



# City of Palo Alto

## City Council Staff Report

(ID # 7165)

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**Report Type: Consent Calendar**

**Meeting Date: 8/29/2016**

**Summary Title: Approval of Airport Contract with Golden Bay Fence Plus Iron Works, Inc.**

**Title: Approval of Contract With Golden Bay Fence Plus Iron Works, Inc. in the Amount of \$1,755,510 for the Palo Alto Airport Perimeter Fence and Gate Upgrades, CIP Project AP-16003; Approval of Amendment Number 2 to C&S Engineers, Inc. Contract Number C151555208A to Increase the Contract by \$208,329 for a Total Not-to-Exceed Amount of \$1,108,329 for Engineering and Design Services; Approval of a Budget Amendment in the Airport Enterprise Fund; and Adoption of Findings That the Project Satisfies the Requirements of the National Environmental Protection Act (NEPA) and California Environmental Quality Act (CEQA)**

**From: City Manager**

**Lead Department: Public Works**

### **Recommendation**

Staff recommends that Council:

1. Adopt findings that, as a project that involves only the replacement of an existing structure, the Airport Perimeter Fence Project (AP-16003) meets the requirements of the National Environmental Protection Act (NEPA) by qualifying for a categorical exclusion (Attachment A), and the requirements of the California Environmental Quality Act (CEQA) by qualifying for a categorical exemption (Attachment B);
2. Approve and authorize the City Manager or his designee to execute a contract with Golden Bay Fence Plus Iron Works, Inc. (Attachment C) in the amount not to exceed of \$1,755,510 for the Airport Perimeter Fence Project (AP-16003);

3. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Golden Bay Fence Plus Iron Works, Inc. for related, additional but unforeseen work which may develop during the project, the total value of which shall not exceed \$175,551;
4. Approve Amendment No. Two to C & S Engineers, Inc. Contract C151555208A (Attachment D) to increase the contract by \$208,329 for a total not-to-exceed amount of \$1,108,329 for engineering and design services related to CIP projects; and
5. Amend the Fiscal Year 2017 Budget Appropriation for the Airport Enterprise Fund by:
  - a. Increasing the estimate for Revenue from the Federal Government in the amount of \$264,793;
  - b. Increasing the Capital Improvement Airport Perimeter Fence Project (AP-16003) appropriation in the amount of \$344,201; and
  - c. Decreasing the fund balance in the amount of \$79,408.

### **Executive Summary**

Since the transfer of the Palo Alto Airport (PAO) in August 2014, the City of Palo Alto has been working with the Federal Aviation Administration (FAA) to rehabilitate and update PAO to current FAA standards. The Airport Enterprise Fund was created and requires temporary monetary assistance from the General Fund for CIPs and to provide operational support for the airport. Repayment of loans to the General Fund is anticipated to begin in FY 2019.

On December 14, 2015, Council approved a resolution authorizing a Budget Amendment Ordinance to establish the Airfield Perimeter Fence CIP project AP-16003, in the amount of \$179,838 funding the design and construction of the perimeter fence of which 90% is eligible for reimbursement through a grant from the FAA estimated at \$161,854 (City Manager's Report [#6367 Contract Amendments and BAO for Airport FY 2016 CIP](#)).

The Airport Perimeter Fence project involves replacing fencing and gates to prevent unauthorized access to the airport runway, an important safety measure that prevents disruptions to landings and takeoffs. The Airport Perimeter Fence project was driven by new initiatives to enhance runway safety at all airports in

the nation as identified in the FAA National Runway Safety Report dated June 2015.

### **Background**

Prior to transferring operations of the Palo Alto Airport in 2014, staff analyzed infrastructure at PAO and provided recommendations for important safety-related maintenance and modernization projects needed to upgrade the PAO to a modern operational facility. The FAA is the national regulatory authority for civil aviation in the United States of America and its mission is to provide the safest, most efficient aerospace system in the world. With over 170,000 annual operations, PAO serves as a General Aviation Reliever Airport for three primary Bay Area airports and is identified as an important airport in the National Plan of Integrated Airport System (NPIAS). Airports in the NPIAS qualify for FAA grant money for eligible projects under the Airport Improvement Program, which includes capital improvements necessary for continued safe and efficient operation of an airport. Participants that accept grant money are required by law to meet these obligations, known as grant assurances. These obligations require the recipients to maintain and operate their facilities safely and efficiently and in accordance with specified conditions. The assurances may be attached to the application or the grant and become part of the final grant offer or in restrictive covenants to property deeds.

Since Fiscal Year 2011, the General Fund has loaned or is anticipated to loan the PAO about \$2.9 million to support operations and provide seed funding for capital improvement projects. It is anticipated that the Airport Fund will begin to repay the General Fund loans in Fiscal Year 2019. A breakdown of loans by fiscal year follows.

Fiscal Year	Loan Amount
2011	\$300,000
2013	\$310,000
2014	\$325,000
2015	\$760,000
2016	\$515,601
2017 (est.)	\$704,150
TOTAL	\$2,914,751

## Contracts

On October 27, 2014, Council approved two contracts totaling \$500,000, each in an amount not to exceed \$250,000 with C & S Engineers, Inc. and Mead & Hunt, Inc. for terms of five years for on-call consulting services (City Manager's Report [#4948 Approval of Contracts, CIP & BAO for Palo Alto Airport Rehabilitation Projects](#)). The contracts provide for a variety of design, construction administration, environmental studies and other planning functions required for FAA Airport Capital Improvement Program projects. On-call consultant services that are compliant with FAA requirements are eligible for 90% reimbursement of the contract amount.

On December 14, 2015, Council approved Amendment No. One to increase the C & S Engineers, Inc. contract in the amount of \$650,000 for a total not-to-exceed amount of \$900,000 for professional engineering and design services related to CIPs. (City Manager's Report [#6367 Contract Amendments and BAO for Airport FY 2016 CIP](#)). Staff is requesting Council's approval for Amendment No. Two to C & S Engineers, Inc. to increase the contract by an additional \$208,329 for a total not-to-exceed amount of \$1,108,329 for engineering and design services related to CIPs. FAA reimbursement for services under this contract is anticipated to be 90% or \$997,496.

