract associated with the scope of work covered in the contract. This amendment results in a revised total contract amount of \$1,934,307;
6. Approve and authorize the City Manager or his designee to execute the attached contract with Trafficware Group, LLC (Attachment I) to purchase licensing and install SynchroGreen adaptive traffic control system and related hardware along the Charleston-Arastradero Corridor (CIP PE-13011) in the amount not to exceed \$181,287;
7. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Trafficware Group, LLC for related additional but unforeseen work that may develop during the project, the total value of which shall not exceed \$18,129;
8. Amend the Fiscal Year 2018 Budget Appropriation for:
 - a. The Capital Improvement Fund by:
 - i. Increasing the revenue estimate for grants by \$250,604;
 - ii. Increasing Transfers from the Charleston-Arastradero Development Impact Fee Fund by \$12,000;
 - iii. Increasing Transfers from the Storm Drainage Fund by \$330,000;
 - iv. Decreasing the Sidewalk Repair Project CIP (PO-89003) by \$575,000;
 - v. Decreasing the Capital Fund Infrastructure Reserve by \$4,658,211; and
 - vi. Increasing the Charleston/Arastradero Corridor Project CIP (PE-13011) appropriation by \$5,825,815.
 - b. The Charleston/Arastradero Development Impact Fee Fund by:

- i. Decreasing the Ending Fund Balance by \$12,000; and
 - ii. Increasing the transfer to the Capital Improvement Fund by \$12,000.
- c. The Storm Drain Fund by:
 - i. Decreasing the Ending Fund Balance by \$330,000; and
 - ii. Increasing the transfer to the Capital Improvement Fund by \$330,000.

Executive Summary

The Charleston-Arastradero Corridor is a heavily-used artery serving as an east-west connector for South Palo Alto. Comprehensive Plan Policy T4.3 specifically names Charleston Road and Arastradero Road as Residential Arterials, which are to be treated with landscaping, medians and other visual improvements to distinguish them as residential streets to reduce speeds and improve neighborhood quality of life. Trial striping pavement markings were previously approved by Council for permanent retention along the corridor. The construction phase of the project will install landscaped medians, bulb-outs, traffic signal modifications, and enhanced bicycle and pedestrian improvements, consistent with the existing striping/roadway configuration. Curb extensions at intersections and other key areas will be marked in paint at least two weeks prior to commencement of work in each area to ensure the public is aware of the coming changes prior to their implementation. The Charleston-Arastradero Corridor project is one of the nine 2014 Council Infrastructure Plan projects.

Background

The Charleston-Arastradero Corridor is a heavily-used, 2.3-mile-long artery serving as an east-west connector for South Palo Alto. Among other things, it services 11 schools, several parks, shopping centers, community centers, senior living facilities, and a library. The corridor extends from East Charleston Road at Fabian Way to Arastradero Road at Miranda Avenue. In 2003, Council directed staff to prepare a Charleston-Arastradero Corridor plan to address school commute and other travel safety concerns for pedestrians, bicyclists and drivers and to enhance residential amenities along the corridor. In 2004, Council approved a plan for a trial demonstration to reduce the continuous four-lane road to a continuous two-lane road. In 2006, Phase 1 of the plan was implemented on

East and West Charleston Road from Fabian Way to El Camino Real (SR 82), together with improvements at the Gunn High School driveway at Arastradero Road intersection. Phase 2 of the improvements was implemented in 2010 on Arastradero Road between El Camino Real (SR 82) and the Gunn High School driveway. These trials were approved by Council for permanent retention in 2008 and 2012, respectively. Since that time, the project has secured \$1.8 million in grant funding for associated landscaping, pedestrian and bicycle safety improvements, installation of an adaptive traffic control system and resurfacing the road with rubberized asphalt. The City Council included the Charleston-Arastradero Corridor Project in its Council Infrastructure Plan in June 2014.

The trial projects were implemented using pavement markings, without the introduction of any civil improvements. This final phase of the project will construct hardscape elements including landscaped medians, bulbouts and widened sidewalks to enhance safety for bicyclists and pedestrians, and make changes to areas with existing traffic delay and operational issues. All of the project's bicycle lanes are separated from vehicular traffic lanes. An example of improvements to address traffic operations is the extension of the two westbound lanes of East Charleston Road approaching Alma Street, which will allow motorists to move through the Alma Street intersection more quickly.

The Charleston-Arastradero Corridor Project has been in the works for 15 years and has included significant stakeholder outreach and community engagement. Extensive public outreach was done to develop the preferred Concept Plan, designed to add landscaping, pedestrian and bicycle facilities, and signal improvements to the corridor. The City hosted four community workshops, met with PTAs at Gunn High School, Terman Middle School, Hoover Elementary School and Fairmeadow Elementary School, and presented plans to the Palo Alto Pedestrian and Bicycle Advisory Committee (PABAC) twice for comments. In 2015, staff restudied the traffic impacts with a new traffic study and counts which was used to complete an addendum to the 2004 Mitigated Negative Declaration for California Environmental Quality Act (CEQA). The May 2015 counts were comparable to the counts found previously in 2011 and 2012. The preferred Concept Plan was unanimously approved by the Planning and Transportation Commission and Council in April and September 2015, respectively (Staff Reports [#5690](#) and [#6070](#)). The Architectural Review Board approved the landscape plans in July 2017 ([Staff Report #8073](#)) and the Public Arts Commission approved the art

for the corridor project in October 2017.

The final design and construction plan closely follow the Concept Plan. During final design many community-driven changes were made to the final plans including: installation of a small median at Pomona Avenue to assist with left turns onto Arastradero Road, median reductions at Clemo Avenue/Suzanne Drive/Alta Mesa Avenue to allow for driveway access, and installation of a raised pedestrian crosswalk and expanded concrete refuge area at Hoover Elementary School's exit driveway.

Discussion

The Charleston-Arastradero Corridor Project has been divided into three phases to meet grant funding deadlines and minimize construction disruption. Phase 1 includes Arastradero Road from Miranda Avenue to Clemo Avenue. Phase 2 includes East Charleston Road from Alma Street to Middlefield Road. Phase 1 and 2 will be constructed simultaneously. Phase 3 includes Arastradero Road from Clemo Avenue to El Camino Real (SR 82), West Charleston Road from El Camino Real to Alma Street, and East Charleston Road from Middlefield Road to San Antonio Road. The phases are shown on the maps in Attachment A. This project is designed to enhance safety for K-12 students biking to school, smooth traffic flow along the corridor and beautify the streetscape with approximately 80 trees, shrubs, ground cover, grasses and bio-retention planting areas added throughout the 42,000 square feet of landscaped elements. The final design and construction plans closely follow the concept plan line. The final project plans and cross-sections can be viewed at <https://www.cityofpaloalto.org/civicax/filebank/documents/64110>. For a detailed description of the improvements at key intersections, please see Attachment B.

Phase 1 and Phase 2 Bid Process

On February 1, 2018, an Invitation for Bids (IFB) on the Charleston-Arastradero Corridor Project – Phase 1 was posted on the City's eProcurement system and sent to 11 builder's exchanges and 608 contractors. The bidding period was 28 calendar days. Bids were received from four qualified contractors on February 28, 2018, as listed in the attached Bid Summary (Attachment D).

On February 20, 2018, an Invitation for Bids for the Charleston-Arastradero Corridor Project – Phase 2 was posted on the City's eProcurement system and

three bids were received on March 16, 2018. The bids came in approximately 30% over the engineer's estimate. Staff rejected the bids on March 21, 2018. Staff contacted the contractors regarding the higher price. The contractors indicated that the strict timing requirements for concrete placement and the more constricted work area with the center medians as being the reasons for the higher costs than Phase 1. Staff reevaluated the bids and adjusted project specifications and reissued the Phase 2 Invitation for Bids on March 27, 2018. The bidding period was 23 calendar days. Bids were received from four qualified contractors on April 19, 2018, as listed on the attached Bid Summary (Attachment F).

Summary of Bid Process

Bid Name/Number	Charleston/Arastradero Corridor Project – Phase 1 IFB #171137	Charleston/Arastradero Corridor Project – Phase 2 IFB #171392A
Proposed Length of Project	300 calendar days	285 calendar days
Number of Bid Packages Downloaded by Builder's Exchanges	9	8
Number of Bid Packages Downloaded by Contractors	26	20
Total Days to Respond to Bid	28	23
Pre-Bid Meeting?	Yes	Yes
Number of Bids Received:	4	4
Base Bid Price Range	\$4,336,298 to \$5,366,057	\$4,434,347 to \$5,266,113

Phase 1: The apparent low bidder was selected based upon the total of the base bid. Bids ranged from \$4,336,298 to \$5,366,057 and from 6% to 31% above the engineer's estimate. Staff has reviewed all bids submitted and recommends the base bid totaling \$4,336,298 submitted by O'Grady Paving, Inc. be accepted, and O'Grady Paving, Inc. be declared the lowest responsible bidder. The contingency amount of \$433,630, which equals ten percent of the total contract, is requested for related, additional, but unforeseen work, which may develop during the project.

Phase 2: The apparent low bidder was selected based upon the total of the base bid. Bids ranged from \$4,434,347 to \$5,266,113 and from 22% to 45% above the engineer's estimate. Staff has reviewed all bids submitted and recommends the

base bid totaling \$4,434,347 submitted by O'Grady Paving, Inc. be accepted, and O'Grady Paving, Inc. be declared the lowest responsible bidder. The contingency amount of \$443,435, which equals ten percent of the total contract, is requested for related, additional, but unforeseen work, which may develop during the project.

Staff reviewed other similar projects performed by the lowest responsible bidder, O'Grady Paving, Inc., including projects performed for the City and did not find any significant complaints with their previous work. Staff also checked with the Contractor's State License Board and confirmed that O'Grady Paving, Inc. has an active license on file.

Construction Administration

The contract amendment (Attachment G) with Mark Thomas & Company will provide construction administration services for all three phases of the project. Construction administration includes responding to requests for information, performing site visits, attending construction meetings and reviewing shop drawings. A new solicitation for the work contained in this amendment is not required as it was anticipated at the time of the original contract award. The original contract for preliminary design, environmental assessment and contract amendment number one for final design allowed for a future amendment to provide construction administration. Due to Mark Thomas & Company's familiarity with the project and performance to date, staff recommends amending the contract to provide construction administration services.

SynchroGreen Purchase/Installation

When Council approved the reconfiguration of Charleston Road and Arastradero Road in 2008 and 2012, it did so with a recommendation for inclusion of an adaptive traffic control system. An adaptive traffic control system optimizes traffic signal timing for arterials, side streets, and pedestrians through real-time adaptive traffic control. These systems are designed to reduce motorist travel time, delays and stops by maximizing the use of available roadway capacity, while also decreasing fuel consumption, idling times, and vehicle emissions. Adaptive traffic control systems are currently in operation along Sand Hill Road and San Antonio Road.

Staff was able to secure regional grant funding as part of the Santa Clara Valley Transportation Authority Transportation Funds for Clean Air (TFCA) program (Attachment H). This grant will reimburse the City \$250,604 for the adaptive traffic control system along the corridor.

In October 2014, the City entered into an agreement with Trafficware Group for the procurement, deployment and integration support services of an advanced traffic management system. Trafficware currently supports the City with the ongoing operation of the City's traffic signal management system, which includes intelligent transportation system devices, remote operation and maintenance of 100 signalized intersections, and dissemination of operation traffic data. Trafficware is the developer of SynchroGreen adaptive timing software. SynchroGreen was selected in 2014 by the City as the preferred software program for adaptive traffic control systems due to its seamless integration with the City's centralized traffic signal management system. Palo Alto's Municipal Code 2.30.360(d) and (e) permit the City to contract without further solicitation if the City has gone through a product standardization process.

This adaptive signal timing contract (Attachment I) with Trafficware includes software licensing, implementation, training, warranty maintenance and support for a total of \$181,287. The contingency amount of \$18,129, which equals ten percent of the total contract, is requested for related, additional, but unforeseen work, which may develop during the project. Staff recommends entering a new contract with Trafficware Group, LLC to provide the compatible SynchroGreen system for the Charleston-Arastradero Corridor.

Recent and Construction Outreach

In addition to the outreach done to develop the preferred concept plan line, additional meetings were held during the design phase. Staff went to PABAC for comments on the 65% and 95% design plan set. Staff also met with the stakeholder group at the 65% design stage. Once the design was completed, staff held mobile office hours at Gunn High School, Terman Middle School and Hoover Elementary Schools during the week of March 19, 2018, to answer questions about the project's construction and encourage attendance at the community open houses scheduled prior to construction starting. Two open house meetings were held at Gunn High School and Hoover Elementary School on March 27 and 29, 2018, respectively. Each meeting was attended by over 50 people. Throughout

the design process, there have been both proponents and opponents of the project. Although staff has attempted to address comments made by project opponents whenever possible, the open houses were attended by a mix of proponents and opponents. The goal of these meetings was to answer questions about the project, construction impacts and timeline.

During construction, regular updates to the project email distribution list and web page will include upcoming work and plans for the impacted areas. Curb extensions at intersections and other key areas will be marked in paint at least two weeks prior to commencement of work in each area to ensure the public is aware of the coming changes prior to their implementation. These updates will be in addition to the standard 7-day and 3-day construction notifications that occur during street maintenance work.

Timeline

Following Council approval of the contracts, Phase 1 and 2 construction will start in June and will last approximately one year. Phase 3 will start construction once Phase 1 and 2 are complete in 2019.

Resource Impact

Project Costs	Prior Years Actuals	FY 2018 Adopted Budget	Recommended FY 2018 Adjustment	FY 2018 Modified Budget	Subsequent Years Proposed Costs	Updated Project Total
Design	\$1,241,684	\$608,123		\$608,123		\$1,849,807
Construction		\$4,483,893	\$5,825,815*	\$10,309,708	\$5,545,200*	\$15,854,908
Salary & Benefits	\$490,255	\$245,106		\$245,106	\$1,200,000	\$1,935,361
Total	\$1,731,939	\$5,337,122	\$5,825,815	\$11,162,937	\$6,745,200	\$19,640,076

*Includes funding for testing, tree trimming, utility connections and administration costs for printing and outreach.

The initial 2014 Council Infrastructure Plan budget for the Charleston-Arastradero Corridor Project was \$10 million, excluding staff salaries and benefits, and was based on a cost estimate from 2009. Cost estimates were updated during the design phase and the final estimate was \$15.7 million excluding staff salaries and benefits. The updated estimated project total, using the actual Phase 1 and Phase

2 bids, is \$17.7 million (also excluding staff salaries and benefits). The primary factor in the cost increase is escalation of construction costs between 2009 and 2018. Costs also increased due to increases in the project's scope, including additional traffic signal modifications at ten intersections and one new traffic signal installation compared to traffic signal modifications at three intersections in the 2009 cost estimate. Additional scope not included in the 2009 estimate includes replacement of non-compliant curb ramps and installation of green stormwater infrastructure (eight bio-retention areas primarily funded by the new Stormwater Management Fee approved by voters in 2017). The proposed budget amendment addresses the funding needed to complete Phases 1 and 2. The increase in the total project cost is part of the estimated \$77 million gap in funding for the Council Infrastructure Plan that the Council and Finance Committee are currently working to address.

As part of the Proposed FY 2019 Capital Budget and 2019-2023 Capital Improvement Plan (CIP), the Charleston-Arastradero Corridor Project (PE-13011) was budgeted at a total cost of \$18.6 million, with \$9.6 million estimated to be spent in FY 2018. These amounts include estimated salary and benefit costs over the life of the project. Based on the recommendations in this memorandum, the total cost of the project will increase by an additional \$1.0 million to \$19.6 million, with an additional \$1.6 million estimated in FY 2018, for a total of \$11.2 million. The FY 2020 planned budget for the project will be reduced by \$0.6 million for the net \$1.0 million increase to the project.

The Proposed FY 2019 Capital Budget estimated the Infrastructure Reserve (Capital Improvement Fund ending fund balance) to have \$3.1 million at the end of FY 2019. The actions recommended in this memorandum would reduce the Infrastructure Reserve (IR) to \$1.6 million at the end of FY 2019 based on the Proposed FY 2019 Capital Budget. Staff will continue to monitor changes in project estimates in the Capital Improvement Fund in FY 2018 and continuing into FY 2019 to ensure the IR remains positive.

