

AMENDMENT NO. 1 TO CONTRACT NO. C08126592 BETWEEN
THE CITY OF PALO ALTO AND THE PALO ALTO ART CENTER
FOUNDATION FOR THE DESIGN OF CAPITAL IMPROVEMENTS
RELATING TO THE RENOVATION OF THE PALO ALTO ART
CENTER

This Amendment No. 1 to Contract No. C08126592 ("Amendment No. 1") is entered into _____, 2008, between the CITY OF PALO ALTO (the "City") and the PALO ALTO ART CENTER FOUNDATION (the "Foundation")(individually, a "Party" and, collectively, the "Parties"), in reference to the following facts and circumstances:

RECITALS

1. On March 10, 2008, the Parties entered into the Design of Capital Improvements Relating to the Renovation of the Palo Alto Art Center agreement (the "Design Agreement").

2. The Parties wish to amend the Design Agreement by increasing the amount of reimbursement to the Foundation for design services from \$290,000.00 to \$368,580.00, for design services rendered in connection with certain changes to the Schematic Plans, as defined, and to make allowance for payment for additional design work upon the completion of the design development phase.

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

SECTION 1. Section 4.2 of the Design Agreement is amended in its entirety to read, as follows:

"4.2 As set forth in Recitals 4 and 5, City will contribute to the Project's design consultant's (Architect's) costs from a part of the City's General Fund that is allocated to the Capital Improvement Program Project PF-07000 (Art Center Electrical & Mechanical Upgrades) in an amount not to exceed three hundred sixty-eight thousand, five hundred eighty dollars (\$368,580.00). The City will provide City staff support and other assistance, as practicable, to the Foundation, upon request and at no cost or expense to the Foundation, in connection with the commencement and completion of the design and planning phase of the Project."

SECTION 2. Section 4.3(A) of the Design Agreement is amended in its entirety to read, as follows:

"(A) The City will disburse the City's share of the full Architect's costs and expenses, including the bid and construction administration costs and expenses, not to exceed three hundred sixty-eight thousand five hundred eighty dollars (\$368,580.00) in the aggregate, as follows: (1) within ten (10) days after the execution and delivery of this

Design Agreement, the first installment of forty-three thousand five hundred dollars (\$43,500.00) for schematic design and costs and expenses, previously incurred by the Foundation for the design of the Project; (2) the second installment of fifty-eight thousand dollars (\$58,000.00) will be paid upon the City's determination that the Project has attained the thirty-five percent (35%) schematic design phase and design development phase completion milestone; (3) the third installment will be paid upon the completion of the design development phase for additional design work deemed reasonable and necessary during this phase, and will be based upon the City's portion of the final design development cost estimate, which shall not exceed seventy-eight thousand five hundred eighty dollars (\$78,580.00); (4) the fourth installment of ninety-four thousand two hundred fifty dollars (\$94,250.00) will be paid upon the City's determination that the Project has attained the fifty percent (50%) Construction Documents phase completion milestone; and (5) the fifth installment of ninety-four thousand two hundred fifty dollars (\$94,250.00) will be paid upon the City's determination that the Project has attained the one hundred percent (100%) Construction Documents phase completion milestone. The City will make payment in accordance with the payment procedures, as described in Exhibit "C." The City's City Manager (the "City Manager"), or designee, will make the determination regarding the percentage completion milestones referred to in the preceding sentence."

SECTION 3. Exhibit "C" Payment Procedures to the Design Agreement is hereby amended, to read as set forth in the attachment to this Amendment No. 1, which is incorporated in full by this reference

SECTION 4. Except as they are herein modified, all other provisions of the Design Agreement, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.


IN WITNESS WHEREOF, the Parties hereto have duly executed this Amendment No. 1 on the day and year first written.

CITY OF PALO ALTO

PALO ALTO ART CENTER
FOUNDATION

APPROVED AS TO FORM:

Senior Asst. City Attorney

By: 
Name: Jeannie Deisenberg

APPROVED:

Title: President, Palo Alto
Art Center Foundation Board

City Manager

Taxpayer Identification No.

Director, Administrative Services

94-2382459

EXHIBIT "C"
PAYMENT PROCEDURES

A. General Procedures:

1. The Foundation will be wholly responsible for paying the Architect in a timely manner in accordance with its contract with that party.
2. The Foundation will deliver to the City all required documentation, specified below, for the design services work payments to:

City of Palo Alto
Public Works Division
Attention: Karen Smith, Facilities Manager
250 Hamilton Avenue
P. O. Box 10250
Palo Alto, CA 94303.

3. The individual referred to in the preceding paragraph (the "PW Manager") will review and approve the submittals and initiate the process of making payments to the Foundation in a timely manner in accordance with the City's usual accounts payable procedures. The PW Manager may refer her approval of the Foundation's invoices to the City's Real Property Manager, who will forward the approved invoices the City's accounts payable personnel for reimbursement, directly, to the Foundation. The City will not assure the Foundation that reimbursement will occur within any specified time frame after submittal; provided, however, the City will endeavor to pay the Foundation in a timely manner.

B. Payments for Design Services:

1. The City will contribute the maximum sum of \$368,580.00 for the design consultant services costs of the Project, which sum will be paid to the Foundation in the installments, as outlined in Section 4.3(A) of this Design Agreement, following the receipt of the Foundation's documentation in support of each installment payment request.

The required documentation will consist of copies of the Architect's contract with the Foundation, the Architect's invoices, as submitted to the Foundation for payment, with documentation of all design and plan development services rendered to that point in time, together with the Foundation's proof of payment of such invoices.

Following its receipt of the documentation submitted by the Foundation, the City will process each of the installment payments to the Foundation, based upon

the Architect's determination that the design has achieved the completion percentage stages specified in Section 4.3(A) of this Design Agreement.

4. Notwithstanding any other provision in this Section B of Exhibit "C" to the contrary, the City will not be required to make payment of any amount unless and until Exhibit "F" is executed by the Foundation and the Architect and submitted to the City Attorney, who will review it for compliance with the requirements of Section 6.2 of this Design Agreement.