## Capital Improvement

The FAA launched a new national initiative to address one of its top safety priorities, runway incursions, which are trespasses of the runway that lead to disruptions of takeoffs and/or landings. In the summer of 2015, two areas of PAO were identified as "hotspots," landing PAO on the list of airports needing to immediately address Runway Incursion Mitigation (RIM) measures identified by the FAA Regional Office of Runway Safety. The RIM program identifies airport risk factors that may contribute to a runway incursion and develops strategies to help mitigate those risks. The existing perimeter fence at PAO is too low to adequately provide perimeter security and has gaps and access gates that are inoperable and beyond their useful and serviceable life.

In a meeting on September 28, 2015, the local FAA Airport District Office strongly supported the mitigation measures offered by staff: replacing existing fencing, gates and pedestrian entrances. The FAA suggested it could fund 90% of the

design and construction of this high priority RIM project if the City could prefund the design and environmental review before Spring 2016.

### Grants

Prior to 2007, users of the PAO approached the City advocating for return of operational control to the City and for the City to complete needed infrastructure improvements. In 2007, Council directed staff to pursue options for early termination of the PAO 50-year lease with the County of Santa Clara, previously set to expire in 2017. On December 6, 2010, Council established the Airport Enterprise Fund to provide for the transition of airport operations. In a presentation to Council, staff recommended applying for FAA grant funds to implement the safety enhancements, rehabilitation and infrastructure needs.(City Manager Report:[431:10](#).)

On June 29, 2015, Council authorized the City Manager to apply for and execute future grant agreements offered by the FAA and California Department of Transportation (DOT) for improvements at the airport, enabling staff to respond within the deadlines set by these granting agencies. (City Manager Report #[5890](#)). Resolution No. 9533 authorizes the City Manager to execute grant agreements offered by the FAA. Council authorized similar agreements with the FAA prior to the airport transfer, successfully securing federal funding for improvements. The FAA makes airport improvement grants available to local airport sponsors for 90% of the total costs of eligible projects and, when applicable, the California DOT will match 2.5% of the federal share. In receiving grant funds from the FAA, the City agrees to the conditions governing the use of grant funds and operates the airport in compliance with FAA requirements.

### **Discussion**

The Airport Perimeter Fence Project is intended to provide funding for replacing perimeter fencing and gates surrounding the Palo Alto Airport boundaries to prevent unauthorized access to the airport runway in accordance with Federal and State standards. This fencing project satisfies the FAA's initiative to enhance runway safety, mitigating those risks by securing the airport perimeter.

Notices inviting formal bids for the Perimeter Fence project were posted at City Hall and on PlanetBids (IFB 163874) on May 3, 2016. The bidding period was 35 days. Bids were received from two contractors on June 7, 2016. The City

determined the low bidder to be non-responsive on the grounds that the bidder failed to meet the 11.2% Disadvantaged Business Enterprise (DBE) requirement or show good faith efforts to do so. The next responsive bidder, Golden Bay Fence Plus Iron Works, Inc., met the DBE goal and all other contract requirements, and staff recommends award to Golden Bay Fence.

Summary of Bid Process

Bid Name/Number	Palo Alto Airport Perimeter Fence and Access Gates Upgrades – IFB 163847
Total Days to Respond to Bid	35
Mandatory Pre-Bid Meeting	May 24, 2016
Number of Bids Received:	2
Base Bid Price Range	\$1,647,175 to \$1,755,510

\*Bid Summary is Attachment F.

The base bid is approximately 21% above the construction cost estimate for the scope of work included. A contingency amount of \$175,551 equal to 10 percent of the total contract is requested for unforeseen conditions which may be discovered during construction. Therefore, it is recommended that the City award the bid to Golden Bay Fence Plus Iron Works, Inc. in a total contract award amount of \$1,931,061.

The contract with Golden Bay Fence Plus Iron Works, Inc. addresses the unauthorized access to restricted aircraft movement areas as required by the FAA to provide mitigation measures for the high number of Runway Incursions at the Airport. The fencing foot print will remain the same but the fence height will be raised to eight feet in accordance with the FAA’s recommendation. By participating in the RIM program, the City is reducing the possibility of unauthorized access to the airfield, rendering the airport safer.

In order to continue to assist in the management of the Airport Perimeter Fence Project, a contract Amendment No. 2 with C&S Companies, Inc. is recommended to increase the contract amount \$208,329 for the construction observation and administration costs for the perimeter fencing project. The new total not-to-exceed amount of the C&S Companies, Inc. contract will be \$1,108,329. Services

include activities such as project inspection, construction management, Project management, and construction administration, depending on discipline.

### Resource Impact

On December 14, 2015, Council approved a BAO to pre-fund the design of the perimeter fence project totaling \$179,838 understanding 90% will be reimbursed by the FAA through the anticipated construction grant following the results of the competitive bid process for the fence project. The remaining \$17,984 was funded with Airport Enterprise Fund reserves. (CMR [#6367](#)).

In total, the Airport Perimeter Fence Project AP-16003 is estimated to cost \$2,172,190 to cover environmental, design, construction, administration, and city salaries and benefit costs to support it. However, included in this staff report is a request for authorization of amendments to the contract not to exceed \$175,551. Therefore, the total project cost seeking authorization is \$2,347,741. This is above the revised estimated total project cost outlined in the FY 2017 Adopted Capital Budget which estimated a total project cost of \$2.0 million of which \$1.8 million was necessary in FY 2017. The higher costs are due to higher construction bids being received. Below is a summary of the project costs and components of those costs:

Design	\$ 179,838
Construction	1,755,510
Project Management	208,329
<u>Miscellaneous (environmental review &amp; sponsor administration)</u>	<u>28,513</u>
<b>TOTAL PROJECT ESTIMATED COST</b>	<b>\$ 2,172,190</b>
<u>Construction Contingency (10%)</u>	<u>175,551</u>
<b>TOTAL PROJECT BUDGET</b>	<b>\$ 2,347,741</b>

Currently, the City has applied for FAA grant reimbursement of 90% of the estimated project cost, (\$2,172,190; excludes the contingency) approximately \$1,954,971. The remaining City contribution from the Airport Enterprise Fund is estimated to be \$217,219.