Grants

The City has secured four grants for the Charleston-Arastradero Corridor Project to supplement City funding:

1. Vehicle Emissions Reductions Based at Schools (VERBS) - \$1,000,000
2. Safe Routes to School (SR2S) - \$450,000
3. Transportation Fund for Clean Air (TFCA) - \$250,604

4. Rubberized Asphalt Concrete (RAC) Paving - \$125,300 (Recommended to be recognized and appropriated to PE -13011 in the Proposed FY 2019 Capital Budget)

The VERBS and SR2S grants expire next year and the projects must be constructed and fully invoiced to Caltrans by May 2019. The RAC grant expires in April 2020. If the construction contracts are not approved, the grants will be rescinded. Additionally, the inability to fully execute these grants could hamper the City's ability to secure grant funding for other projects in the future.

Additional Funding Sources

The Charleston-Arastradero Corridor Project also received funding from other sources, besides the above mentioned grants, to offset the impact to the IR:

1. Stanford University Medical Center Funding - \$1,550,000
2. Gas Tax (SB1) Funding - \$1,140,686 (Recommended to be recognized and appropriated to PE -13011 in the Proposed FY 2019 Capital Budget)
3. Charleston/Arastradero Impact Fee Funding - \$847,000
4. Storm Water Management Fee Funding - \$660,000

In total, \$6.0 million from various revenue sources is recommended to be appropriated for this project, leaving an estimated \$13.6 million to be funded by the IR.

Policy Implications

The advancement of this project is consistent with City policies and previous Council direction and implements one of Council's Infrastructure Plan projects. This project advances multiple objectives in the *Palo Alto Bicycle and Pedestrian Transportation Plan* as well as many goals, policies, and programs in the City's Comprehensive Plan. Most specifically, Policy T-4.3 names Charleston Road and Arastradero Road (between Miranda Avenue and Fabian Way) as Residential Arterials, which are to be treated with landscaping, medians and other visual improvements to distinguish them as residential streets to reduce speeds.

Environmental Review

The Charleston-Arastradero Corridor Project is funded from both local, state and federal sources. Therefore, compliance with the both the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA)

is required.

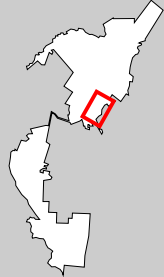
For CEQA compliance, an Initial Study/Mitigated Negative Declaration (IS/MND) was prepared and approved by Council in 2004. An addendum to the Final Study/MND was approved in September 2015. NEPA clearance was completed in October 2016.

Attachments:

- Attachment A: Charleston-Arastradero Corridor Project Map
- Attachment B: Description of Project Improvements
- Attachment C: C18171137 O'Grady Construction - Phase 1
- Attachment D: Charleston-Arastradero Phase 1 Bid Summary Table
- Attachment E: C18171392A O'Grady Construction - Phase 2
- Attachment F: Charleston-Arastradero Phase 2 Bid Summary Table
- Attachment G: C14150694 Amendment No.2- Final
- Attachment H: VTA Transportation Funds for Clean Air Grant
- Attachment I: S18170590 Trafficware Contract
- Attachment J: Public Letters to Council



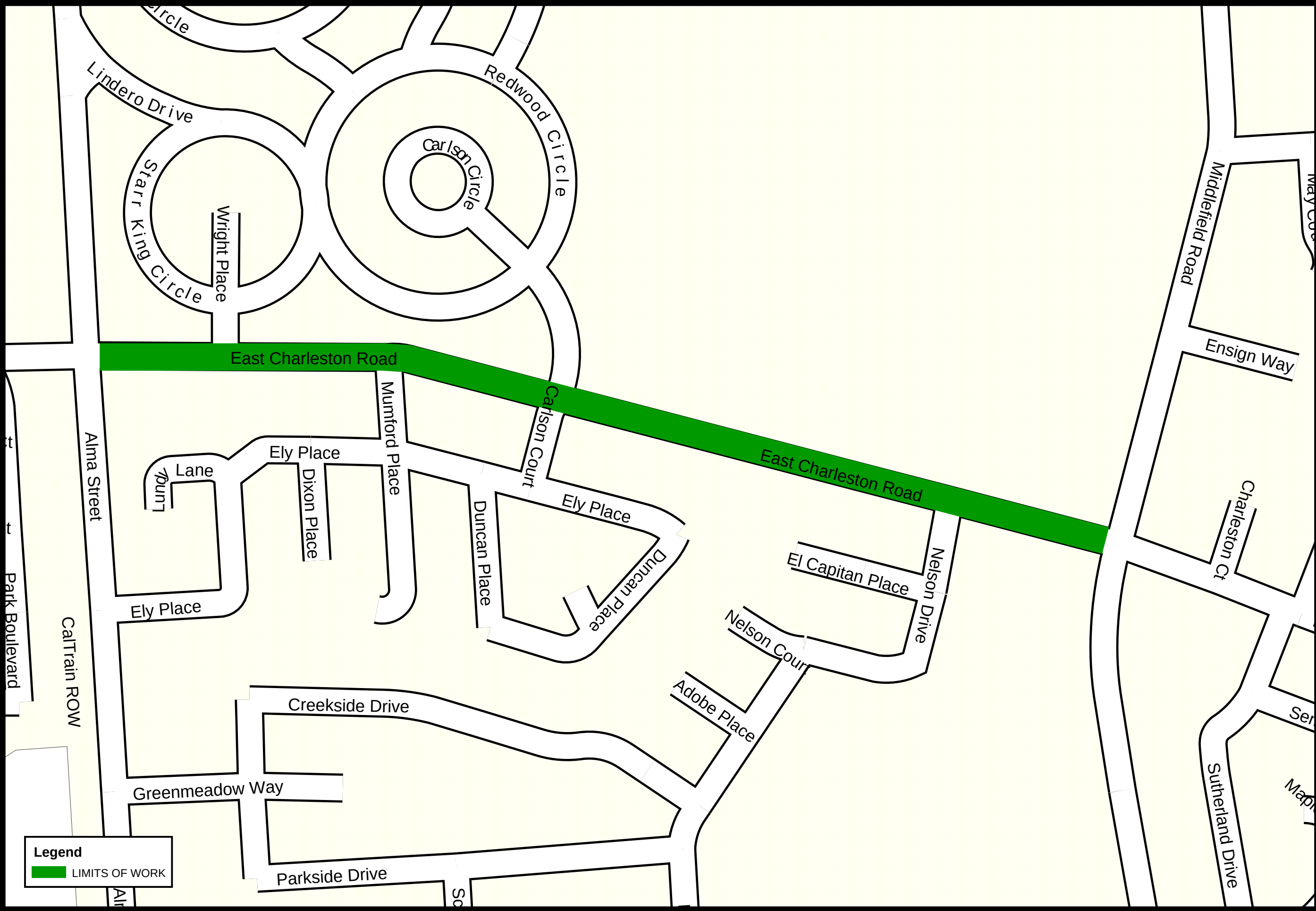
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**CHARLESTON - ARASTRADERO CORRIDOR
PHASE 1 - LOCATION MAP**

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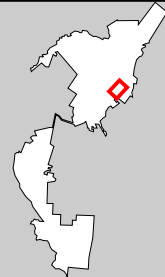


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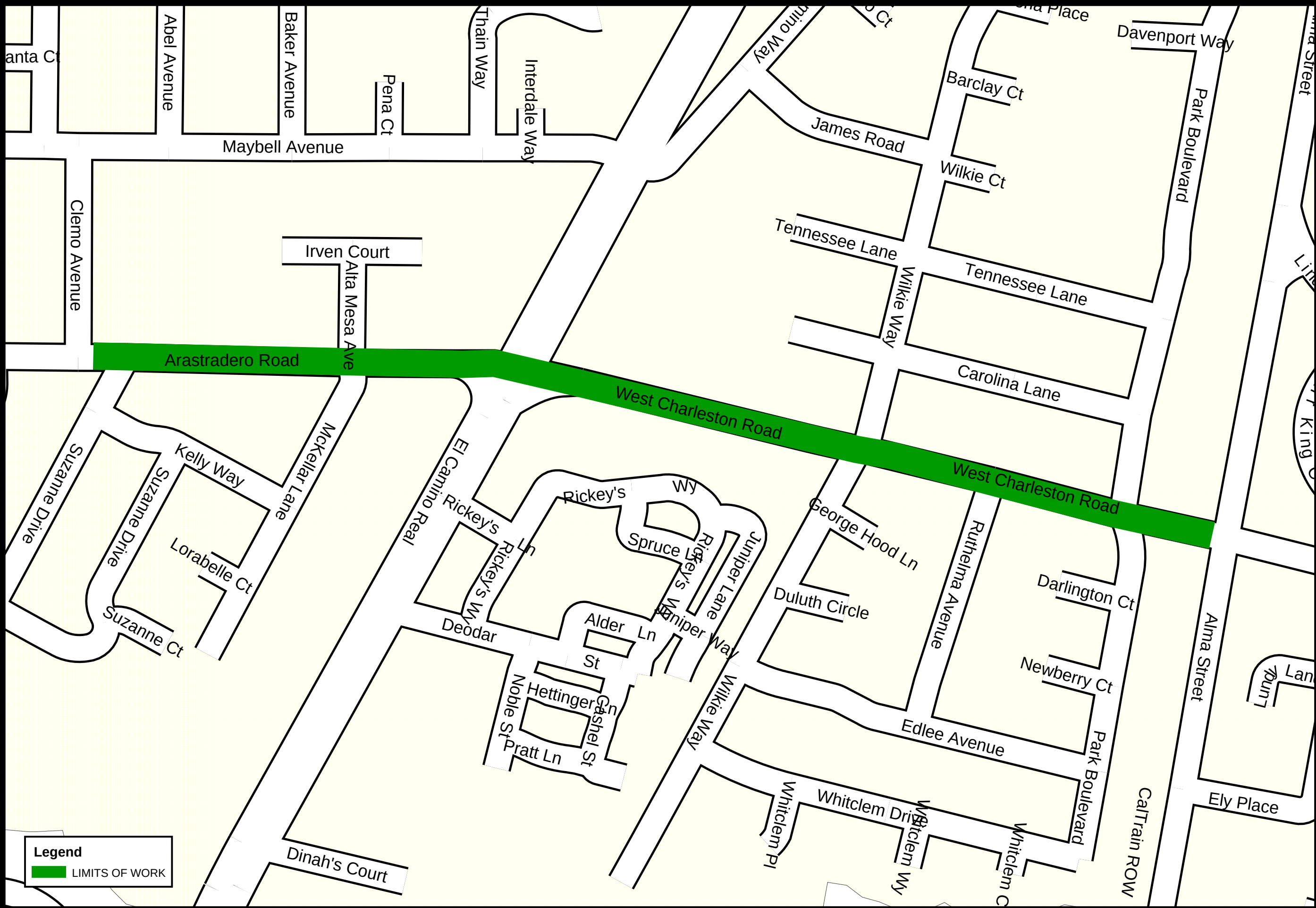
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CHARLESTON - ARASTRADERO CORRIDOR
PHASE 2 - LOCATION MAP

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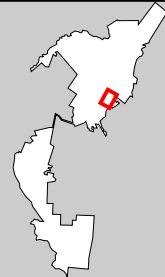


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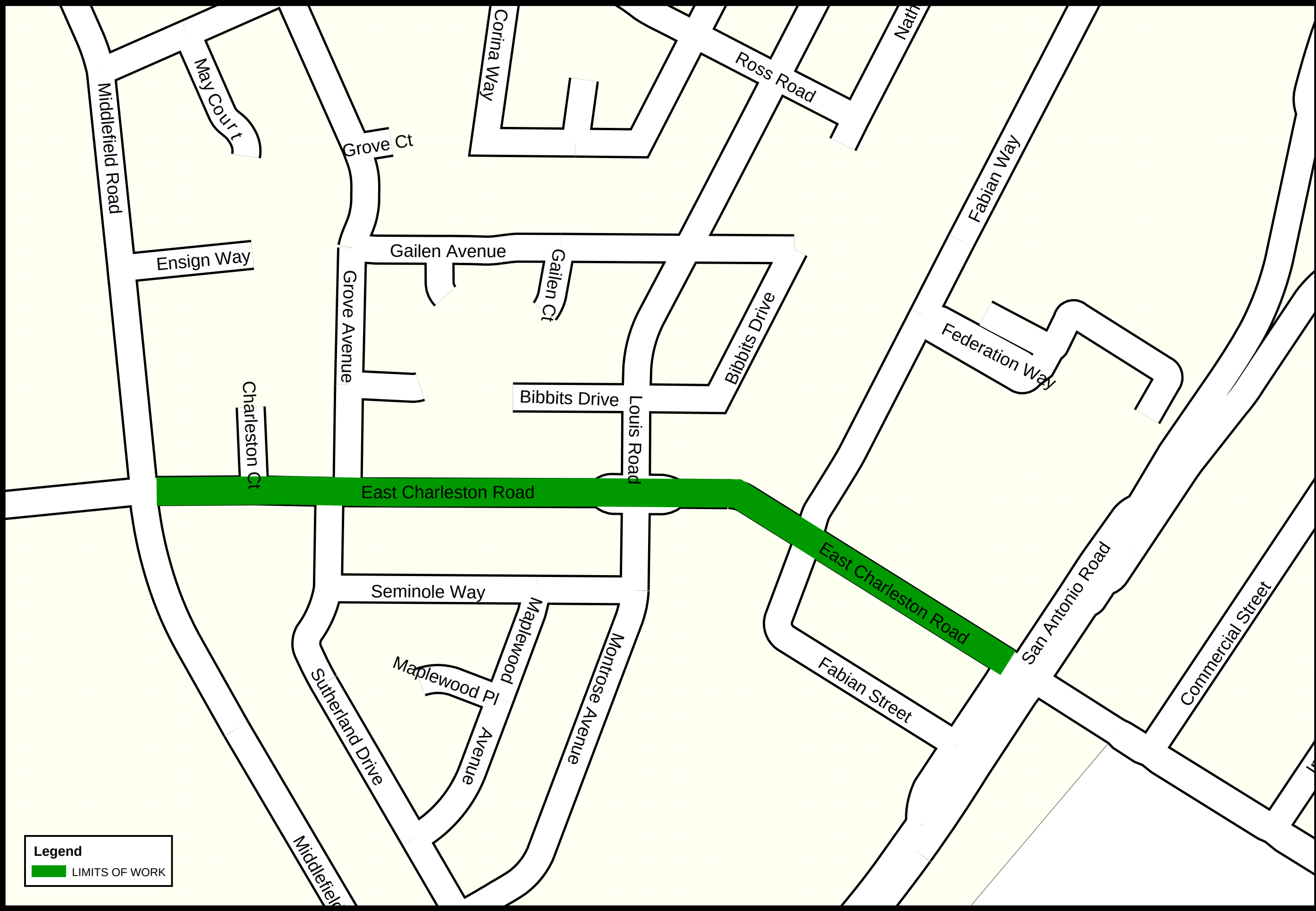
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Charleston - Arastradero Corridor
Phase 3 Location Map
Page A

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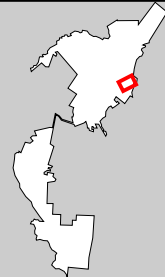


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 LIMITS OF WORK



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Charleston - Arastradero Corridor
Phase 3 Location Map
Page B

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ATTACHMENT B

Listed below are project highlighted components at specific intersections/areas along the corridor:

- **Miranda Avenue (Phase 1)**
The project will include restriping separate dedicated right turn lanes for Miranda Avenue and northbound Foothill Expressway based on public feedback.
- **Gunn High School (Phase 1)**
The project adjusts the existing “pork chop” islands for improved pedestrian crossing and adds a new 13 foot wide multi-use pathway on the eastbound side of the street from Gunn High School to existing trail to Los Altos (Hetch-Hetchy trail). It also adds a green surface treatment to the bike lane approaching the Gunn High School intersection in westbound direction and adds a new bicycle crosswalk from the multi-use trail to Gunn High School.
- **Arastradero Road between Gunn High School and Georgia Avenue (Phase 1)**
Based on public outreach comments with residents, the center median will be modified to allow access into driveways.
- **Terman Middle School (Phase 1)**
In the eastbound direction, the project adds a dedicated right turn lane into Terman Middle School, a green bike lane between the through lane and right turn, and a bike ramp to the sidewalk ahead of the intersection. The ramp allows school-bound bicyclists travelling east to avoid having to weave with vehicles at the intersection. On the east side of the intersection the plan provides a bus bay and increases the size of the corner sidewalk area to provide more queuing space for bikes and pedestrians waiting to cross the street. To accommodate these improvements, the project shifts the eastbound lane merge from after the intersection to before the intersection and removes 18 parking spaces on westbound Arastradero Road between Georgia Avenue and Willmar Drive. A parking survey conducted by volunteers at twenty various times between February 6 and March 2, 2015 indicated that cars were only parked on the section of the road designated for parking removal three times with the maximum number of spaces occupied during the survey being five.
- **Coulombe Avenue (Phase 1)**
The project shortens the existing crosswalk distance by widening the sidewalk on the north-west corner and realigning the crosswalk to be perpendicular to the road. The project also adds an additional crosswalk on the east side of the intersection.
- **Juana Briones Park (Phase 1)**

On the eastbound side of street, the project widens the sidewalk to 10 feet between Terman Middle School and Suzanne Drive. On the westbound side, it incorporates a cycle track/bike lane which is separated from vehicle travel lanes by on-street parking spaces. During construction, measures will be incorporated to encourage student bicyclists to use Los Palos Avenue to enter Terman Middle School via an entrance at the back of the campus rather than riding on the sidewalk along Arastradero Road.