Due to the nature of a contingency, FAA grant funding for the construction contingency cannot be requested until an action to use contingency funds is

exercised. Therefore, the current FAA grant application of \$2,172,190 does not include these potential costs. Consequently, the budget actions recommended in this report do not anticipate reimbursement from the FAA for the contingency amount (\$175,551). Staff will request reimbursement from the FAA should these additional funds be needed, however, they will also manage expenses in pavement maintenance and liability insurance costs during FY 2017 to ensure the Airport Enterprise Fund remains solvent in FY 2017 without additional General Fund support incase additional FAA funding is not approved. A review of FY 2016 actuals and current year tracking will be completed as part of the FY 2017 Mid-Year Budget Review report and any rebalancing actions brought forward as necessary at that time.

Below is a table outlining the estimated project costs and the recommended amendments to the budget.

	Prior Year	FY 2017 Adopted Budget	Recommended FY 2017 Adjustment	FY 2017 Revised Budget	TOTAL PROJECT BUDGET
<b>Sources</b>					
FAA Grant Reimbursement	\$161,854	\$1,528,324	\$264,793	\$1,793,117	\$1,954,971
<b>Uses</b>					
Design	\$179,838				\$179,838
Construction		\$1,823,702	\$315,688	\$2,139,390	\$2,139,390
Other			28,513	28,513	28,513
<b>TOTAL USES</b>	<b>\$179,838</b>	<b>\$1,823,702</b>	<b>\$344,201</b>	<b>\$2,167,903</b>	<b>\$2,347,741</b>
Impact on Airport Fund Balance/ Reserves	(\$17,984)	(\$295,378)	(\$79,408)	(\$374,786)	(\$392,770)*

\*This contribution from the Airport Enterprise Fund Balance/Reserve assumes full responsibility of costs associated with the option to exercise a 10% contingency. However, should this contingency be drawn upon in, staff will seek for additional reimbursement from the FAA for these escalated costs at a 90% reimbursement level or \$157,996, therefore reducing this contribution from \$392,770 to \$234,774.

## Environmental Review

### National Environmental Policy Act

Based on FAA direction, C&S Engineers, Inc. was tasked to prepare documentation necessary to comply with National Environmental Policy Act (NEPA) requirements for the proposed airport perimeter fence replacement at the PAO. As a project that involves only the replacement of an existing structure it qualifies under a categorical exclusion (CATEX) (Attachment A). In support of the



NEPA documentation, a biological constraints evaluation was recently prepared that evaluated potential impacts of the proposed project on biological resources. The evaluation recommended a number of steps to avoid wetland features and construction during the nesting season (February 1 through August 31). A qualified biologist will conduct a preconstruction survey and delineate suitable habitat for special status species that will be avoided. The biologist will also be present during construction activities in close proximity to environmentally sensitive areas. In addition, a worker environmental awareness program will be implemented as part of the proposed project.

#### California Environmental Quality Act

The proposed airport perimeter fence replacement qualifies for a Categorical Exemption under the California Environmental Quality Act (CEQA) Guidelines Section 15302, Replacement or Reconstruction (See Attachment B). This exemption covers the replacement of existing structures where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

#### Architectural Review Board

On May 19, 2016, the Architectural Review Board recommended approval of the application for the perimeter fence replacement. The Director of Planning and Community Environment (Director) approved the project on June 1, 2016 (Attachment F). The design and architecture of the proposed improvements, as conditioned, complies with the Findings for Architectural Review as required in Chapter 18.76 of the Palo Alto Municipal Code (PAMC). Federal law prohibits the installation of a project that would be in compliance with the City's Zoning ordinance and the Site Assessment and Design Guidelines for the Palo Alto Baylands Nature Preserve. The design is compatible with the immediate environment of the site in that the replacement fencing and gates are located in the same location as the existing fence and gates and would not change the existing use of the site. The replacement of the fence would ensure that FAA requirements for safety and security to protect the general public and wildlife are met for the continued safe operation of the airport. The proposed material and color of the fencing is consistent with the material identified in the Site Assessment and Design Guidelines for the Palo Alto Baylands Nature Preserve for security fencing in the Baylands. The design is compatible with the sidewalks, roadway, utilities and other existing improvements. The proposed fencing is the

best available option to meet FAA requirements while also ensuring compatibility with the open space and associated recreational trails adjacent to the site area. The proposed fencing would also replace several different types of existing fencing at the site, the new fence and gates would provide a more unifying character to the site. The proposed fence would increase security for the existing buildings and would not involve any additions or changes to the existing buildings at the site.

### Bay Conservation and Development Commission

On March 14, 2016, PAO applied for a permit amendment with the Bay Conservation and Development Commission (BCDC) since the BCDC's shoreline band jurisdiction extends 100 feet inland from the bay where a portion of the Airfield Perimeter Fencing project lies. On June 30 2016, an amended permit allowing the perimeter fence replacement was received by BCDC for the project (Attachment H).

### **Policy Implications**

This CIP project is consistent with one of City Council's 2016 priorities: Infrastructure.

#### **Attachments:**

- Attachment A - FAA NEPA Cate-Ex\_12-16-15(PDF)
- Attachment B - Notice of Exemption - CEQA June 15\_2016 (PDF)
- Attachment C - C17163874 PAO Fence FINAL Aug 10\_unsigned K-GB (PDF)
- Attachment D - CS Engineers Inc. - Amendment No Two (PDF)
- Attachment E - O75.001.006 Bid Tabulation 06-07-16 (PDF)
- Attachment F - Planning Approval Letter 6-1-16 (PDF)
- Attachment G - BCDC Permit No M1976.058.02\_Amendment No Two\_6-30-16 (PDF)



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Western-Pacific Region  
Airports Division

Received  
Palo Alto Airport

DEC 22 15

City of Palo Alto  
Public Works

San Francisco Airports District Office  
1000 Marina Boulevard, Suite 220  
Brisbane, CA 94005-1835

December 16, 2015

Mr. Andrew Swanson  
Airport Manager  
Palo Alto Airport  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 94301

Subject: Environmental Evaluation of Palo Alto Airport Project: Perimeter Fence Replacement

Dear Mr. Swanson:

The Federal Aviation Administration (FAA) has reviewed the environmental information you submitted for the Palo Alto Airport project: Perimeter Fence Replacement. The FAA has determined the proposed project is Categorical Exclusion pursuant to FAA Order 1050.1E as it relates to the National Environmental Policy Act of 1969, as amended (NEPA) provided that the City of Palo Alto follows the measures to minimize potential environmental effects of the project identified on pages A-19 and A-20 of Documented Categorical Exclusion you certified as correct on November 24, 2015 and subsequently submitted to the FAA. Those measures include:

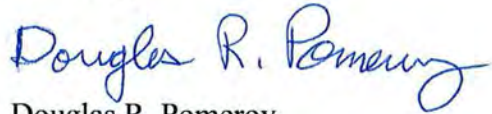
- Avoid disturbing areas identified as seasonal wetland, pickleweed mats, drainage ditches, or seep wetlands.
- Project shall not be implemented during nesting bird season (February 1 through August 31), otherwise further avoidance and minimization measures will be necessary.
- A preconstruction survey of all access routes and the construction area must be completed no more than 30 days prior to construction activities. Suitable western burrowing owl burrows must be marked for complete avoidance; otherwise a Burrowing Owl Exclusion Plan must be developed in consultation with the California Department of Fish and Wildlife.
- A qualified biologist will develop and implement a worker environmental awareness program detailing protections for potential special-status species that may be encountered in or adjacent to the Project site.
- A biologist familiar with the biology and ecology of potentially occurring species shall be present during construction of the fence along the eastern and southern portions of the Project.

Therefore, no further federal environmental disclosure documentation for this project is necessary for NEPA purposes.

This letter notifies you that the proposed project has complied with NEPA only. This is not a notice of final project approval of funding availability.

If you have any questions regarding this matter I am available at 650-827-7612, or email me at [Douglas.Pomeroy@faa.gov](mailto:Douglas.Pomeroy@faa.gov).

Sincerely,

A handwritten signature in blue ink that reads "Douglas R. Pomeroy". The signature is written in a cursive style with a large, stylized 'D' and 'P'.

Douglas R. Pomeroy  
Environmental Protection Specialist



Attachment B  
**Notice of Exemption**

**TO:**

- Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044
- County Clerk  
County of Santa Clara  
70 W. Hedding St., E. Wing, 1<sup>st</sup> Fl  
San Jose, CA 95110

**FROM:**

City of Palo Alto, Planning Division  
250 Hamilton Ave, 5<sup>th</sup> Fl  
Palo Alto, Ca 94301

Contact: Claire Hodgkins  
Phone: 650-329-2116

**Project Title:** Airport Perimeter Fence Replacement

**Project Location** (include county): 1925 Embarcadero Road, Palo Alto, CA (Santa Clara Co.)

**Project Description:**

The proposed project includes removal of approximately 10,600 linear feet of existing perimeter fence and gates that are beyond their useful life and do not meet FAA or Transportation Security Administration (TSA) standards. The existing fence would be replaced with new, black, vinyl-coated chain link fencing and gates with black posts. A short section of proposed fencing around an existing material and equipment storage area will contain privacy slats to shield the storage area from view. Fence posts are, and would be, approximately 10 feet apart. The new fence posts would not be in the same location as the existing fence posts but would be located within approximately the same alignment. Material excavated for the new fence post holes will be used to fill the existing fence post holes. A rubber-tired bobcat with an auger attachment would be used to drill the 18- to 24-inch diameter holes for fence posts that would be set in concrete approximately 6 feet below grade.

The proposed project has been designed to avoid wetlands features and construction during the nesting season (February 1 through August 31). A qualified biologist will conduct a preconstruction survey and delineate suitable habitat for special status species that will be avoided. The biologist will also be present during construction activities in close proximity to environmentally sensitive areas. In addition, a worker environmental awareness program will be implemented as part of the proposed project.

**Name of Public Agency Approving Project:** City of Palo Alto

**Name of Person or Agency Carrying Out Project:** City of Palo Alto, Public Works Engineering

**Exempt Status:** (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption: 15302 Replacement or Reconstruction
- Statutory Exemptions. State code number

**Reasons why project is exempt:**

The proposed project includes removal of an existing fence and replacement of a new fence in the same alignment along the perimeter of the Palo Alto Airport. The new structure will have the same purpose and be the same length as the existing fence. The project has been designed to avoid impacts to wetlands and all work would occur outside the avian nesting season to avoid impacts to avian species and their nests.

**Lead Agency Contact Person:** Claire Hodgkins, Project Planner **Email:** [Claire.hodgkins@cityofpaloalto.org](mailto:Claire.hodgkins@cityofpaloalto.org)

**If filed by applicant:**

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  N/A

  
Signature (Public Agency)

Project Planner  
Title

June 15, 2016  
Date

Signed by Lead Agency

Signed by Applicant

Date Received for filing at OPR: \_\_\_\_\_

Attachment C



CITY OF  
**PALO  
ALTO**

**CONSTRUCTION CONTRACT**

**Contract No. C17163874**

**City of Palo Alto**

**“Airfield Perimeter Fencing and Gate Upgrades” Project**

**CONSTRUCTION CONTRACT  
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## CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT entered into on August 29, 2016 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and GOLDEN BAY FENCE PLUS IRON WORKS, 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 664905 and Department of Industrial Relations Registration Number 100000720. 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 May 3, 2016, City issued an Invitation for Bids (IFB) to contractors for the "Airfield Perimeter Fencing and Gate Upgrades" ("Project"). In response to the IFB, Contractor submitted a Bid. The Project will be funded in part by an Airport Improvement Grant from the Federal Aviation Administration.
- 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 "Airfield Perimeter Fencing and Gate Upgrades" Project, located at the Palo Alto Airport, 1925 Embarcadero Road, Palo Alto, CA 94303 ("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 within **thirty (30) calendar days** 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 set off 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 One Million Seven Hundred Fifty-five Thousand Five Hundred Ten Dollars (\$1,755,510.00).

#### **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 "Indemnitee" 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 Indemnitee. 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 Indemnitee.

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 venture or syndicate member of Contractor, if the Contractor is a partnership or joint venture or syndicate or co-tenancy shall result in changing the control of Contractor, shall be construed as an assignment of this Construction Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

**SECTION 13 NOTICES.**

**13.1 Method of Notice.**

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

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

**13.2 Notice to Recipients.**

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

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

Copy to:  City of Palo Alto  
Public Works Administration  
250 Hamilton Avenue  
Palo Alto, CA 94301  
Attn: James Wadleigh

OR

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 delivered personally or sent by certified mail.