- Clemo Avenue/Suzanne Drive (Phase 3)

The project widens sidewalks on the east bound side of the street and adds directional curb ramps and a median island at the intersection with Suzanne Drive in order to provide a refuge for vehicles turning left onto or from Arastradero Road. During final design, measures to improve visibility of pedestrians using the crosswalk will be incorporated.

- El Camino Real (Phase 3)

The project provides new bike lanes in each direction across the intersection by narrowing the eastbound sidewalk and the travel lanes in both directions as they approach the intersection. The plan eliminates the “pork chop” island on the southeast corner of the intersection and adds a raised crosswalk across the slip ramp in the southwest corner of the intersection in order to slow the high speed right-turning traffic.

- Wilkie Way (Phase 3)

The plan adds new left-turn pockets on Charleston Road in both directions.

- Alma Street (Phase 2 and 3)

On the west side of Alma Street, the project adds a new concrete median down Charleston Road from just west of Park Boulevard up to the train tracks. This new median prevents left turns from and onto Park Boulevard, thus improving the flow of through traffic on Charleston Road. On the east side of Alma Street, the plan extends the two-lane approach to the intersection by approximately 500 feet in order to decrease the length of the queue of vehicles crossing or turning onto Alma Street.

- Carlson Court (Phase 2)

The project widens sidewalks at three corners of the intersection to reduce pedestrian crossing distances and to discourage U-turn movements at this intersection. U-turns are accommodated in both directions at the intersection of Charleston Road and Mumford Place and also at the intersection of Charleston Road and Nelson Drive. The sidewalk along the westbound lanes is being widened between Carlson Court and the multi-use trail adjacent to Hoover Elementary School in order to accommodate the high volume of student two-way bicycle traffic between Carlson Court and the multi-use trail.

- Hoover Elementary School (Phase 2)

The project provides a new landscaped median island down the center of Charleston Road between Carlson Court and Nelson Drive. The median island preclude left-turn and U-turn movements from eastbound Charleston Road. Median openings are proposed to accommodate left-turns onto eastbound Charleston Road from both the Hoover Elementary School driveway and the Stevenson House driveway. The signal at Nelson Drive is being modified to have a protected left-turn phase for both eastbound and westbound traffic, and the storage length for the eastbound left-turn/U-turn lane has been lengthened to more than 300 feet. The north side of the intersection is being modified to make it clear to vehicles heading northbound on Nelson Drive that a through-movement at the intersection is provided only for bicyclists.

- Middlefield Road (Phase 2)

Currently, Charleston Road is a two-lane road on both approaches to the Middlefield Road intersection and widens to four lanes for approximately 600 feet at the intersection. The project adds dedicated right turn lanes in both directions by shifting the westbound lane merge from after the intersection at Middlefield Road to before. To improve bike safety, curb modifications are being implemented to allow bicyclists to be able to maintain a straight path through the intersection. This requires right-turning vehicles to slowly cross the bike lanes as they enter the right-turn lanes. Green bike lanes are being incorporated to improve visibility of bicyclists in weaving or potential conflict areas.

- Sutherland Drive/Grove Avenue (Phase 3)

The design initially provided new landscaped medians to improve safety of left-turning movements from Charleston Road on to the side streets. The proposed improvements allowed for left-turns out of the side streets but not into them for every direction. Left-turns into the side streets were to be accommodated by the use of U-turn maneuvers at Louis Road for eastbound traffic. The proposed islands were removed from the project in response to the negative community feedback. The project now calls for a new pedestrian crossing with a median refuge area.

- Louis Road (Phase 3)

The project widens this intersection to provide space for eastbound vehicle U-turns. Additionally, it provides a new traffic signal to help vehicles, bikes, and pedestrians to safely cross Charleston Road or to make the left turn onto Charleston Road from Louis Road. The project adds a green bike lane on southbound Louis Road which improves safety for bicyclists by providing a place to wait to cross Charleston Road out of the way of left turning or right turning vehicles. The existing median refuge islands for bicyclists are being enlarged.

- Fabian Way (Phase 3)

In the eastbound direction, the project adds a dedicated left-turn lane for vehicles as well left-turn bike box for bicyclists. Additionally, it provides a new crosswalk across

Charleston Road on the east side of the intersection. Bike lanes will be installed on Charleston Road east of Fabian Way in both directions.



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ALTO**

CONSTRUCTION CONTRACT

Contract No. C18171137

City of Palo Alto

Charleston/Arastradero Corridor Project - Phase 1

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 May 21, 2018 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and O'GRADY PAVING, INC. ("Contractor"), is made with reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. Contractor is a Corporation duly organized and in good standing in the State of California, Contractor's License Number 201696 and Department of Industrial Relations Registration Number 1000003381. 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 February 1, 2018, City issued an Invitation for Bids (IFB) to contractors for the Charleston/Arastradero Corridor Project - Phase 1 ("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 Charleston/Arastradero Corridor Project - Phase 1, located at Charleston and Arastradero Road, Palo Alto, CA. 94301 ("Project").

SECTION 3 THE CONTRACT DOCUMENTS.

3.1 List of Documents.

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

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

3.2 Order of Precedence.

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

SECTION 4 CONTRACTOR'S DUTY.

4.1 Contractor's Duties

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

SECTION 5 PROJECT TEAM.

5.1 Contractor's Co-operation.

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

SECTION 6 TIME OF COMPLETION.

6.1 Time Is of Essence.

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

6.2 Commencement of Work.

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

6.3 Contract Time.

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

☐

not later than .

☒

within three hundred calendar days (300) 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 five hundred dollars (\$500) per day, or as otherwise specified in the Special Provisions. Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents, regardless of impact on the time for achieving Substantial Completion. The assessment of liquidated damages is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer by delay in completion of the Work. The City is entitled to setoff the amount of liquidated damages assessed against any payments otherwise due to Contractor,

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

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

6.5 Adjustments to Contract Time.

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

SECTION 7 COMPENSATION TO CONTRACTOR.

7.1 Contract Sum.

Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of Four Million Three Hundred Thirty Six Thousand Two Hundred Ninety Eight Dollars (\$4,336,298).

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

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 Engineering
250 Hamilton Avenue
Palo Alto, CA 94301
Attn: Holly Boyd

AND

[Include Construction Manager, If Applicable.]

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

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:

O'Grady Paving, Inc.
Attn: Craig Young
2513 Wyandotte Street
Mountain View, CA 94043

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: _____

CHARLESTON-ARASTRADERO CORRIDOR PROJECT - PHASE 1
FEDERAL PROJECT NO. CML-5100(023)