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

Golden Bay Fence Plus Iron Works, Inc.  
4104 South B Street  
Stockton, CA 95206  
Attn: Paul W. Chavez

### **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.

### **SECTION 33. Federal Requirements**

The following provisions are required as a condition of federal funding. To the extent that a provision of this Section 33 conflicts with any other Section of this Agreement, the requirements of Section 33 shall prevail.

Contractor agrees as follows:

#### **a. GENERAL CIVIL RIGHTS PROVISIONS**

Contractor agrees that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor from the bid solicitation period through the completion of the contract (including all Letters-of-Authorization issued thereunder). This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the City of Palo Alto, as Sponsor of the Palo Alto Airport, through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of, personal property; real property or interest therein; structures or improvements thereon.

In these cases, the provision obligates the party or any transferee for the longer of the following

periods:

- (a) the period during which the property is used by the Airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) the period during which the Airport sponsor or any transferee retains ownership or possession of the property.

**b. CIVIL RIGHTS – TITLE VI ASSURANCES.**

**Title VI Solicitation Notice:**

The Airport Sponsor, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations promulgated thereunder, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**Compliance with Nondiscrimination Requirements**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined

by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **Title VI List of Pertinent Nondiscrimination Authorities**

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

### **ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

## **BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

## **BUY AMERICAN CERTIFICATION**

If there is equipment acquired under the contract, the contractor agrees to comply with 49 USC§ 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list. A bidder or offerer must submit the appropriate Buy America certification with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

## **CLEAN AIR AND WATER POLLUTION CONTROL**

Contractors and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
3. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
4. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

## **CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

### **1. Overtime Requirements.**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; Liability for Unpaid Wages; Liquidated Damages.**

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

**3. Withholding for Unpaid Wages and Liquidated Damages.**

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

**4. Subcontractors.**

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

**CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)**

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

**CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)**

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered



transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment.

#### **DISADVANTAGED BUSINESS ENTERPRISES**

**Contract Assurance (§ 26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (§26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

#### **FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

<b>Requirement</b>	<b>Federal Agency with Enforcement Responsibilities</b>

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

**LOBBYING AND INFLUENCING FEDERAL EMPLOYEES**

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**MANDATORY CONTRACT LANGUAGE.**

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
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Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

### RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to requirements and regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

### TERMINATION OF CONTRACT

- a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor is liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination will be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.
- e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

### TRADE RESTRICTION CLAUSE

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade

Representative (USTR);

- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

#### **DAVIS-BACON ACT PROVISIONS**

1. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision(s) of the

Secretary of Labor which is (are) attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision(s) shall be posted by the contractor at the site of the work in a prominent place where it (they) can be easily seen by the workers. For the purpose of this paragraph, contributions made or costs reasonably anticipated under Section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subparagraph 4 below. Also for the purpose of this paragraph, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period [29 CFR 5.5(a)(1)(i)].

2. Any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination(s) and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination(s), and a report of the action taken shall be sent by the SPONSOR to the FAA for approval and transmittal to the Secretary of Labor. In the event that the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for final determination [29 CFR 5.5(a)(1)(ii)].
3. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for determination [29 CFR 5.5(a) (1)(iii)].
4. If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract. Provided, however, the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **SPECIAL GRANT CONDITIONS**

Office of Management and Budget issued Memorandum M-08-03 implementing Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (TVPA) ([22 U.S.C. 7104\(g\)](#)).

#### **TRAFFICKING IN PERSONS:**

**a. Provisions applicable to a recipient that is a private entity.**

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

#### **BAN ON TEXTING WHEN DRIVING**

- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
  1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
  2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
    - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
    - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. The Sponsor must insert the substance of this clause on banning texting when driving in all subgrants, contracts and subcontracts

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**

City Manager (Contract over \$85k)

APPROVED AS TO FORM:

City Attorney or designee

PWD APPROVED:

Public Works Director

**GOLDEN BAY FENCE PLUS IRON WORKS, INC.**

**Officer 1**

By:

Name:

Title:

**Officer 2**

By:

Name:

Title:

Attachment D

**AMENDMENT NO. TWO TO CONTRACT NO. C15155208A  
BETWEEN THE CITY OF PALO ALTO AND C & S ENGINEERS, INC.**

This Amendment No. Two to Contract No. C15155208A (“Contract”) is entered into August 22, 2016, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and C & S ENGINEERS, INC., a New York corporation, located at 499 Col. Eileen Collins Boulevard, Syracuse, New York 13212 (“CONSULTANT”).

**RECITALS**

A. The Contract was entered into between the parties for the provision of On-call engineering services including planning, design engineering, environmental analyses, grant management and construction management.

B. The parties wish to amend the Contract to increase the funding to cover an additional task order.

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

SECTION 1. Section 4. NOT TO EXCEED COMPENSATION is hereby amended to read as follows:

“The compensation to be paid to CONSULTANT for performance of the Services as amended above, including payment for professional services, shall not exceed One Million One Hundred Eight Thousand Three Hundred Twenty Nine Dollars (\$1,108,329).”