IFB Post Date: 02/01/2018
IFB Due Date: 02/28/2018

BID ITEM	APPROX. QTY.	UNIT	DESCRIPTION, WITH UNIT PRICE IN WORDS	Engineer's Estimate		O'Grady Paving		Granite Construction		Redgwick Construction		Disney Construction	
				Unit Price	Total Item Price	Unit Price	Total Item Price	Unit Price	Total Item Price	Unit Price	Total Item Price	Unit Price	Total Item Price
1	1	LS	Traffic Control System:	\$ 159,000.00	\$ 159,000.00	\$ 200,000.00	\$ 200,000.00	\$ 500,000.00	\$ 500,000.00	\$ 839,387.00	\$ 839,387.00	\$ 730,000.00	\$ 730,000.00
2	1	LS	Public Notification and Posting:	\$ 10,000.00	\$ 10,000.00	\$ 25,000.00	\$ 25,000.00	\$ 15,000.00	\$ 15,000.00	\$ 11,400.00	\$ 11,400.00	\$ 150,000.00	\$ 150,000.00
3	1	LS	Clearing and Grubbing:	\$ 10,000.00	\$ 10,000.00	\$ 100,000.00	\$ 100,000.00	\$ 235,000.00	\$ 235,000.00	\$ 35,000.00	\$ 35,000.00	\$ 150,000.00	\$ 150,000.00
4	50	CREW HOURS	Trim Street Trees:	\$ 590.00	\$ 29,500.00	\$ 250.00	\$ 12,500.00	\$ 265.00	\$ 13,250.00	\$ 235.00	\$ 11,750.00	\$ 220.00	\$ 11,000.00
5	29,810	SF	Remove Concrete (Miscellaneous):	\$ 11.00	\$ 327,910.00	\$ 5.50	\$ 163,955.00	\$ 11.50	\$ 342,815.00	\$ 8.00	\$ 238,480.00	\$ 10.00	\$ 298,100.00
6	178,500	SF	Asphalt Concrete Milling:	\$ 0.70	\$ 124,950.00	\$ 0.90	\$ 160,650.00	\$ 0.50	\$ 89,250.00	\$ 0.70	\$ 124,950.00	\$ 1.50	\$ 267,750.00
7	31	EA	Temporary Drainage Inlet Protection:	\$ 500.00	\$ 15,500.00	\$ 150.00	\$ 4,650.00	\$ 225.00	\$ 6,975.00	\$ 200.00	\$ 6,200.00	\$ 650.00	\$ 20,150.00
8	1	LS	Stormwater Pollution Prevention:	\$ 20,000.00	\$ 20,000.00	\$ 5,000.00	\$ 5,000.00	\$ 60,000.00	\$ 60,000.00	\$ 38,100.00	\$ 38,100.00	\$ 150,000.00	\$ 150,000.00
9	8	EA	Gas Valve Box Adjustment:	\$ 800.00	\$ 6,400.00	\$ 500.00	\$ 4,000.00	\$ 1,095.00	\$ 8,760.00	\$ 690.00	\$ 5,520.00	\$ 3,000.00	\$ 24,000.00
10	13	EA	Water Valve Box Adjustment:	\$ 800.00	\$ 10,400.00	\$ 500.00	\$ 6,500.00	\$ 1,095.00	\$ 14,235.00	\$ 650.00	\$ 8,450.00	\$ 3,000.00	\$ 39,000.00
11	2	EA	Sewer Manhole Cover Adjustment:	\$ 880.00	\$ 1,760.00	\$ 1,000.00	\$ 2,000.00	\$ 1,710.00	\$ 3,420.00	\$ 1,300.00	\$ 2,600.00	\$ 6,000.00	\$ 12,000.00
12	5	EA	New Catch Basin:	\$ 5,500.00	\$ 27,500.00	\$ 4,000.00	\$ 20,000.00	\$ 8,200.00	\$ 41,000.00	\$ 7,400.00	\$ 37,000.00	\$ 7,000.00	\$ 35,000.00
13	4	EA	Adjust Catch Basin:	\$ 3,500.00	\$ 14,000.00	\$ 1,100.00	\$ 4,400.00	\$ 5,740.00	\$ 22,960.00	\$ 3,500.00	\$ 14,000.00	\$ 2,000.00	\$ 8,000.00
14	193	LF	6" HDPE Pipe, SDR 17:	\$ 45.00	\$ 8,685.00	\$ 315.00	\$ 60,795.00	\$ 275.00	\$ 53,075.00	\$ 300.00	\$ 57,900.00	\$ 250.00	\$ 48,250.00
15	221	LF	6" Slotted HDPE Pipe, SDR 17:	\$ 50.00	\$ 11,050.00	\$ 315.00	\$ 69,615.00	\$ 110.00	\$ 24,310.00	\$ 50.00	\$ 11,050.00	\$ 75.00	\$ 16,575.00
16	88	LF	12" HDPE Pipe, SDR 17:	\$ 100.00	\$ 8,800.00	\$ 415.00	\$ 36,520.00	\$ 350.00	\$ 30,800.00	\$ 400.00	\$ 35,200.00	\$ 250.00	\$ 22,000.00
17	2	EA	Catch Basin (MOD):	\$ 6,000.00	\$ 12,000.00	\$ 4,000.00	\$ 8,000.00	\$ 5,995.00	\$ 11,990.00	\$ 7,000.00	\$ 14,000.00	\$ 4,000.00	\$ 8,000.00
18	3	EA	New Manhole:	\$ 6,000.00	\$ 18,000.00	\$ 12,000.00	\$ 36,000.00	\$ 13,300.00	\$ 39,900.00	\$ 12,000.00	\$ 36,000.00	\$ 15,000.00	\$ 45,000.00
19	4	EA	Overflow Inlet:	\$ 1,000.00	\$ 4,000.00	\$ 5,500.00	\$ 22,000.00	\$ 1,635.00	\$ 6,540.00	\$ 5,500.00	\$ 22,000.00	\$ 4,000.00	\$ 16,000.00
20	4	EA	Cleanout:	\$ 500.00	\$ 2,000.00	\$ 800.00	\$ 3,200.00	\$ 1,375.00	\$ 5,500.00	\$ 800.00	\$ 3,200.00	\$ 600.00	\$ 2,400.00
21	2	EA	Join Pipes:	\$ 3,000.00	\$ 6,000.00	\$ 3,000.00	\$ 6,000.00	\$ 2,850.00	\$ 5,700.00	\$ 2,600.00	\$ 5,200.00	\$ 3,000.00	\$ 6,000.00
22	2,940	TON	Rubberized Hot Mix Asphalt (RHMA):	\$ 180.00	\$ 529,200.00	\$ 175.00	\$ 514,500.00	\$ 194.00	\$ 570,360.00	\$ 200.00	\$ 588,000.00	\$ 170.00	\$ 499,800.00
23	1,071	TON	Hot Mix Asphalt (HMA), Type A:	\$ 120.00	\$ 128,520.00	\$ 190.00	\$ 203,490.00	\$ 256.00	\$ 274,176.00	\$ 178.00	\$ 190,638.00	\$ 225.00	\$ 240,975.00
24	15,984	SF	Base Failure Repair:	\$ 4.40	\$ 70,329.60	\$ 9.00	\$ 143,856.00	\$ 11.50	\$ 183,816.00	\$ 8.10	\$ 129,470.40	\$ 8.00	\$ 127,872.00
25	22,785	SF	Asphalt Concrete Paving Conform Prior to RAC:	\$ 4.00	\$ 91,140.00	\$ 6.00	\$ 136,710.00	\$ 4.20	\$ 95,697.00	\$ 3.50	\$ 79,747.50	\$ 3.60	\$ 82,026.00
26	704	CY	Aggregate Base, Class 2:	\$ 60.00	\$ 42,240.00	\$ 100.00	\$ 70,400.00	\$ 100.00	\$ 70,400.00	\$ 60.00	\$ 42,240.00	\$ 200.00	\$ 140,800.00
27	1,365	CY	Roadway Excavation:	\$ 55.00	\$ 75,075.00	\$ 50.00	\$ 68,250.00	\$ 205.00	\$ 279,825.00	\$ 150.00	\$ 204,750.00	\$ 70.00	\$ 95,550.00
28	3,530	LF	Minor Concrete (Type A MOD Curb):	\$ 80.00	\$ 282,400.00	\$ 80.00	\$ 282,400.00	\$ 62.00	\$ 218,860.00	\$ 80.00	\$ 282,400.00	\$ -	\$ -
29	320	LF	Minor Concrete (Bioretention Curb):	\$ 110.00	\$ 35,200.00	\$ 140.00	\$ 44,800.00	\$ 35.00	\$ 11,200.00	\$ 155.00	\$ 49,600.00	\$ 70.00	\$ 22,400.00
30	260	LF	Minor Concrete (Bioretention Curb and Gutter):	\$ 130.00	\$ 33,800.00	\$ 140.00	\$ 36,400.00	\$ 62.00	\$ 16,120.00	\$ 180.00	\$ 46,800.00	\$ 90.00	\$ 23,400.00
31	340	LF	Minor Concrete (Retaining Curb) :	\$ 65.00	\$ 22,100.00	\$ 35.00	\$ 11,900.00	\$ 38.00	\$ 12,920.00	\$ 140.00	\$ 47,600.00	\$ 45.00	\$ 15,300.00
32	1,510	LF	Minor Concrete (A1-6 Curb) :	\$ 45.00	\$ 67,950.00	\$ 45.00	\$ 67,950.00	\$ 25.00	\$ 37,750.00	\$ 89.00	\$ 134,390.00	\$ -	\$ -
33	50	LF	Minor Concrete (A2-6 Curb):	\$ 55.00	\$ 2,750.00	\$ 45.00	\$ 2,250.00	\$ 55.50	\$ 2,775.00	\$ 180.00	\$ 9,000.00	\$ 90.00	\$ 4,500.00
34	860	LF	Minor Concrete (A3-6 Curb):	\$ 55.00	\$ 47,300.00	\$ 45.00	\$ 38,700.00	\$ 28.50	\$ 24,510.00	\$ 40.00	\$ 34,400.00	\$ 35.00	\$ 30,100.00
35	1,350	LF	Minor Concrete (B1-4 Curb):	\$ 55.00	\$ 74,250.00	\$ 45.00	\$ 60,750.00	\$ 22.50	\$ 30,375.00	\$ 97.00	\$ 130,950.00	\$ 85.00	\$ 114,750.00
36	30,620	SF	Minor Concrete (Sidewalk):	\$ 18.00	\$ 551,160.00	\$ 14.00	\$ 428,680.00	\$ 14.10	\$ 431,742.00	\$ 15.00	\$ 459,300.00	\$ 18.00	\$ 551,160.00
37	2,660	SF	Minor Concrete (Driveway):	\$ 35.00	\$ 93,100.00	\$ 16.00	\$ 42,560.00	\$ 24.00	\$ 63,840.00	\$ 26.00	\$ 69,160.00	\$ 19.00	\$ 50,540.00
38	1,780	SF	Minor Concrete (Textured Paving):	\$ 33.00	\$ 58,740.00	\$ 30.00	\$ 53,400.00	\$ 38.00	\$ 67,640.00	\$ 29.00	\$ 51,620.00	\$ 35.00	\$ 62,300.00
39	1,520	SF	Minor Concrete (Pavers):	\$ 11.00	\$ 16,720.00	\$ 15.00	\$ 22,800.00	\$ 37.00	\$ 56,240.00	\$ 50.00	\$ 76,000.00	\$ 42.00	\$ 63,840.00
40	30	EA	Curb Ramp:	\$ 5,500.00	\$ 165,000.00	\$ 1,700.00	\$ 51,000.00	\$ 2,225.00	\$ 66,750.00	\$ 3,500.00	\$ 105,000.00	\$ 1,000.00	\$ 30,000.00
41	50	EA	Sign:	\$ 300.00	\$ 15,000.00	\$ 100.00	\$ 5,000.00	\$ 100.00	\$ 5,000.00	\$ 100.00	\$ 5,000.00	\$ 100.00	\$ 5,000.00
42	26	EA	Post:	\$ 125.00	\$ 3,250.00	\$ 240.00	\$ 6,240.00	\$ 105.00	\$ 2,730.00	\$ 220.00	\$ 5,720.00	\$ 220.00	\$ 5,720.00
43	6	EA	Sign (relocate):	\$ 200.00	\$ 1,200.00	\$ 240.00	\$ 1,440.00	\$ 265.00	\$ 1,590.00	\$ 220.00	\$ 1,320.00	\$ 220.00	\$ 1,320.00
44	13	EA	Remove Sign:	\$ 150.00	\$ 1,950.00	\$ 70.00	\$ 910.00	\$ 227.00	\$ 2,951.00	\$ 70.00	\$ 910.00	\$ 65.00	\$ 845.00
45	2	EA	Remove Post:	\$ 150.00	\$ 300.00	\$ 140.00	\$ 280.00	\$ 325.00	\$ 650.00	\$ 130.00	\$ 260.00	\$ 125.00	\$ 250.00
46	16	EA	Sign (Object Marker):	\$ 50.00	\$ 800.00	\$ 140.00	\$ 2,240.00	\$ 121.00	\$ 1,936.00	\$ 130.00	\$ 2,080.00	\$ 125.00	\$ 2,000.00
47	3,297	LF	Stripe (Caltrans Detail 9):	\$ 0.40	\$ 1,318.80	\$ 0.70	\$ 2,307.90	\$ 1.00	\$ 3,297.00	\$ 0.70	\$ 2,307.90	\$ 1.00	\$ 3,297.00
48	2,531	LF	Stripe (Caltrans Detail 22):	\$ 1.50	\$ 3,796.50	\$ 1.50	\$ 3,796.50	\$ 2.00	\$ 5,062.00	\$ 1.40	\$ 3,543.40	\$ 1.30	\$ 3,290.30
49	599	LF	Stripe (Caltrans Detail 27B):	\$ 0.80	\$ 479.20	\$ 0.65	\$ 389.35	\$ 1.00	\$ 599.00	\$ 0.70	\$ 419.30	\$ 1.00	\$ 599.00
50	1,827	LF	Stripe (Caltrans Detail 32):	\$ 1.60	\$ 2,923.20	\$ 1.50	\$ 2,740.50	\$ 2.00	\$ 3,654.00	\$ 1.40	\$ 2,557.80	\$ 1.30	\$ 2,375.10
51	2,058	LF	Stripe (Caltrans Detail 38B):	\$ 1.00	\$ 2,058.00	\$ 1.50	\$ 3,087.00	\$ 2.00	\$ 4,116.00	\$ 1.40	\$ 2,881.20	\$ 1.30	\$ 2,675.40
52	6,857	LF	Stripe (Caltrans Detail 39):	\$ 1.00	\$ 6,857.00	\$ 1.00	\$ 6,857.00	\$ 1.25	\$ 8,571.25	\$ 1.10	\$ 7,542.70	\$ 1.00	\$ 6,857.00
53	4,337	LF	Stripe (Caltrans Detail 39A):	\$ 1.00	\$ 4,337.00	\$ 1.00	\$ 4,337.00	\$ 1.00	\$ 4,337.00	\$ 1.00	\$ 4,337.00	\$ 1.00	\$ 4,337.00
54	389	LF	Stripe (Caltrans Detail 40):	\$ 1.00	\$ 389.00	\$ 2.00	\$ 778.00	\$ 1.25	\$ 486.25	\$ 1.00	\$ 389.00	\$ 1.00	\$ 389.00
55	830	LF	White Stripe (12"):	\$ 3.00	\$ 2,490.00	\$ 4.00	\$ 3,320.00	\$ 5.00	\$ 4,150.00	\$ 4.00	\$ 3,320.00	\$ 4.00	\$ 3,320.00
56	1,729	LF	Yellow Stripe (12"):	\$ 3.00	\$ 5,187.00	\$ 4.00	\$ 6,916.00	\$ 5.00	\$ 8,645.00	\$ 4.00	\$ 6,916.00	\$ 4.00	\$ 6,916.00
57	1,092	LF	Yellow Stripe (24"):	\$ 5.00	\$ 5,460.00	\$ 8.00	\$ 8,736.00	\$ 9.00	\$ 9,828.00	\$ 8.00	\$ 8,736.00	\$ 7.00	\$ 7,64



CITY OF
**PALO
ALTO**

CONSTRUCTION CONTRACT

Contract No. C18171392A

City of Palo Alto

Charleston/Arastradero Corridor Project - Phase 2(Re-bid)

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 May 21, 2018 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and O'GRADY PAVING, INC. ("Contractor"), is made with reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. Contractor is a Corporation duly organized and in good standing in the State of California, Contractor's License Number 201696 and Department of Industrial Relations Registration Number 1000003381. 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 March 27, 2018, City issued an Invitation for Bids (IFB) to contractors for the Charleston/Arastradero Corridor Project - Phase 2- Re-Bid ("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 Charleston/Arastradero Corridor Project - Phase 2-Re-Bid -Project, located at Charleston and Arastradero Road, Palo Alto, CA. 94301 ("Project").

SECTION 3 THE CONTRACT DOCUMENTS.

3.1 List of Documents.

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

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

3.2 Order of Precedence.

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

SECTION 4 CONTRACTOR'S DUTY.

4.1 Contractor's Duties

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

SECTION 5 PROJECT TEAM.

5.1 Contractor's Co-operation.

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

SECTION 6 TIME OF COMPLETION.

6.1 Time Is of Essence.

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

6.2 Commencement of Work.

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

6.3 Contract Time.

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

☐

not later than .

☒

within two hundred eighty five calendar days (285) 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 five hundred dollars (\$500) per day, or as otherwise specified in the Special Provisions. Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents, regardless of impact on the time for achieving Substantial Completion. The assessment of liquidated damages is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer by delay in completion of the Work. The City is entitled to setoff the amount of liquidated damages assessed against any payments otherwise due to Contractor,

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

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

6.5 Adjustments to Contract Time.

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

SECTION 7 COMPENSATION TO CONTRACTOR.

7.1 Contract Sum.

Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of Four Million Four Hundred Thirty Four Thousand Three Hundred Forty Seven Dollars (\$4,434,347).

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

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 Engineering
 250 Hamilton Avenue
 Palo Alto, CA 94301
 Attn: Holly Boyd

AND

[Include Construction Manager, If Applicable.]

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

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:

O'Grady Paving, Inc.
Attn: Craig Young
2513 Wyandotte Street
Mountain View, CA 94043

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: _____

CHARLESTON-ARASTRADERO CORRIDOR PROJECT - PHASE 2
STATE PROJECT NO. SR2SL-5100(020)

IFB Post Date: 03/27/2018
IFB Due Date: 04/20/2018

BID ITEM	APPROX. QTY.	UNIT	DESCRIPTION, WITH UNIT PRICE IN WORDS	Engineer's Estimate		O'Grady Paving		Granite Construction		Redgwick Construction		Disney Construction	
				Unit Price	Total Item Price	Unit Price	Total Item Price	Unit Price	Total Item Price	Unit Price	Total Item Price	Unit Price	Total Item Price
1	1	LS	Traffic Control System:	\$ 135,000.00	\$ 135,000.00	\$ 350,000.00	\$ 350,000.00	\$ 450,000.00	\$ 450,000.00	\$ 542,100.00	\$ 542,100.00	\$ 440,000.00	\$ 440,000.00
2	1	LS	Public Notification and Posting:	\$ 10,000.00	\$ 10,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 1,500.00	\$ 1,500.00	\$ 80,000.00	\$ 80,000.00
3	1	LS	Clearing and Grubbing:	\$ 10,000.00	\$ 10,000.00	\$ 100,000.00	\$ 100,000.00	\$ 290,000.00	\$ 290,000.00	\$ 165,000.00	\$ 165,000.00	\$ 80,000.00	\$ 80,000.00
4	50	CREW HOURS	Trim Street Trees:	\$ 590.00	\$ 29,500.00	\$ 250.00	\$ 12,500.00	\$ 300.00	\$ 15,000.00	\$ 230.00	\$ 11,500.00	\$ 300.00	\$ 15,000.00
5	18,743	SF	Remove Concrete (Miscellaneous):	\$ 11.00	\$ 206,173.00	\$ 7.00	\$ 131,201.00	\$ 7.75	\$ 145,258.25	\$ 8.00	\$ 149,944.00	\$ 6.00	\$ 112,458.00
6	140,364	SF	Asphalt Concrete Milling:	\$ 0.70	\$ 98,254.80	\$ 0.70	\$ 98,254.80	\$ 0.50	\$ 70,182.00	\$ 0.42	\$ 58,952.88	\$ 0.80	\$ 112,291.20
7	14	EA	Temporary Drainage Inlet Protection:	\$ 500.00	\$ 7,000.00	\$ 150.00	\$ 2,100.00	\$ 230.00	\$ 3,220.00	\$ 200.00	\$ 2,800.00	\$ 700.00	\$ 9,800.00
8	1	LS	Stormwater Pollution Prevention:	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 50,000.00	\$ 50,000.00	\$ 25,000.00	\$ 25,000.00	\$ 80,000.00	\$ 80,000.00
9	14	EA	Gas Valve Box Adjustment:	\$ 800.00	\$ 11,200.00	\$ 500.00	\$ 7,000.00	\$ 850.00	\$ 11,900.00	\$ 900.00	\$ 12,600.00	\$ 3,000.00	\$ 42,000.00
10	16	EA	Water Valve Box Adjustment:	\$ 800.00	\$ 12,800.00	\$ 500.00	\$ 8,000.00	\$ 850.00	\$ 13,600.00	\$ 900.00	\$ 14,400.00	\$ 3,000.00	\$ 48,000.00
11	13	EA	Sewer Manhole Cover Adjustment:	\$ 880.00	\$ 11,440.00	\$ 900.00	\$ 11,700.00	\$ 1,330.50	\$ 17,296.50	\$ 1,500.00	\$ 19,500.00	\$ 7,000.00	\$ 91,000.00
12	2	EA	Electrical Manhole Adjustment	\$ 1,000.00	\$ 2,000.00	\$ 1,500.00	\$ 3,000.00	\$ 1,774.25	\$ 3,548.50	\$ 1,500.00	\$ 3,000.00	\$ 7,000.00	\$ 14,000.00
13	504	LF	6" HDPE Pipe, SDR 17:	\$ 45.00	\$ 22,680.00	\$ 180.00	\$ 90,720.00	\$ 180.00	\$ 90,720.00	\$ 190.00	\$ 95,760.00	\$ 250.00	\$ 126,000.00
14	420	LF	6" Slotted HDPE Pipe, SDR 17:	\$ 50.00	\$ 21,000.00	\$ 180.00	\$ 75,600.00	\$ 192.00	\$ 80,640.00	\$ 200.00	\$ 84,000.00	\$ 100.00	\$ 42,000.00
15	179	LF	12" HDPE Pipe, SDR 17:	\$ 100.00	\$ 17,900.00	\$ 420.00	\$ 75,180.00	\$ 465.00	\$ 83,235.00	\$ 500.00	\$ 89,500.00	\$ 300.00	\$ 53,700.00
16	3	EA	New Catch Basin:	\$ 5,500.00	\$ 16,500.00	\$ 6,000.00	\$ 18,000.00	\$ 4,300.00	\$ 12,900.00	\$ 7,200.00	\$ 21,600.00	\$ 5,000.00	\$ 15,000.00
17	5	EA	New Manhole:	\$ 6,000.00	\$ 30,000.00	\$ 11,000.00	\$ 55,000.00	\$ 7,400.00	\$ 37,000.00	\$ 8,100.00	\$ 40,500.00	\$ 14,000.00	\$ 70,000.00
18	6	EA	Overflow Inlet:	\$ 1,000.00	\$ 6,000.00	\$ 5,500.00	\$ 33,000.00	\$ 4,000.00	\$ 24,000.00	\$ 3,850.00	\$ 23,100.00	\$ 4,000.00	\$ 24,000.00
19	6	EA	Cleanout:	\$ 500.00	\$ 3,000.00	\$ 800.00	\$ 4,800.00	\$ 1,000.00	\$ 6,000.00	\$ 1,000.00	\$ 6,000.00	\$ 700.00	\$ 4,200.00
20	1	EA	Relocate 8" Water:	\$ 3,000.00	\$ 3,000.00	\$ 19,000.00	\$ 19,000.00	\$ 25,000.00	\$ 25,000.00	\$ 27,000.00	\$ 27,000.00	\$ 20,000.00	\$ 20,000.00
21	2266	TON	Rubberized Hot Mix Asphalt (RHMA):	\$ 180.00	\$ 407,880.00	\$ 165.00	\$ 373,890.00	\$ 210.00	\$ 475,860.00	\$ 167.00	\$ 378,422.00	\$ 180.00	\$ 407,880.00
22	620	TON	Hot Mix Asphalt (HMA), Type A:	\$ 120.00	\$ 74,400.00	\$ 190.00	\$ 117,800.00	\$ 425.00	\$ 263,500.00	\$ 210.00	\$ 130,200.00	\$ 195.00	\$ 120,900.00
23	1,188	SF	Base Failure Repair:	\$ 4.40	\$ 5,227.20	\$ 13.00	\$ 15,444.00	\$ 35.00	\$ 41,580.00	\$ 15.00	\$ 17,820.00	\$ 10.00	\$ 11,880.00
24	11,886	SF	Asphalt Concrete Paving Conform Prior to RAC:	\$ 4.00	\$ 47,544.00	\$ 5.00	\$ 59,430.00	\$ 6.00	\$ 71,316.00	\$ 4.90	\$ 58,241.40	\$ 4.00	\$ 47,544.00
25	300	CY	Aggregate Base, Class 2:	\$ 60.00	\$ 18,000.00	\$ 90.00	\$ 27,000.00	\$ 210.00	\$ 63,000.00	\$ 100.00	\$ 30,000.00	\$ 350.00	\$ 105,000.00
26	1218	CY	Roadway Excavation:	\$ 55.00	\$ 66,990.00	\$ 150.00	\$ 182,700.00	\$ 210.00	\$ 255,780.00	\$ 160.00	\$ 194,880.00	\$ 140.00	\$ 170,520.00
27	1,580	LF	Minor Concrete (Type A MOD Curb):	\$ 80.00	\$ 126,400.00	\$ 90.00	\$ 142,200.00	\$ 84.00	\$ 132,720.00	\$ 94.00	\$ 148,520.00	\$ 55.00	\$ 86,900.00
28	560	LF	Minor Concrete (Bioretention Curb):	\$ 110.00	\$ 61,600.00	\$ 145.00	\$ 81,200.00	\$ 80.00	\$ 44,800.00	\$ 150.00	\$ 84,000.00	\$ 45.00	\$ 25,200.00
29	480	LF	Minor Concrete (Bioretention Curb and Gutter):	\$ 130.00	\$ 62,400.00	\$ 155.00	\$ 74,400.00	\$ 145.25	\$ 69,720.00	\$ 160.00	\$ 76,800.00	\$ 70.00	\$ 33,600.00
30	150	LF	Minor Concrete (Retaining Curb) :	\$ 65.00	\$ 9,750.00	\$ 35.00	\$ 5,250.00	\$ 190.50	\$ 28,575.00	\$ 33.00	\$ 4,950.00	\$ 40.00	\$ 6,000.00
31	2720	LF	Minor Concrete (A1-6 Curb) :	\$ 45.00	\$ 122,400.00	\$ 57.00	\$ 155,040.00	\$ 40.25	\$ 109,480.00	\$ 52.00	\$ 141,440.00	\$ 68.00	\$ 184,960.00
32	280	LF	Minor Concrete (A2-6 Curb):	\$ 55.00	\$ 15,400.00	\$ 57.00	\$ 15,960.00	\$ 114.50	\$ 32,060.00	\$ 57.00	\$ 15,960.00	\$ 80.00	\$ 22,400.00
33	950	LF	Minor Concrete (B1-4 Curb):	\$ 55.00	\$ 52,250.00	\$ 57.00	\$ 54,150.00	\$ 46.00	\$ 43,700.00	\$ 57.00	\$ 54,150.00	\$ 75.00	\$ 71,250.00
34	160	LF	Minor Concrete (B2-4 Curb):	\$ 55.00	\$ 8,800.00	\$ 57.00	\$ 9,120.00	\$ 186.75	\$ 29,880.00	\$ 52.00	\$ 8,320.00	\$ 60.00	\$ 9,600.00
35	14,380	SF	Minor Concrete (Sidewalk):	\$ 18.00	\$ 258,840.00	\$ 16.00	\$ 230,080.00	\$ 15.75	\$ 226,485.00	\$ 14.50	\$ 208,510.00	\$ 19.00	\$ 273,220.00
36	1,620	SF	Minor Concrete (Driveway):	\$ 35.00	\$ 56,700.00	\$ 18.00	\$ 29,160.00	\$ 35.00	\$ 56,700.00	\$ 18.00	\$ 29,160.00	\$ 20.00	\$ 32,400.00
37	1,070	SF	Minor Concrete (Textured Paving):	\$ 33.00	\$ 35,310.00	\$ 29.00	\$ 31,030.00	\$ 44.25	\$ 47,347.50	\$ 31.00	\$ 33,170.00	\$ 40.00	\$ 42,800.00
38	3,050	SF	Minor Concrete (Pavers):	\$ 11.00	\$ 33,550.00	\$ 17.00	\$ 51,850.00	\$ 33.00	\$ 100,650.00	\$ 38.00	\$ 115,900.00	\$ 23.00	\$ 70,150.00
39	21	EA	Curb Ramp:	\$ 5,500.00	\$ 115,500.00	\$ 2,600.00	\$ 54,600.00	\$ 7,200.00	\$ 151,200.00	\$ 2,600.00	\$ 54,600.00	\$ 1,000.00	\$ 21,000.00
40	50	EA	Sign:	\$ 300.00	\$ 15,000.00	\$ 165.00	\$ 8,250.00	\$ 65.00	\$ 3,250.00	\$ 165.00	\$ 8,250.00	\$ 100.00	\$ 5,000.00
41	2	EA	Sign (relocate):	\$ 200.00	\$ 400.00	\$ 240.00	\$ 480.00	\$ 175.00	\$ 350.00	\$ 165.00	\$ 330.00	\$ 200.00	\$ 400.00
42	12	EA	Sign (Object Marker):	\$ 50.00	\$ 600.00	\$ 105.00	\$ 1,260.00	\$ 75.00	\$ 900.00	\$ 55.00	\$ 660.00	\$ 40.00	\$ 480.00
43	23	EA	Post:	\$ 125.00	\$ 2,875.00	\$ 235.00	\$ 5,405.00	\$ 215.00	\$ 4,945.00	\$ 270.00	\$ 6,210.00	\$ 200.00	\$ 4,600.00
44	26	EA	Remove Sign:	\$ 150.00	\$ 3,900.00	\$ 70.00	\$ 1,820.00	\$ 75.00	\$ 1,950.00	\$ 80.00	\$ 2,080.00	\$ 100.00	\$ 2,600.00
45	3	EA	Remove Post:	\$ 150.00	\$ 450.00	\$ 140.00	\$ 420.00	\$ 150.00	\$ 450.00	\$ 100.00	\$ 300.00	\$ 100.00	\$ 300.00
46	998	LF	Stripe (Caltrans Detail 9):	\$ 0.40	\$ 399.20	\$ 1.10	\$ 1,097.80	\$ 1.20	\$ 1,197.60	\$ 0.60	\$ 598.80	\$ 0.50	\$ 499.00
47	903	LF	Stripe (Caltrans Detail 22):	\$ 1.50	\$ 1,354.50	\$ 2.20	\$ 1,986.60	\$ 2.35	\$ 2,122.05	\$ 1.60	\$ 1,444.80	\$ 1.50	\$ 1,354.50
48	1,449	LF	Stripe (Caltrans Detail 27B):	\$ 0.80	\$ 1,159.20	\$ 1.00	\$ 1,449.00	\$ 1.10	\$ 1,593.90	\$ 0.80	\$ 1,159.20	\$ 0.50	\$ 724.50
49	231	LF	Stripe (Caltrans Detail 32):	\$ 1.60	\$ 369.60	\$ 2.15	\$ 496.65	\$ 2.30	\$ 531.30	\$ 3.30	\$ 762.30	\$ 3.00	\$ 693.00
50	1,607	LF	Stripe (Caltrans Detail 38B):	\$ 1.00	\$ 1,607.00	\$ 2.20	\$ 3,535.40	\$ 2.35	\$ 3,776.45	\$ 1.50	\$ 2,410.50	\$ 1.50	\$ 2,410.50
51	6,972	LF	Stripe (Caltrans Detail 39):	\$ 1.00	\$ 6,972.00	\$ 1.20	\$ 8,366.40	\$ 1.30	\$ 9,063.60	\$ 1.10	\$ 7,669.20	\$ 1.00	\$ 6,972.00
52	3,497	LF	Stripe (Caltrans Detail 39A):	\$ 1.00	\$ 3,497.00	\$ 1.20	\$ 4,196.40	\$ 1.20	\$ 4,196.40	\$ 1.10	\$ 3,846.70	\$ 1.00	\$ 3,497.00
53	84	LF	Stripe (Caltrans Detail 40):	\$ 1.00	\$ 84.00	\$ 2.00	\$ 168.00	\$ 1.20	\$ 100.80	\$ 5.50	\$ 462.00	\$ 1.00	\$ 84.00
54	662	LF	White Stripe (12"):	\$ 3.00	\$ 1,986.00	\$ 5.00	\$ 3,310.00	\$ 4.70	\$ 3,111.40	\$ 5.50	\$ 3,641.00	\$ 4.00	\$ 2,648.00
55	1281	LF	Yellow Stripe (12"):	\$ 3.00	\$ 3,843.00	\$ 5.00	\$ 6,405.00	\$ 4.70	\$ 6,020.70	\$ 5.50	\$ 7,045.50	\$ 4.00	\$ 5,124.00
56	893	LF	White Stripe (24"):	\$ 5.00	\$ 4,465.00	\$ 9.00	\$ 8,037.00	\$ 9.40	\$ 8,394.20	\$ 11.00	\$ 9,823.00	\$ 8.00	\$ 7,144.00

**AMENDMENT NO. 2 TO CONTRACT NO. C14150694
BETWEEN THE CITY OF PALO ALTO AND MARK THOMAS & COMPANY**

This Amendment No. 2 (this "Amendment") to contract no. C14150694 is entered into as of January 1, 2018, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and **MARK THOMAS & COMPANY, INC.**, a California corporation, located at 2290 North First Street, Suite 304, San Jose, CA 95131 ("CONSULTANT").

RECITALS

A. The Contract (as defined below) was entered into between the parties for the provision of professional design services for streetscape and pedestrian/bicycle improvements along the Charleston/Arastradero Corridor Project.

B. The parties wish to amend the Contract to increase the scope of services to include Construction Administration Services for the Charleston/Arastradero Corridor Project, increase the total not-to-exceed amount of compensation by \$145,419.00 for professional services and to extend the Contract term, as detailed herein.

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

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

- a. **Contract.** The term "Contract" shall mean contract no. C14150694 between CONSULTANT and CITY, as amended by:

Amendment No. 1, dated May 9, 2016

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

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

"CONSULTANT shall perform the Services described in the attached Exhibit "A", entitled "SCOPE OF SERVICES", Exhibit "A-1", entitled "SCOPE OF SERVICES", and Exhibit "A-2", entitled "SCOPE OF SERVICES", in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY."

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

"The term of this Agreement shall be from the date of its full execution through December 31, 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", entitled "SCHEDULE OF PERFORMANCE", Exhibit "B-1", entitled "SCHEDULE OF PERFORMANCE", and Exhibit "B-2", entitled "SCHEDULE OF PERFORMANCE", each of which is, by this reference, hereby attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT."

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

"The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A", entitled "SCOPE OF SERVICES", Exhibit "A-1", entitled "SCOPE OF SERVICES", and Exhibit "A-2", entitled "SCOPE OF SERVICES", including both payment for professional services and reimbursable expenses, shall not exceed **one million eight hundred thirty four thousand three hundred seven dollars (\$1,834,307)**, as detailed in Exhibit "C", entitled "COMPENSATION", Exhibit "C-2", entitled "COMPENSATION", and Exhibit "C-4", entitled "COMPENSATION", as applicable. CONSULTANT agrees to complete all such services, including reimbursable expenses, within this amount. In the event Additional Services are authorized, the total compensation for professional services, reimbursable expenses and such Additional Services, shall not exceed **one million nine hundred thirty four thousand three hundred seven dollars (\$1,934,307)**. The applicable rates and schedule of payment for such Additional Services are set out in Exhibit "C-1", entitled "HOURLY RATE SCHEDULE", Exhibit "C-3", entitled "HOURLY RATE SCHEDULE", or Exhibit "C-5", entitled "HOURLY RATE SCHEDULE", as applicable.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C," Exhibit "C-2," or Exhibit "C-4", as applicable. CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit "A," Exhibit "A-1," or Exhibit "A-2", as applicable.

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

SECTION 6. The following exhibit(s) to the Contract is/are hereby added to read as set forth in the attachment(s) to this Amendment, and which are hereby attached and incorporated in full by this reference:

- a. Exhibit "A-2" entitled "SCOPE OF SERVICES".
- b. Exhibit "B-2" entitled "SCHEDULE OF PERFORMANCE".
- c. Exhibit "C-4" entitled "COMPENSATION".
- d. Exhibit "C-5" entitled "HOURLY RATE SCHEDULE".

SECTION 7. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Contract, including any exhibits thereto, shall remain unchanged and in full force and effect.

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

SIGNATURES OF THE PARTIES

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

CITY OF PALO ALTO

City Manager

APPROVED AS TO FORM:

Assistant City Attorney

MARK THOMAS & COMPANY. INC.

Officer 1

DocuSigned by:
By: Robert A Himes
56A744E3336345A...

Name: Robert A Himes

Title: President

Officer 2 (Required for Corp. or LLC)

DocuSigned by:
By: Richard Tanaka
6162A41726264F7...

Name: Richard Tanaka

Title: Senior Principal/VP

Attachments:

Exhibit "A-2" entitled "SCOPE OF SERVICES".

Exhibit "B-2" entitled "SCHEDULE OF PERFORMANCE".

Exhibit "C-4" entitled "COMPENSATION"

Exhibit "C-5" entitled "HOURLY RATE SCHEDULE".

EXHIBIT "A-2"
SCOPE OF SERVICES
AMENDMENT NO. 2 TO CONTRACT NO. C14150694

Task 1 – Construction Support

Consultant and its subconsultants shall provide design support during construction of the Charleston-Arastradero Corridor Project, Phases 1-3, by responding to requests for information, performing site visits, attending construction meetings, reviewing shop drawings, preparing contract change order plans and specifications, and performing other tasks as necessary at the direction of the City's Engineer. Construction support shall be performed on a time and materials basis.

Deliverables:

- a) Responses to RFIs, as requested
- b) Plans or sketches to support the City for Contract Change Orders, as requested
- c) Review of contractor submittals, as requested

All deliverables are to be submitted in pdf format.

Task 2 – Project Closeout (As-Built)

Consultant and its subconsultants shall prepare as-built plans based upon redline mark-ups provided by the City's Engineer. As-built plan preparation shall be performed on a time and materials basis.

Deliverables:

- a) Record Drawings, Phase 1
- b) Record Drawings, Phase 2
- c) Record Drawings, Phase 3

All deliverables are to be submitted in pdf format.