SECTION 2. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

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**

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Director of Public Works

**C & S ENGINEERS, INC.**

By:   
Name: Jessica Bryan

Title: Department Manager

By:   
Name: Michael D Hotaling

Title: Senior Vice President

## Attachment E



(PAO) PALO ALTO AIRPORT AIRFIELD PERIMETER FENCING AND GATE UPGRADES CIP: AP-16003 IFB NO. 163874					ENGINEER'S OPINION OF CONSTRUCTION COST C&S ENGINEERS, INC. 8950 Cal Center Drive Suite 112 Sacramento, CA 95826		CRUSADER FENCE CO. INC. 1600 Benicia Road Vallejo, CA 95810		GOLDEN BAY FENCE PLUS IRON WORKS, INC. 4104 S. B. Street Stockton, CA 95206	
ITEM NO.	FAA SPEC NO.	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
<b>BASE BID</b>										
001	P-156	COMPLIANCE W/ POLLUTION, EROSION & SILTATION CTRL.	1	LS	\$15,000.00	\$15,000.00	\$6,500.00	\$6,500.00	\$10,000.00	\$10,000.00
002	F-162	8-FOOT PVC COATED CHAIN LINK FENCE	11,000	LF	\$75.00	\$825,000.00	\$53.00	\$583,000.00	\$70.00	\$770,000.00
003	F-162	8-FOOT PVC COATED CHAIN LINK FENCE WITH PRIVACY SLATS	675	LF	\$85.00	\$57,375.00	\$65.00	\$43,875.00	\$38.00	\$25,650.00
004	F-162	6-FOOT PVC COATED FRANGIBLE FENCE	250	LF	\$50.00	\$12,500.00	\$70.00	\$17,500.00	\$350.00	\$87,500.00
005	F-162	4-FOOT PVC COATED PRE-HUNG PEDESTRIAN GATE	12	EACH	\$2,500.00	\$30,000.00	\$6,200.00	\$74,400.00	\$2,645.00	\$31,740.00
006	F-162	16-FOOT PVC COATED CHAIN LINK MANUAL CANTILEVER GATE	1	EACH	\$3,000.00	\$3,000.00	\$11,000.00	\$11,000.00	\$9,540.00	\$9,540.00
007	F-162	16-FOOT PVC COATED CHAIN LINK MANUAL DOUBLE SWING GATE	6	EACH	\$3,000.00	\$18,000.00	\$4,525.00	\$27,150.00	\$2,711.00	\$16,266.00
008	F-162	20-FOOT PVC COATED CHAIN LINK MANUAL CANTILEVER GATE	2	EACH	\$4,000.00	\$8,000.00	\$12,575.00	\$25,150.00	\$9,821.00	\$19,642.00
009	F-162	20-FOOT PVC COATED CHAIN LINK MANUAL CANTILEVER GATE WITH PRIVACY SLATS	1	EACH	\$3,700.00	\$3,700.00	\$5,600.00	\$5,600.00	\$9,936.00	\$9,936.00
010	F-162	20-FOOT PVC COATED CHAIN LINK MANUAL DOUBLE SWING GATE	1	EACH	\$3,500.00	\$3,500.00	\$6,000.00	\$6,000.00	\$2,833.00	\$2,833.00
011	F-162	REMOVAL OF EXISTING FENCE AND GATES AND RESTORATION	11,925	LF	\$5.75	\$68,568.75	\$31.28	\$373,000.00	\$21.00	\$250,425.00
012	L-119	SOLAR POWERED OBSTRUCTION LIGHTS	24	EACH	\$500.00	\$12,000.00	\$2,500.00	\$60,000.00	\$3,000.00	\$72,000.00
013	L-128	14-FOOT PVC COATED CHAIN LINK AUTOMATIC SWING GATE	2	EACH	\$50,000.00	\$100,000.00	\$43,000.00	\$86,000.00	\$73,515.00	\$147,030.00
014	L-129	16-FOOT PVC COATED AUTOMATIC CANTILEVER VEHICLE GATE	1	EACH	\$50,000.00	\$50,000.00	\$85,000.00	\$85,000.00	\$72,487.00	\$72,487.00
015	L-128	20-FOOT PVC COATED AUTOMATIC CANTILEVER VEHICLE GATE - EXISTING ELECTRICAL	1	EACH	\$50,000.00	\$50,000.00	\$90,000.00	\$90,000.00	\$75,222.00	\$75,222.00
016	L-128	20-FOOT PVC COATED AUTOMATIC CANTILEVER VEHICLE GATE - NEW ELECTRICAL	1	EACH	\$65,000.00	\$65,000.00	\$95,000.00	\$95,000.00	\$75,239.00	\$75,239.00
017	M-100	MAINTENANCE AND PROTECTION OF TRAFFIC	1	LS	\$35,000.00	\$35,000.00	\$36,500.00	\$36,500.00	\$10,000.00	\$10,000.00

## Attachment E



(PAO) PALO ALTO AIRPORT AIRFIELD PERIMETER FENCING AND GATE UPGRADES CIP: AP-16003 IFB NO. 163874					ENGINEER'S OPINION OF CONSTRUCTION COST C&S ENGINEERS, INC. 8950 Cal Center Drive Suite 112 Sacramento, CA 95826		CRUSADER FENCE CO. INC. 1600 Benicia Road Vallejo, CA 95810		GOLDEN BAY FENCE PLUS IRON WORKS, INC. 4104 S. B. Street Stockton, CA 95206	
ITEM NO.	FAA SPEC NO.	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
018	M-150	SURVEY AND STAKEOUT	1	LS	\$20,000.00	\$20,000.00	\$6,500.00	\$6,500.00	\$20,000.00	\$20,000.00
019	GP-105	MOBILIZATION (6% MAXIMUM)	1	LS	\$78,000.00	\$78,000.00	\$15,000.00	\$15,000.00	\$50,000.00	\$50,000.00
<b>BASE BID TOTAL</b>						<b>\$1,454,643.75</b>		<b>\$1,647,175.00</b>		<b>\$1,755,510.00</b>
<b>ALTERNATE NO. 1</b>										
001	F-162	8-FOOT PVC COATED CHAIN LINK FENCE	-2,100	LF	\$75.00	-\$157,500.00	\$50.00	-\$105,000.00	\$41.00	-\$86,100.00
002	F-162	4-FOOT PVC COATED PRE-HUNG PEDESTRIAN GATE	-10	EACH	\$2,000.00	-\$20,000.00	\$5,500.00	-\$55,000.00	\$2,645.00	-\$26,450.00
003	F-162	16-FOOT PVC COATED CHAIN LINK MANUAL DOUBLE SWING GATE	-2	EACH	\$2,500.00	-\$5,000.00	\$4,000.00	-\$8,000.00	\$2,711.00	-\$5,422.00
004	F-162	20-FOOT PVC COATED CHAIN LINK MANUAL DOUBLE SWING GATE	-1	EACH	\$3,000.00	-\$3,000.00	\$4,300.00	-\$4,300.00	\$2,833.00	-\$2,833.00
005	F-162	8-FOOT ORNAMENTAL IRON FENCE	2,100	LF	\$90.00	\$189,000.00	\$195.00	\$409,500.00	\$119.00	\$249,900.00
006	F-162	4-FOOT ORNAMENTAL IRON PRE-HUNG PEDESTRIAN GATE	10	EACH	\$2,500.00	\$25,000.00	\$6,900.00	\$69,000.00	\$4,230.00	\$42,300.00
007	F-162	16-FOOT ORNAMENTAL IRON MANUAL DOUBLE SWING GATE	2	EACH	\$3,500.00	\$7,000.00	\$9,400.00	\$18,800.00	\$6,265.00	\$12,530.00
008	F-162	20-FOOT ORNAMENTAL DOUBLE SWING GATE	1	EACH	\$3,500.00	\$3,500.00	\$9,400.00	\$9,400.00	\$13,069.00	\$13,069.00
009	L-128	14-FOOT PVC COATED CHAIN LINK AUTOMATIC SWING GATE	-2	EACH	\$40,000.00	-\$80,000.00	\$43,000.00	-\$86,000.00	\$73,515.00	-\$147,030.00
010	L-128	20-FOOT PVC COATED AUTOMATIC CANTILEVER VEHICLE GATE - EXISTING ELECTRICAL	-1	EACH	\$40,000.00	-\$40,000.00	\$90,000.00	-\$90,000.00	\$75,239.00	-\$75,239.00
011	L-128	20-FOOT PVC COATED AUTOMATIC CANTILEVER VEHICLE GATE - NEW ELECTRICAL	-1	EACH	\$50,000.00	-\$50,000.00	\$95,000.00	-\$95,000.00	\$75,222.00	-\$75,222.00
012	L-128	14-FOOT ORNAMENTAL IRON SINGLE SWING GATE	2	EACH	\$50,000.00	\$100,000.00	\$9,300.00	\$18,600.00	\$9,099.00	\$18,198.00
013	L-128	20-FOOT ORNAMENTAL IRON AUTOMATIC CANTILEVER SLIDING GATE - EXISTING ELECTRICAL	1	EACH	\$50,000.00	\$50,000.00	\$105,000.00	\$105,000.00	\$73,212.00	\$73,212.00
014	L-128	20-FOOT ORNAMENTAL IRON AUTOMATIC CANTILEVER GATE - NEW ELECTRICAL	1	EACH	60000	\$60,000.00	\$120,000.00	\$120,000.00	87634	\$87,634.00
<b>ALTERNATE NO. 1 TOTAL</b>						<b>\$79,000.00</b>		<b>\$307,000.00</b>		<b>\$78,547.00</b>
<b>TOTAL BASE BID + ALTERNATE NO. 1</b>						<b>\$1,533,643.75</b>		<b>\$1,954,175.00</b>		<b>\$1,834,057.00</b>

# Attachment E



<b>(PAO) PALO ALTO AIRPORT</b> <b>AIRFIELD PERIMETER FENCING AND GATE UPGRADES</b> <b>CIP: AP-16003</b> <b>IFB NO. 163874</b>				ENGINEER'S OPINION OF CONSTRUCTION COST C&S ENGINEERS, INC. 8950 Cal Center Drive Suite 112 Sacramento, CA 95826		CRUSADER FENCE CO. INC. 1600 Benicia Road Vallejo, CA 95810		GOLDEN BAY FENCE PLUS IRON WORKS, INC. 4104 S. B. Street Stockton, CA 95206	
*DENOTES BIDDER ERROR, THE CORRECTED VALUE IS SHOWN.									

C&S ENGINEERS, INC.

I CERTIFY THAT THIS IS A TRUE AND CORRECT TABULATION OF BIDS RECEIVED JUNE 7, 2016.

JOB NUMBER: 075.001.006

SIGNED: Jessiah Bryan      DATE: 6.8.16



CITY OF  
**PALO  
ALTO**

PLANNING & COMMUNITY ENVIRONMENT

250 Hamilton Avenue, 5th Floor  
Palo Alto, CA 94301  
650.329.2441

Attachment F

June 1, 2016

Andrew Swanson  
City of Palo Alto, Airport Manager  
1925 Embarcadero Road  
Palo Alto, CA 94303

**Subject: 1925 Embarcadero Road [16PLN-00145] Airport Perimeter Fence Replacement**

Dear Andrew Swanson:

On May 19, 2016, the Architectural Review Board recommended approval of the application referenced above and as described below. The Director of Planning and Community Environment (Director) approved the project on June 1, 2016. The approval will become effective 14 days from the postmark date of this letter, unless an appeal is filed in accordance with Title 18 of the Palo Alto Municipal Code. The approval was based on the findings in Attachment A, and is subject to the conditions of approval in Attachment B for the project. The project is described as follows:

**1925 Embarcadero Road [16PLN-00145]:** Request by the City of Palo Alto Public Works, Airport Division, for replacement of existing perimeter fencing at the City of Palo Alto Airport with new fencing and gates that meet Federal Aviation Administration (FAA) standards for security and safety. Environmental Assessment: Exempt from the provisions of CEQA per 15302 (Replacement or Reconstruction). Zoning District: Public Facility with Site and Design Combining District Overlay PF (D).

Unless an appeal is filed, this project approval shall be effective for one year from **June 16, 2016**, within which time construction of the project shall have commenced. Application for extension of this entitlement may be made prior to the one year expiration. The time period for a project may be extended once for an additional year by the Director of Planning and shall be open to appeal at that time. In the event the building permit is not secured for the project within the time limits specified above, the Architectural Review approval shall expire and be of no further force or effect.

Should you have any questions regarding this ARB action, please do not hesitate to contact the Project Planner, Claire Hodgkins, by email at [claire.hodgkins@cityofpaloalto.org](mailto:claire.hodgkins@cityofpaloalto.org) or by phone at (650) 329-2116.

Sincerely,

Jonathan Lait, AICP  
Assistant Director of Planning and Community Environment

**Attachments:** A: Findings for Architectural Review Approval  
B: Conditions of Approval



CityOfPaloAlto.org

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**ATTACHMENT A**  
**ARB FINDINGS FOR APPROVAL**  
1925 Embarcadero  
16PLN-00145

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The design and architecture of the proposed improvements, as conditioned, complies with the Findings for Architectural Review as required in Chapter 18.76 of the PAMC.

**Comprehensive Plan and Purpose of ARB:**

Federal law prohibits the installation of a project that would be in compliance with the City's regulations, City of Palo Alto Comprehensive Plan, and Site Assessment and Design Guidelines for the Palo Alto Baylands Preserve. Given those limitations, the proposed project is consistent with:

Finding #1: The design is consistent and compatible with applicable elements of the comprehensive plan and the City had legal authority to comply.