EXHIBIT "B-2"
SCHEDULE OF PERFORMANCE
AMENDMENT NO. 2 TO CONTRACT NO. C14150694

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

Tasks	Completions No. of Weeks from NTP
Task 1.1 (Construction Support – Phase 1)	62
Task 2.1 (Project Close Out – Phase 1)	82
Task 1.2 (Construction Support – Phase 2)	62
Task 2.2 (Project Close Out- Phase 2)	82
Task 1.3 (Construction Support- Phase 3)	114
Task 2.3 (Project Close Out- Phase 3)	134

EXHIBIT "C-4"
COMPENSATION
AMENDMENT NO. 2 TO CONTRACT NO. C14150694

The CITY agrees to compensate the CONSULTANT for professional services performed as detailed in Exhibit "A-2" 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-5," up to the not to exceed budget amount for each task set forth below in this Exhibit "C-4".

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.

BUDGET SCHEDULE	NOT TO EXCEED AMOUNT
Task 1.1 (Construction Support – Phase 1)	\$29,319
Task 1.2 (Construction Support – Phase 2)	\$29,319
Task 1.3 (Construction Support – Phase 3)	\$29,319
Task 2.1 (Project Close Out – Phase 1)	\$19,154
Task 2.2 (Project Close Out – Phase 2)	\$19,154
Task 2.3 (Project Close Out – Phase 3)	\$19,154

Sub-total Basic Services	\$ 145,419
Reimbursable Expenses	\$0
Total Basic Services and Reimbursable expenses	\$145,419
Additional Services (Not to Exceed)	\$0
Maximum Total Compensation	\$145,419

EXHIBIT “C-5”
HOURLY RATE SCHEDULE
AMENDMENT NO.2 TO CONTRACT NO. C14150694

1.	Engineering Manager	\$252
2.	Senior Project Engineer	\$178
3.	Design Engineer	\$118
4.	Project Coordinator	\$100

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
CONGESTION MANAGEMENT PROGRAM
TRANSPORTATION FUND FOR CLEAN AIR
AGREEMENT
FY 2017/18**

This agreement ("Agreement") by and between the Santa Clara Valley Transportation Authority ("VTA") and the City of Palo Alto ("Sponsor") shall be effective on the date that this Agreement is fully executed by the parties hereto ("Effective Date").

RECITALS

This Agreement is made with reference to the following facts:

- A. VTA has been designated by resolutions of the County of Santa Clara, as well as a majority of the cities within Santa Clara County, as the Program Manager for Santa Clara County Transportation Fund for Clean Air ("TFCA") County Program Manager under the State of California Health and Safety Code Section 44241.
- B. Pursuant to that designation, VTA is responsible for allocating and administering the County of Santa Clara's TFCA County Program Manager Fund ("County Fund") to eligible project sponsors in accordance with its agreement with the Bay Area Air Quality Management District ("BAAQMD").
- C. On June 1, 2017, the VTA Board approved the programming of FY 2017/18 Transportation Fund for Clean Air Program Manager (TFCA 40%) funds for the Palo Alto Bike Share and Charleston-Arastradero Signal Timing projects (PROJECTS). This Agreement specifies the conditions under which VTA will allocate and administer a grant from the County Fund to Sponsor for fiscal year 2017/18.

Now, therefore the parties agree as follows:

AGREEMENT

Section 1. Grant of TFCA Funds; Description of Project

- A. Subject to appropriation and receipt of TFCA funds (as further set forth in Section 9, below), VTA hereby agrees to allocate to Sponsor a TFCA grant in an amount not to exceed \$413,038 (the "Grant Funds") in consideration for Sponsor's agreement to implement and complete the "Projects" (as further set forth in the project summary, attached hereto as **Attachment A**), in accordance with the terms and conditions set forth in this Agreement.
- B. In consideration of VTA's providing Sponsor with the Grant Funds, Sponsor hereby agrees to implement and complete the Project in conformance with the terms of this Agreement. In implementing the Project, Sponsor shall comply with the Project schedule and monitoring requirements, as described in **Attachment A**.

Section 2. Proper Expenditure; Return of Funds

- A. Sponsor shall assure that all funds received under this Agreement are expended only in accordance with all applicable provisions of federal, state and local law, and Sponsor shall require any other sub-recipients of Grant Funds for the Project to do the same.
- B. Sponsor shall comply with: (i) all TFCA program and project requirements, as set forth in the BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending (FYE)2018," the Funding Agreement between VTA and BAAQMD for FY 2017/18 (FYE2018); and (ii) the TFCA County Program Manager Fund Policies for FY 2017/18 (hereinafter "Policies"). These documents, including appendices, are incorporated herein and made a part hereof by this reference as if fully set forth herein.
- C. Sponsor shall expend no more than five percent (5%) of Grant Funds received hereunder on administrative costs, per California Health and Safety Code Section 44233.
- D. Sponsor shall return to VTA all funds that are not expended in accordance with applicable provisions of law.
- E. In addition, Sponsor shall return the TFCA funds to VTA if a project is not maintained and/or operated throughout and until the conclusion of the "Number of Years of Effectiveness." This is the default value stated in Appendix H of BAAQMD's "County Program Manager Fund Expenditure Plan Guidance Fiscal Year Ending 2017" for the applicable project type, unless a different value was approved and shown to yield a Project that meets the cost-effectiveness requirement in the Policies by the Program Manager. The amount of funds returned to the Program Manager shall be calculated on a prorated basis.

Section 3. Term

The term of this Agreement shall commence July 1, 2017 and shall continue until either the Project is completed or terminated in accordance with Section 15C.

Any requests for additional time to complete Project beyond June 30, 2019 must be submitted in writing to VTA no later than sixty (60) days prior to that date. VTA may approve or deny two 12-month requests in its sole discretion. In order to approve any time extensions, VTA must determine that significant progress has been made on implementing the projects. VTA can approve no more than two one-year schedule extensions for a project. Any subsequent schedule extensions for projects can only be approved by BAAQMD on a case-by-case basis, if BAAQMD finds that significant progress has been made on a project. Sponsor must demonstrate that significant progress has been made on any project seeking extensions to the completion date. Documentation by VTA or BAAQMD approving any extensions for the Project shall be sufficient approval to extend the term of this Agreement.

Section 4. Work Product

Sponsor shall place in the public domain any software, written document, or other product developed with funds received through this Agreement, to the extent not otherwise prohibited by law, and to the extent required by the California Public Records Act (California Government Code Sections 6250 et seq.).

Section 5. Acknowledgement of Funding Sources

- A. Sponsor shall acknowledge both VTA and BAAQMD as Project's funding sources during the implementation of a project and shall use the VTA and the BAAQMD approved logos as specified below:
- (1) The logos shall be used on signs posted at the site of any Project construction;
 - (2) The logos shall be displayed on any vehicles operated with or obtained as part of the Projects;
 - (3) The logos shall be used on any material intended for public consumption associated with the Projects, such as websites and printed materials, including project-related transit schedules, brochures, handbooks, maps created for public distribution, and promotional material; and
 - (4) Sponsor will demonstrate to VTA, through evidence such as photographs of vehicles, construction signs, and copies of press releases, that the logos are used and displayed as required by this Section.
- B. VTA shall provide a copy of BAAQMD and VTA logos to Sponsor solely for use in fulfilling Sponsor's obligations under this Section.
- C. Sponsor shall acknowledge VTA and BAAQMD as a funding source in any related articles, news releases, or other publicity materials for the Project that are produced or caused to be produced by Sponsor.

Section 6. Insurance Coverage

Sponsor shall obtain and maintain, throughout the term of this Agreement, the insurance coverage specified in Attachment B "Insurance Requirements," and shall comply with all insurance requirements set forth therein, including the provision regarding documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage and to comply with all insurance requirements shall be deemed a breach of this Agreement. The Sponsor shall forward a copy of the required insurance documentation to VTA.

Section 7. Invoicing

Sponsor shall submit invoices at quarterly intervals to VTA for reimbursement of costs incurred to implement the Project. Sponsor shall send requests for reimbursement to VTA Accounts Payable at 3331 North 1st Street, Building A, San José, CA 95134-1927. Sponsor shall include relevant, auditable back-up documentation (time sheets, bills, etc.) with each invoice.

Section 8. Reimbursement

- A. All funds allocated by VTA to Sponsor shall be on a cost-reimbursement basis only. VTA shall pay no funds in advance.
- B. Upon review and approval of invoices and documentation, VTA shall, within twenty (20) days of receipt of an invoice that conforms to the requirements set forth in this Agreement, reimburse Sponsor for all eligible expenditures up to the maximum amount described in Section 1 of this Agreement. Only those Project costs incurred by Sponsor on or after July 1, 2017 shall be considered reimbursable expenditures.
- C. Funds for the Project described in this Agreement, which are not submitted for reimbursement prior to June 30, 2019, shall not be available to reimburse Project costs unless a Project schedule, which extends the Project completion date beyond June 30, 2019, has been approved by VTA and BAAQMD, as set forth in Section 3, above.

Section 9. Funds Subject to Appropriation/Allocation of Funds Contingent on Appropriation

VTA's obligations under the terms of this Agreement are contingent upon and subject to the allocation of TFCA funds to VTA by BAAQMD under VTA's "17-SC" agreement with BAAQMD for approved projects during Fiscal Year 2017/18.

Section 10. Audit by State Auditor

This Agreement shall be subject to the examination and audit of the California State Auditor pursuant to California Government Code Section 8546.7 for a period of five (5) years after final payment.

Section 11. Sponsor's Record Keeping

Sponsor shall:

- A. Allow VTA staff, BAAQMD staff, both Parties' authorized representatives, and both Parties' independent auditors, during the term of this Agreement and for five (5) years following completion of each Project, to conduct performance and financial audits of the Project and to inspect the Project. During audits, the Sponsor shall make available to the auditor, in a timely manner, all records relating to Sponsor's implementation of the Projects. During inspections, Sponsor will provide, at the request of VTA or BAAQMD, access to inspect the Projects and related records.
- B. Maintain employee time sheets documenting those hourly labor costs incurred in the implementation of the Projects, including both administrative and Project implementation costs, or to establish an alternative method to document staff costs charged to the funded Project.
- C. Keep all financial and Project implementation records necessary to demonstrate compliance with this Agreement and the Program. Such records shall include documentation that demonstrates significant progress made for those Program Projects seeking extensions to the completion date. Sponsor shall keep such documents in a central location for a period of five (5) years following completion of the Project.

- D. Submit a mid-year progress report to VTA one (1) month after the end of the second quarter of each fiscal year ("fiscal year" means the period starting July 1 and ending June 30.) The report shall itemize: (a) the expenditure of the funds; and (b) progress to-date in the implementation of each funded project.
- E. Submit a year-end report within one (1) month of the end of each fiscal year until each project is completed and all monitoring requirements have been fulfilled. The report shall itemize: (a) the expenditure of the funds; (b) progress to-date in the implementation of each funded project; and (c) the results of the monitoring of the performance of the Projects as specified in Attachment A.

Section 12. Indemnity

Neither VTA nor BAAQMD nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Sponsor under or in connection with Sponsor's performance of the Project. It is understood and agreed that Sponsor shall fully defend, indemnify, and save harmless VTA and BAAQMD from all liability, loss, expense (including reasonable attorneys' fees), claims for injury or damages, or suits or actions of every name, kind, and description brought on, for, or on account of injury to persons, damages to real or personal property, or other monetary damages to the extent caused by anything done or omitted to be done by Sponsor under or in connection with the performance of the Project with funds allocated by this Agreement.

Section 13. Review

- A. VTA shall review Sponsor's progress in implementing the Project at the end of the sixth (6th) quarter following execution of this Agreement. If progress at the sixth (6th) quarter review is insufficient to implement the Project or to expend the funds within the period described in Section 3, VTA shall develop an action plan with the Sponsor to ensure that these funds are not required to be repaid to the County Funds, and the action plan may include reprogramming funds to other projects within Santa Clara County to ensure their expenditure prior to the fund expiration date described in Section 3.
- B. VTA shall provide Sponsor with all BAAQMD-approved Program Manager reporting forms required pursuant to this Agreement.

Section 14. Non-Performance

- A. If Sponsor causes all or part of these Grant Funds to be subject to repayment to the County Program Manager Fund as a result of failure to complete a project according to the work scope described in Attachment A, Sponsor's next grant allocation of any kind shall be reduced by the amount lost.
- B. Sponsor shall be ineligible for future funding under this program if Sponsor has five (5) or more projects greater than two (2) years old on BAAQMD's annual "Less than 100% complete" list.

Section 15. General Terms and Conditions

- A. **Notices.** Any notice required to be given by either Party, or which either Party may wish to

give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority
Manager, Programming & Grants
3331 North 1st Street
San José, CA 95134-1906

To SPONSOR: City of Palo Alto
City Manager
250 Hamilton Avenue
Palo Alto, CA 94301

B. **Program Liaison.** Within thirty (30) days from the Effective Date of this Agreement, Sponsor shall notify VTA of Sponsor's "Program Liaison" and of the Program Liaison's address, telephone number, and email address. The Program Liaison shall be the liaison to VTA pertaining to implementation of this Agreement and shall be the contact for information about the Project(s). Sponsor shall notify VTA of the change of Program Liaison or of the Program Liaison's contact information in writing no later than thirty (30) days from the date of any change.

C. **Termination.**

- i. **Voluntary.** Either Party may terminate this Agreement by giving written notice to the other Party. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of receipt of such notice.

Unless the Parties have agreed to an alternative formula, the VTA will calculate the amount of funds to which the Sponsor is eligible or which the Sponsor is required to return to VTA. If the VTA has paid the Sponsor more than the amount of such eligible funds, the Sponsor shall pay the funds owed to the VTA within thirty (30) days of the effective date of termination.

If the VTA terminates this Agreement pursuant to this provision, the Sponsor shall cease all work under this Agreement and cease further expenditures of TFCA funds received under this Agreement immediately upon receipt of the notice of termination, excepting any work permitted to continue that is specified in the notice of termination. The VTA will reimburse Sponsor for eligible costs on the Project expended up to the effective date of the termination.

- ii. **After Breach.** The VTA may terminate this Agreement for breach. The VTA will deliver a written notice of breach that specifies the date of termination, which will be no less than ten (10) business days from delivery of such notice, and will provide the Sponsor the opportunity to contest such breach within that period of time. The notice of termination will specify the amount of the Total TFCA Funds awarded that the VTA has paid. The Sponsor shall reimburse any funds owed to the VTA within thirty (30) days of the effective date of termination.

Survival. Any provision that, by its nature, extends beyond the term or termination of this Agreement shall survive the expiration or termination of this Agreement.

- D. **Non-Waiver.** The failure of either party to insist upon the strict performance of any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.
- E. **Assignment:** Sponsor shall not assign, sell, license, or otherwise transfer any rights or obligations under this Agreement without the prior written consent of VTA.
- F. **Integration.** This Agreement, including all attachments and references, constitutes the entire Agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations, and understandings of the Parties relative thereto.
- G. **Amendments.** Future amendments and modifications to this Agreement shall be made in writing and signed by both parties.
- H. **Attachments.** Each attachment hereto is incorporated into this Agreement as if fully set forth herein.
- I. **Severability.** If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, covenants, conditions, and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- J. **Warranty of Authority to Execute Agreement.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

Signatures of Parties on following page.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date shown below.

City of Palo Alto
(Sponsor)

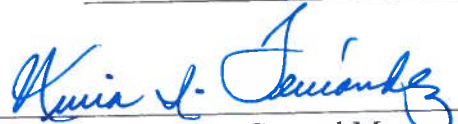
Dated: 9.15.17


James Keene, City Manager
City of Palo Alto


Sandra Lee
Assistant City Attorney

Santa Clara Valley Transportation Authority
(VTA)

Dated: 9.21.17


Nuria I. Fernandez, General Manager/CEO
VTA


Caroline Kim
Assistant Counsel

ATTACHMENT A

PROJECT INFORMATION

- A. Project Number: 18SC08
- B. Project Title: Palo Alto Bike Share Expansion
- C. TFCA Program Manager Funds Allocated: \$162,434.00
- D. TFCA Regional Funds Awarded (if applicable): \$0
- E. Total TFCA Funds Allocated (sum of C and D): \$162,434.00
- F. Total Project Cost: \$1,104,550.00
- G. Project Description:

Grantee will use TFCA funds to establish a bike share system with Social Bicycles to operate up to 350 bicycles in the city's bike share network.

- H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.
- I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.
- J. Comments (if any): None.

ATTACHMENT A

PROJECT INFORMATION

A. Project Number: 18SC09

B. Project Title: Charleston-Arastradero Signal Timing

C. TFCA Program Manager Funds Allocated: \$250,604.00

D. TFCA Regional Funds Awarded (if applicable): \$0

E. Total TFCA Funds Allocated (sum of C and D): \$250,604.00

F. Total Project Cost: \$353,000.00

G. Project Description:

Grantee will use TFCA funds to perform signal timing on Charleston/Arastradero from East Charleston Road at Fabian Way to Arastradero Road at Gunn High School.

H. Final Report Content: Final Report Form for arterial management projects and final Cost Effectiveness Worksheet.

I. Attach a completed Cost-effectiveness Worksheet and any other information used to evaluate the proposed project.

J. Comments (if any): None.

INSURANCE REQUIREMENTS

VERIFICATION OF COVERAGE

Sponsor shall obtain and maintain certificates and/or other evidence of the insurance coverage required below. VTA and the BAAQMD reserve the right to require Sponsor to provide complete, certified copies of any insurance offered in compliance with these specifications. Certificates, policies and other evidence provided shall specify that the VTA and the BAAQMD shall receive 30 days advanced notice of cancellation from the insurers.

MINIMUM SCOPE OF INSURANCE

Throughout the Term as defined in **Section 3** of this Agreement, the Sponsor shall obtain and maintain in full force and effect the Liability Insurance as set forth below:

1. **Liability Insurance** with a limit of not less than \$1,000,000 per occurrence. Such insurance shall be of the type usual and customary to the business of the Sponsor and any Sub-awardee, and to the operation of the vehicles, vessels, engines or equipment operated by the Sponsor or any Sub-awardee.
2. **Property Insurance** in an amount of not less than the insurable value of Sponsor's vehicles, vessels, engines or equipment funded under the Agreement, and covering all risks of loss, damage or destruction of such vehicles, vessels, engines or equipment.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. The BAAQMD may, at its sole discretion, waive or alter this requirement or accept self-insurance in lieu of any required policy of insurance.

CITY OF PALO ALTO CONTRACT NO. S18170590**GENERAL SERVICES AGREEMENT**

THIS AGREEMENT made and entered into on the 14th day of May, 2018, by and between the **CITY OF PALO ALTO**, a California chartered municipal corporation ("CITY"), and **TRAFFICWARE GROUP, INC.** a Texas corporation, located at 522 Gillingham Lane, Sugar Land, TX 77478, Telephone Number: (281) 240-7233 ("**CONTRACTOR**"). In consideration of their mutual covenants, the parties hereto agree as follows:

1. **SERVICES.** CONTRACTOR shall provide or furnish the services (the "Services") described in the Scope of Services, attached at Exhibit A.
2. **EXHIBITS.** The following exhibits are attached to and made a part of this Agreement:
 - ☒ "A" - Scope of Services
 - ☒ "B" - Schedule of Performance
 - ☒ "C" - Schedule of Fees
 - ☒ "D" - Insurance Requirements
3. **TERM.** The term of this Agreement is from April 17, 2018 to April 16, 2019 inclusive, subject to the provisions of Sections R and W of the General Terms and Conditions.
4. **SCHEDULE OF PERFORMANCE.** CONTRACTOR shall complete the Services within the term of this Agreement in a reasonably prompt and timely manner based upon the circumstances and direction communicated to CONTRACTOR, and if applicable, in accordance with the schedule set forth in the Schedule of Performance, attached at Exhibit B. Time is of the essence in this Agreement.
5. **COMPENSATION FOR ORIGINAL TERM.** CITY shall pay and CONTRACTOR agrees to accept as not-to-exceed compensation for the full performance of the Services and reimbursable expenses, if any:

A sum calculated in accordance with the fee schedule set forth at Exhibit C, not to exceed a total maximum compensation amount of One Hundred Seventy Four Thousand Two Hundred Ninety Eight dollars (\$174,298.00).

CONTRACTOR agrees that it can perform the Services for an amount not to exceed the total maximum compensation set forth above. Any hours worked or services performed by CONTRACTOR for which payment would result in a total exceeding the maximum amount of compensation set forth above for performance of the Services shall be at no cost to CITY.

- ☒ CITY has set aside the sum of Seventeen Thousand Four Hundred Thirty dollars (\$17,430.00) for Additional Services. CONTRACTOR shall provide Additional Services only by advanced, written authorization from the City Manager or designee. CONTRACTOR, at the CITY's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONTRACTOR's proposed maximum compensation, including reimbursable expense, for such services. Compensation shall be based on the hourly rates set forth above or in Exhibit C (whichever is applicable), or if such rates are not applicable, a negotiated lump sum. CITY shall not authorize and CONTRACTOR shall not perform any Additional Services for which payment would exceed the amount set forth above for Additional Services. Payment for Additional Services is subject to all requirements and restrictions in this Agreement.

6. COMPENSATION DURING ADDITIONAL TERMS.

- ☒ CONTRACTOR'S compensation rates for each additional term shall be the same as the original term; **OR**
- ☐ CONTRACTOR's compensation rates shall be adjusted effective on the commencement of each Additional Term. The lump sum compensation amount, hourly rates, or fees, whichever is applicable as set forth in section 5 above, shall be adjusted by a percentage equal to the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland- San Jose area, published by the United States Department of Labor Statistics (CPI) which is published most immediately preceding the commencement of the applicable Additional Term, which shall be compared with the CPI published most immediately preceding the commencement date of the then expiring term. Notwithstanding the foregoing, in no event shall CONTRACTOR's compensation rates be increased by an amount exceeding five percent of the rates effective during the immediately preceding term. Any adjustment to CONTRACTOR's compensation rates shall be reflected in a written amendment to this Agreement.

7. CLAIMS PROCEDURE FOR "9204 PUBLIC WORKS PROJECTS". For purposes of this Section 7, a "9204 Public Works Project" means the erection, construction,

alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. Public Contract Code Section 9204 mandates certain claims procedures for Public Works Projects, which are set forth in "Appendix ___ Claims for Public Contract Code Section 9204 Public Works Projects".

☐ **This project is a 9204 Public Works Project** and is required to comply with the claims procedures set forth in Appendix ___, attached hereto and incorporated herein.

OR

☒ **This project is not a 9204 Public Works Project.**

- 8. INVOICING.** Send all invoices to CITY, Attention: Project Manager. The Project Manager is: Rafael Rius, Planning & Community Environment Dept. Transportation Division, Located at 250 Hamilton Avenue, Palo Alto, CA. 94301, Telephone: (650) 329-2305. Invoices shall be submitted in arrears for Services performed. Invoices shall not be submitted more frequently than monthly. Invoices shall provide a detailed statement of Services performed during the invoice period and are subject to verification by CITY. CITY shall pay the undisputed amount of invoices within 30 days of receipt. CONSULTANT shall send all invoices to PCEContracts@CityofPaloAlto.org.

GENERAL TERMS AND CONDITIONS

- A. ACCEPTANCE.** CONTRACTOR accepts and agrees to all terms and conditions of this Agreement. This Agreement includes and is limited to the terms and conditions set forth in sections 1 through 7 above, these general terms and conditions and the attached exhibits.
- B. QUALIFICATIONS.** CONTRACTOR represents and warrants that it has the expertise and qualifications to complete the services described in Section 1 of this Agreement, entitled "SERVICES," and that every individual charged with the performance of the services under this Agreement has sufficient skill and experience and is duly licensed or certified, to the extent such licensing or certification is required by law, to perform the Services. CITY expressly relies on CONTRACTOR's representations regarding its skills, knowledge, and certifications. CONTRACTOR shall perform all work in accordance with generally accepted business practices and performance standards of the industry, including all federal, state, and local operation and safety regulations.

- C. INDEPENDENT CONTRACTOR.** It is understood and agreed that in the performance of this Agreement, CONTRACTOR and any person employed by CONTRACTOR shall at all times be considered an independent CONTRACTOR and not an agent or employee of CITY. CONTRACTOR shall be responsible for employing or engaging all persons necessary to complete the work required under this Agreement.
- D. SUBCONTRACTORS.** CONTRACTOR may not use subcontractors to perform any Services under this Agreement unless CONTRACTOR obtains prior written consent of CITY. CONTRACTOR shall be solely responsible for directing the work of approved subcontractors and for any compensation due to subcontractors.
- E. TAXES AND CHARGES.** CONTRACTOR shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of CONTRACTOR's business.
- F. COMPLIANCE WITH LAWS.** CONTRACTOR shall in the performance of the Services comply with all applicable federal, state and local laws, ordinances, regulations, and orders.
- G. 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.
- H. DAMAGE TO PUBLIC OR PRIVATE PROPERTY.** CONTRACTOR shall, at its sole expense, repair in kind, or as the City Manager or designee shall direct, any damage to public or private property that occurs in connection with CONTRACTOR's performance of the Services. CITY may decline to approve and may withhold payment in whole or in part to such extent as may be necessary to protect CITY from loss because of defective work not remedied or other damage to the CITY occurring in connection with CONTRACTOR's performance of the Services. CITY shall submit written documentation in support of such withholding upon CONTRACTOR's request. When the grounds described above are removed, payment shall be made for amounts withheld because of them.

- I. WARRANTIES.** CONTRACTOR expressly warrants that all services provided under this Agreement shall be performed in a professional and workmanlike manner in accordance with generally accepted business practices and performance standards of the industry and the requirements of this Agreement. CONTRACTOR expressly warrants that all materials, goods and equipment provided by CONTRACTOR under this Agreement shall be fit for the particular purpose intended, shall be free from defects, and shall conform to the requirements of this Agreement. CONTRACTOR agrees to promptly replace or correct any material or service not in compliance with these warranties, including incomplete, inaccurate, or defective material or service, at no further cost to CITY. The warranties set forth in this section shall be in effect for a period of one year from completion of the Services and shall survive the completion of the Services or termination of this Agreement.
- J. MONITORING OF SERVICES.** CITY may monitor the Services performed under this Agreement to determine whether CONTRACTOR's work is completed in a satisfactory manner and complies with the provisions of this Agreement.
- K. CITY'S PROPERTY.** Any reports, information, data or other material (including copyright interests) developed, collected, assembled, prepared, or caused to be prepared under this Agreement will become the property of CITY without restriction or limitation upon their use and will not be made available to any individual or organization by CONTRACTOR or its subcontractors, if any, without the prior written approval of the City Manager.
- L. AUDITS.** CONTRACTOR agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for three (3) years from the date of final payment, CONTRACTOR's records pertaining to matters covered by this Agreement. CONTRACTOR agrees to maintain accurate books and records in accordance with generally accepted accounting principles for at least three (3) following the terms of this Agreement.
- M. NO IMPLIED WAIVER.** No payment, partial payment, acceptance, or partial acceptance by CITY shall operate as a waiver on the part of CITY of any of its rights under this Agreement.
- N. INSURANCE.** CONTRACTOR, at its sole cost, shall purchase and maintain in full force during the term of this Agreement, the insurance coverage described at Exhibit D. Insurance must be provided by companies with a Best's Key Rating of A-:VII or higher and which are otherwise acceptable to CITY's Risk Manager. The Risk Manager must approve deductibles and self-insured retentions. In addition, all policies, endorsements, certificates and/or binders are subject to approval by

the Risk Manager as to form and content. CONTRACTOR shall obtain a policy endorsement naming the City of Palo Alto as an additional insured under any general liability or automobile policy. CONTRACTOR shall obtain an endorsement stating that the insurance is primary coverage and will not be canceled or materially reduced in coverage or limits until after providing 30 days prior written notice of the cancellation or modification to the Risk Manager. CONTRACTOR shall provide certificates of such policies or other evidence of coverage satisfactory to the Risk Manager, together with the required endorsements and evidence of payment of premiums, to CITY concurrently with the execution of this Agreement and shall throughout the term of this Agreement provide current certificates evidencing the required insurance coverages and endorsements to the Risk Manager. CONTRACTOR shall include all subcontractors as insured under its policies or shall obtain and provide to CITY separate certificates and endorsements for each subcontractor that meet all the requirements of this section. The procuring of such required policies of insurance shall not operate to limit CONTRACTOR's liability or obligation to indemnify CITY under this Agreement.

O. HOLD HARMLESS. To the fullest extent permitted by law and without limitation by the provisions of section N relating to insurance, CONTRACTOR shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents from and against any and all demands, claims, injuries, losses, or liabilities of any nature, including death or injury to any person, property damage or any other loss and including without limitation all damages, penalties, fines and judgments, associated investigation and administrative expenses and defense costs, including, but not limited to reasonable attorney's fees, courts costs and costs of alternative dispute resolution), arising out of, or resulting in any way from or in connection with the performance of this Agreement. CONTRACTOR's obligations under this Section apply regardless of whether or not a liability is caused or contributed to by any negligent (passive or active) act or omission of CITY, except that CONTRACTOR shall not be obligated to indemnify for liability arising from the sole negligence or willful misconduct of CITY. The acceptance of the Services by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section survive the completion of the Services or termination of this Agreement.

P. NON-DISCRIMINATION. 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 agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

- Q. WORKERS' COMPENSATION.** CONTRACTOR, by executing this Agreement, certifies that it is aware of the provisions of the Labor Code of the State of California 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 certifies that it will comply with such provisions, as applicable, before commencing and during the performance of the Services.
- R. TERMINATION.** The City Manager may terminate this Agreement without cause by giving ten (10) days' prior written notice thereof to CONTRACTOR. If CONTRACTOR fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, the City Manager may terminate this Agreement immediately upon written notice of termination. Upon receipt of such notice of termination, CONTRACTOR shall immediately discontinue performance. CITY shall pay CONTRACTOR for services satisfactorily performed up to the effective date of termination. If the termination is for cause, CITY may deduct from such payment the amount of actual damage, if any, sustained by CITY due to CONTRACTOR's failure to perform its material obligations under this Agreement. Upon termination, CONTRACTOR shall immediately deliver to the City Manager any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by CONTRACTOR or given to CONTRACTOR, in connection with this Agreement. Such materials shall become the property of CITY.
- S. ASSIGNMENTS/CHANGES.** This Agreement binds the parties and their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written consent of CITY. No amendments, changes or variations of any kind are authorized without the written consent of CITY.
- T. CONFLICT OF INTEREST.** In accepting this Agreement, CONTRACTOR covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Contract. CONTRACTOR further covenants that, in the performance of this Contract, it will not employ any person having such an interest. CONTRACTOR certifies that no CITY Officer, employee, or authorized representative has any financial interest in the business of CONTRACTOR and that no person associated with CONTRACTOR has any interest, direct or indirect, which could conflict with the faithful performance of this Contract. CONTRACTOR agrees to advise CITY if any conflict arises.

U. GOVERNING LAW. This contract shall be governed and interpreted by the laws of the State of California without regard to its conflict of law provisions.

V. ENTIRE AGREEMENT. This Agreement, including all exhibits, represents the entire agreement between the parties with respect to the services that may be the subject of this Agreement. Any variance in the exhibits does not affect the validity of the Agreement and the Agreement itself controls over any conflicting provisions in the exhibits. This Agreement supersedes all prior agreements, representations, statements, negotiations and undertakings whether oral or written.

W. NON-APPROPRIATION. 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 funds are not appropriated for the following fiscal year, 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 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 Contract.

X. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONTRACTOR shall comply with CITY's Environmentally Preferred Purchasing policies which are available at CITY's Purchasing Division, which are incorporated by reference and may be amended from time to time. CONTRACTOR shall comply with waste reduction, reuse, recycling and disposal requirements of CITY's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, CONTRACTOR shall comply with the following zero waste requirements:

- All printed materials provided by CONTRACTOR to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by Contractor on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including, but not limited to, Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Division's office.

- Reusable/returnable pallets shall be taken back by CONTRCATOR, at no additional cost to CITY, for reuse or recycling. CONTRACTOR shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

Y. AUTHORITY. The individual(s) executing this Agreement on behalf of the parties represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

Z. 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 contract is not a public works contract, if contract does not include a public works construction project of more than \$25,000, or the contract does not include a public works alteration, demolition, repair, or maintenance (collectively, 'improvement') project of more than \$15,000.

AA.CONTRACT TERMS. All unchecked boxes do not apply to this Agreement. In the case of any conflict between the terms of this Agreement and the exhibits hereto or CONTRACTOR's proposal (if any), the Agreement shall control. In the case of any conflict between the exhibits hereto and CONTRACTOR's proposal, the exhibits shall control.

(Signature block follows on the next page.)

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

CITY OF PALO ALTO

TRAFFICWARE GROUP, INC.

DocuSigned by:

59F9A609069B40C...
Jon Newhard

CEO

Approved as to form:

DocuSigned by:

F84F27D12A234F4...
Joe Custer

CFO

EXHIBIT A SCOPE OF SERVICES

Charleston Arastradero Road Adaptive Signal Timing and Signal Performance Monitoring

Background

The Charleston-Arastradero Road Corridor consists of 2.3 miles of roadway and 10 signalized intersections within the control of the City of Palo Alto. In 2008 and 2012 respectively, Charleston Road and Arastradero Road were approved by the City Council for implementation of adaptive signal timing as a part of the permanent retention of trial lane configuration.

Task 1 –Implementation of Adaptive Signal Timing

CONSULTANT shall provide the following as part of this task:

- Licensing for SynchroGreen for eight intersections. Purchases of the licenses are provided directly by Trafficware.
- Work with City Staff to provide the appropriate configuration and fine tuning of the adaptive signal timing parameters. For this project, Trafficware will also serve as the CONSULTANT
- Maintenance and support for three years.

In 2015, the City underwent a citywide signal upgrade project which made all of the signals along the Charleston-Arastradero capable of adaptive timing. Subsequently, the City has implemented SynchroGreen adaptive signal timing along the Sand Hill Road and San Antonio Road corridors. Two intersections on Charleston Road (at San Antonio and at Fabian) are already operating with SynchroGreen as part of the San Antonio Road Corridor. As part of this project, the same SynchroGreen program would be implemented at the remaining eight intersections along Charleston and Arastradero Roads.

Task 2 – Signal Performance Monitoring

CONSULTANT shall provide the following as part of this task:

- Licensing and configuration for ATSPMs at eight intersections.
- Configuration and setup of desktop user interface

This task involves implementation of Trafficware's Advanced Traffic Signal Performance Measures program (ATSPM), which is a relatively new intelligent transportation systems (ITS) monitoring method of collecting high density data and providing signal operating efficiency measures and direction for improving signal timing parameters. As part of the 2015 Citywide upgrade project, each traffic signal controller in the city was updated to be capable of collecting such data so long as the detection systems were compatible and configured correctly. The efforts described above in Tasks 1 and 2 would bring these intersections into a compatible level. This task is considered as an optional task, and may or not be authorized by Staff if deemed necessary.

Task 3 – Staff Training

CONSULTANT shall provide on-site training for Staff for the SynchroGreen Adaptive Signal Timing and the Signal Performance Monitoring system. This task is considered as an optional task, and may or not be authorized by Staff if deemed necessary.

Task 4 – Additional Goods and Services

A ten percent contingency is assumed based the configuration, and maintaining operations of the adaptive timing and ATSPM for three years as described above. Contingencies shall be spent only upon the prior approval of CITY.

INVOICES. CONSULTANT shall send all invoices to PCEContracts@CityofPaloAlto.org.

EXHIBIT B
SCHEDULE OF PERFORMANCE

CONTRACTOR shall perform the Services according to the following schedule:

1. All software and goods shall allow 6-12 weeks for delivery after receipt of order
2. 20 hours of Formal Training will be provided by Trafficware to a max classroom of 15 Public Agency employees within 180 Days after SG Adaptive Online Activation.

EXHIBIT C SCHEDULE OF FEES

CITY shall pay CONTRACTOR according to the following rate schedule. The maximum amount of compensation to be paid to CONTRACTOR, including both payment for services and reimbursable expenses, shall not exceed the amounts set forth in Sections 5 and 6 of the Agreement. Any services provided or hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

RATE SCHEDULE

				FOB / Delivery Terms	
				Palo Alto	
Trafficware P/N	Product Description	Qty	Unit	Each	Total
	8-Intersection SynchroGreen Adaptive Signal System Charleston-Arastradero Corridor - Palo Alto, CA				
v76-SynchroGreen Intersection license P/N 97500-0030	Adaptive SynchroGreen local intersection software for Model 2070 ATC v76 Apogee: - SG Local Intersection v76 (2070 ATC) Software & Adaptive Signal Site License *SG Central License not included; purchased in previous project	8	Ea	15,500.00	124,000.00
Configurations/Integration P/N 97500-0005	SG Factory Project Integration, adaptive signal field adjustments & training. This will be performed post-activation of SynchroGreen, and will include: - Testing SG settings based on observations and measurements from the system's detection - Signal system timing parameter adjustments, based on the measured travel demand - Testing post-install to discover and solve any discrepancies the SG system may contain - Preplanning & post-implementing modeling & simulation software to emulate installation and expedite system verification process	8	Ea	1,600.00	12,800.00
Training P/N 97500-0045	SG Factory Classroom Adaptive Training 3 days of Formal Training will be provided by Trafficware to a max classroom of 15 Public Agency employees within 180 Days after SG Adaptive Online Activation.	3	Ea	2,500.00	7,500.00
P/N 97500-0055	Warranty & Software Maintenance for SynchroGreen Adaptive, 3 Year Term	24	Ea	950.00	22,800.00

(Continued on the next page.)

				FOB / Delivery Terms	
				Palo Alto	
WPS Item Code	Product Description	Qty	Unit	Each	Total
ATMS.now Module P/N 97801-8000	Cloud-Based ATMS.now Signal Performance Measures (SPM) Module, 3 Year Subscription Custom Software Module for ATMS.now, "Signal Performance Measures" cloud-based solution to store and analyze high-resolution data collected from the Agency's traffic signals. This SPM Module provides - Software tools identify potential signal problems and resolve the traffic signal timing issues sooner - Additional Reports including Arrivals on Red, Pedestrian Delays and Yellow and Red Actuations * Cost is for 3 Year Subscription per Intersection * (8 ea x 12mo = 96 x 3years = 288)	288	Ea	24.99	7,197.12
Allow 6-12 weeks for delivery ARO		Subtotal \$174,297.12			

ADDITIONAL GOOD AND SERVICES (10%)
(Also may be used for any applicable taxes and or delivery charges)

\$17,430.00

TOTAL NOT TO EXCEED

\$191,727.12

EXHIBIT D INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
NO	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE		\$1,000,000	
	ALL DAMAGES			
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

- I. INSURANCE COVERAGE MUST INCLUDE:
 - A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
 - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
 - C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.
- II. CONTRACTOR MUST SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

**PURCHASING AND
CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303**

City of Palo Alto | City Clerk's Office | 5/4/2018 4:14 PM

Carnahan, David

From: Avivit Katzir <avivit.katzir@gmail.com>
Sent: Thursday, May 03, 2018 5:21 PM
To: Council, City
Subject: ASking to postpone the vote on Charleston-Arastradero Corridor project

Dear Councilman,

I live close to Ross Road and I am aware of the new improvement the city is implementing along Ross Bike Boulevard and the planning along Charleston-Arastradero Corridor.

There are issues with your improvements and I am confident that you heard from other residence about their concern.

I read the plans for the Charleston-Arastradero Corridor and saw that it is proposed to extend the existing sidewalks in all the intersections. On the intersections close to the public schools, the expansion of the sidewalk will narrow the road creating a narrow megre for bicycles and motorized vehicles going to the schools. This seems to me an unsafe measure.

Since some of the street narrowing that you did on Ross Road do not comply with the law, I am concerned that these proposed changes also do not comply with the law and will be an unnecessary liability.

I am asking the city council to postpone your vote on the upcoming bid for this work for 6 months, to allow the time to research, investigate and learn about the safety of the design and get more community input.

Sincerely,
Avivit Katzir

Carnahan, David

From: Andy Mutz <andy.mutz@gmail.com>
Sent: Thursday, May 03, 2018 10:21 AM
To: Council, City
Subject: Feedback on SafeRoutes to School / Charleston-Arastradero corridor

Palo Alto City Council,

Thanks in advance for continuing to SUPPORT the Bike Boulevard/Charleston-Arastradero implementation and traffic safety/bicycle improvements along local roads and especially routes to schools.

As a long-time cycle commuter and part of a family of four who have lived in our Palo Alto home for over two decades we have seen the impact of Palo Alto's continuing investment and dedication to bicycle safety and friendliness. I personally used Bryant to commute for many years and have recently ridden the Charleston-Arastradero route. My kids attend Paly and also ride the Bryant bike corridor route. My wife uses the Ross Rd. corridor to bike to the JCC and like it.

We agree and believe that roundabouts are safer for bikes/cars than four way stops on local streets. While children and adults will need some time to learn to use them, I'm confident its a better solution as demonstrated in many locations worldwide.

While there have been many social media posts opposing these changes, we believe most Palo Alto residents, like our family, actually favor recent traffic calming measures. We support the Safe Routes to School efforts as a critical part of the city-wide bike network outlined in our 2012 City of Palo Alto Transportation Plan. The Safe Routes program has vastly expanded the number of children riding to schools - to over 50% - removing enormous amounts of car traffic from our streets.

Our family is extremely grateful to Safe Routes (both volunteers and city employees) for their efforts over the years to make biking safer for our own children riding to school (through elementary, middle and high school), for us commuting to both our jobs, and around town.

Please continue supporting the funding for these projects.

Sincerely
Andrew Mutz
Palo Alto, CA 94306

Carnahan, David

From: Alison Marsden <alisonlmarsden@gmail.com>
Sent: Sunday, May 06, 2018 1:24 PM
To: Council, City
Subject: I support PA funding for Bike Safety Improvements and Safe Routes to School

Dear Palo Alto City Council,

Thank you for your continued support of the bike safety and traffic calming measures currently being implemented in Palo Alto. I would like to expressly voice my **support** of the current Bike Boulevard/Charleston-Arastradero implementation and traffic safety/bicycle improvements along local roads and especially routes to schools.

As a bike commuter myself, I am extremely grateful for the safety measures that have been put in place by the safe routes to schools program. I am strongly supportive of the Ross Road roundabouts. I am a Stanford faculty member, and ride a bicycle every day in and around Stanford campus. I have firsthand experience with the success of the roundabouts that were installed on campus in recent years. They have certainly improved student safety, and also have eased the (often crowded) flow of bike traffic through busy campus intersections. I was thrilled to find out that Palo Alto is implementing similar measures in the city, and I strongly support them.

As a parent of two children in the Palo Alto School District, I am extremely grateful to the efforts of the safe routes to schools program. As a direct result of this program, I am confident that my children can get to and from school safely by bike. My middle-school aged daughter rides over 2 miles each way to school, across several busy intersections. It gives me great peace of mind knowing that the routes she takes have been carefully planned, and that there is a critical mass of children biking along the same routes. I hope the city council will continue to support these highly successful programs.

While there have been many (often divisive) social media posts opposing these changes, we believe most Palo Alto residents, like our family, actually favor recent traffic calming measures. We support the Safe Routes to School efforts as a critical part of the city-wide bike network outlined in our 2012 City of Palo Alto Transportation Plan. The Safe Routes program has vastly expanded the number of children riding to schools - to over 50% - removing enormous amounts of car traffic from our streets.

Please continue your support of this important community safety programs.

Sincerely,
Alison Marsden
Stanford, CA 94305
PAUSD parent

Carnahan, David

From: Jennifer Mutz <jennifer.mutz@gmail.com>
Sent: Wednesday, May 02, 2018 2:40 PM
To: Council, City
Subject: Still Support PA Funding for Bike Safety Improvements

Dear Hard Working City Council of Palo Alto,

A year ago in June 2017 I contacted you to express support for the PA Bike Safety Improvement Budget. Now, a year later, and after seeing the Ross Road traffic calming implementation, I would like to express our family's **continued support** for the Bike Boulevard/Charleston-Arastradero implementations and traffic safety/bicycle improvements along local roads.

We are a biking family of four who have lived in our Palo Alto home for over 20+ years. During this time, we have watched bike safety evolve successfully in Palo Alto. My husband bikes to work in Palo Alto using the Arastradero corridor so he's intimately familiar with those bike safety improvements and likes them. Both my teens bike to Palo Alto High School using the Bryant bike corridor which has been a godsend for the high schoolers. (My teens also bike all around town to their friends' houses and summer jobs.) I use the Ross Rd. corridor to bike to the JCC and like it.

The bottom line is that roundabouts (as your PA Transportation Dept. traffic experts know) are much safer for bikes/cars than four way stops on local streets. Adults will need to learn how to use the roundabouts, and hopefully make the effort to teach their children the skill of using a roundabout. I'm confident that if all of Continental Europe and the British Islands use roundabouts, my family and I can figure it out too!

In spite of all the misinformation and fear mongering on neighborhood social network sites like Nextdoor on the topic of traffic safety over the past few months, please be aware there are many Palo Alto citizens (like our family) in favor of the recent traffic calming measures. We are one of the 98.6 percent of residents who support the Safe Routes to School efforts (and not one of the 1.4 percent of residents who have signed the petition opposing it). These Bike Safety efforts clearly support the city-wide bike network outlined in our 2012 City of Palo Alto Transportation Plan, all part of the Comprehensive Plan.

The stats are clear: Safe Routes bike safety program has been enormously successful in Palo Alto – something PA should be very proud of! According to publically posted PAUSD bike counts, biking has increased every single year for both middle and high school since 2000. Today, almost 45 percent of high schoolers (at each of our high schools) ride bikes and almost 60 percent of middle schoolers (at each middle school) ride bikes. In the year 2000 it was 10 percent and 20 percent respectively -- so that's a huge increase! (I was informed by a Safe Routes program representative that the national average for middle schoolers riding bikes is about 2 percent.) Increased PAUSD student biking year over year for almost twenty years is a direct result of Safe Routes to School coordinated efforts between the PTSA, City of Palo Alto, and Palo Alto Police Dept. An incredible accomplishment! Our family is extremely grateful to Safe Routes (both volunteers and city employees) for their efforts over the years to make biking safer for our own children riding to school (through elementary, middle and high school), for us commuting to both our jobs, and for our entire family biking around town.

Thank you for previously supporting the funding for these projects and thank you for your continued support.

Respectfully,
Jennifer Mutz
Palo Alto, CA 94306

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

April 26, 2018

18 MAY -4 AM 11:37

Council Members
City of Palo Alto
250 Hamilton Avenue
Palo Alto CA 94303

As a forty year resident of Greenmeadow I am writing to express my concerns for the project plans and scope for the Charleston corridor proposal as outlined in your recent mailing.

I walk from Alma to Charleston to Middlefield each morning for exercise and at no time do I see a need to widen the sidewalks. Most days I will not encounter more than two other walkers between Alma to Middlefield. And I only see a few people riding on bicycles and they are usually running the red lights. Forget about installing median islands and the additional cost of landscaping and maintenance. Who needs to further narrow the road by installing curb bulb outs. Your plan creates more problems than it solves.

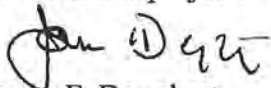
In this area there are only two schools in this project, one shopping center but no parks as noted in your notice. It would be nice if the City were more accurate and honest in their proposals.

My suggestion is either leave the road the way it is or return it to its original configuration. Anything else is a waste of taxpayers money.

If you would like to solve a real problem it would be to install a left turn light at Nelson. When there is a backup on Charleston, and it happens several times daily, and the only way you can turn left is to wait until turns red and then proceed. And you are guilty of a traffic violation in running the red light.

Some cities have a problem with not having enough money to operate successfully. Palo Alto's problem is that it has too much money and is always looking for ways to spend it on unnecessary projects.

I hope the Council will have the good judgment to cancel the staff's recommendation and not fund this project. Thank you for your consideration to my letter.



James F. Dougherty
159 Greenmeadow Way
Palo Alto, CA 94306
(650) 494-7221