Finding #16: The design is consistent and compatible with the purpose of architectural review, which is to:

- Promote orderly and harmonious development in the city;
- Enhance the desirability of residence or investment in the city;
- Encourage the attainment of the most desirable use of land and improvements;
- Enhance the desirability of living conditions upon the immediate site or in adjacent areas; and
- Promote visual environments which are of high aesthetic quality and variety and which, at the same time, are considerate of each other.

*The project is consistent with Findings #1 and #16 because:*

The design is compatible with the immediate environment of the site in that the replacement fencing and gates are located in the same location as the existing fence and gates and would not change the existing use of the site. The replacement of the fence would ensure that FAA requirements for safety and security to protect the general public and wildlife are met for the continued safe operation of the airport. The proposed material and color of the fencing is consistent with the material identified in the Site Assessment and Design Guidelines for the Palo Alto Baylands Preserve for security fencing in the Baylands. The design is compatible with the sidewalks, roadway, utilities and other existing improvements.

**Compatibility and Character:**

Finding #2: The design is compatible with the immediate environment of the site.

Finding #4: This finding of compatibility with unified or historic character is not applicable to the project (there is no unified design or historic character along this portion of El Camino Real).

Finding #5: The design promotes harmonious transitions in scale and character in areas between different designated land uses.

Finding #6: The design is compatible with approved improvements both on and off the site.

*The project is consistent with Findings #2, #4, #5 and #6 because:*

The proposed perimeter fencing and gates are required to meet Federal Aviation Administration requirements for safety and security. The proposed fencing is the best available option to meet FAA requirements while also ensuring compatibility with the open space and associated recreational trails adjacent to the site area. In addition, because the proposed fencing would replace several different types of existing fencing at the site, the new fence and gates would provide a more unifying character to the site. The proposed fence would increase security for the existing buildings and would not involve any additions or changes to the existing buildings at the site.

**Functionality and Open Space:**

Finding #3: The design is appropriate to the function of the project.

Finding #7: The planning and siting of the building on the site creates an internal sense of order and provides a desirable environment for occupants, visitors and the general community.

Finding #8: The amount and arrangement of open space are appropriate to the design and the function of the structures.

*The project is consistent with Findings #3, #7, and #8 because:*

The replacement of the existing fencing is required by the FAA for the continued safe operation of the airport in compliance with federal standards. No buildings are proposed and the fence would be installed in the same location as the existing fence.

**Circulation and Traffic:**

Finding #9: Sufficient ancillary functions are provided to support the main functions of the project and the same are compatible with the project's design concept.

Finding #10: Access to the property and circulation thereon are safe and convenient for pedestrians, cyclists and vehicles.

*The project is consistent with Findings #9 and #10 because:*

There would be no change to circulation and traffic as a result of the proposed project. Required transportation related signage on all access gates would be consistent with Manual on Uniform Traffic Control Devices Standards and FAA standards.

**Landscaping and Plant Materials:**

Finding #11: Natural features are appropriately preserved and integrated with the project.

Finding #12: The materials, textures and colors and details of construction and plant material are an appropriate expression to the design and function and compatible with the adjacent and neighboring structures, landscape elements and functions.

Finding #13: The landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment on the site and the landscape concept depicts an appropriate unit with the various buildings on the site.

Finding #14: Plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety that would tend to be drought-resistant and to reduce consumption of water in its installation and maintenance.

*The project is consistent with Findings #11- #14 because:*

The proposed project would include minimal trimming of City trees and only trees in poor condition would be removed in coordination with the City of Palo Alto Public Works Urban Forestry Division. No new landscaping is planned. The proposed fence meets FAA requirements for safety and security and is therefore appropriate to the function of the facility. The black vinyl-coated chain link fencing is also complementary to the environmental setting consistent with adjacent open space areas.

**Sustainability:**

Finding #15: The design is energy efficient and incorporates renewable energy design elements including, but not limited to:

- a. Careful building orientation to optimize daylight to interiors
- b. High performance, low-emissivity glazing
- c. Cool roof and roof insulation beyond Code minimum
- d. Solar ready roof
- e. Use of energy efficient LED lighting
- f. Low-flow plumbing and shower fixtures
- g. Below grade parking to allow for increased landscape and stormwater treatment areas

*The project is consistent with Finding #15 because:*

Approximately 90 percent of the new PVC coated steel fence would be made from recycled material and the existing fence would be recycled to the extent feasible. Recycling for the existing fence would be tracked and reported. Therefore, replacement of the existing fencing would not result in any change to sustainability at the site.



**ATTACHMENT B**  
**CONDITIONS OF APPROVAL**  
1925 Embarcadero Road  
16PLN-00145

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**PLANNING DIVISION**

1. The project will be constructed in substantial conformance with plans received and date stamped May 4, 2016, except as modified to incorporate these conditions of approval.
2. The ARB approval letter including all Department conditions of approval for the project shall be printed on all construction plans.
3. Any changes to the fence such as size or location are subject to ARB review and approval prior to installation.
4. Wetlands: The applicant and its contractor will delineate work areas prior to construction. A biologist will be present in the field during construction, as proposed by the applicant, to verify that areas identified as wetlands in the April 2016 wetland delineation are avoided during construction.
5. Color and Materials: The color and material of the fence will be consistent with that proposed in the approve plan set and will consist of black, vinyl coated chain link fencing with three strand barbed wire on top except that privacy slats will be installed on a portion of the new fence adjacent to the existing material storage yard, as shown on the approved plan set.
6. Development Impact Fees. Given the proposed fencing will replace existing fencing and no square footage has been added, no impact fees are due.
7. A Planning Division Final inspection will be required to determine substantial compliance with the approved plans. Any revisions during the construction process must be approved by Planning, including but not limited to; materials and location. Contact your Project Planner, Claire Hodgkins at [claire.hodgkins@cityofpaloalto.org](mailto:claire.hodgkins@cityofpaloalto.org) to schedule this inspection.

**PUBLIC WORKS URBAN FORESTRY SECTION**

**PRIOR TO DEMOLITION OR GRADING PERMIT ISSUANCE**

1. The Tree Preservation Report (TPR). All sheets of the Applicant's TPR, as prepared by the City of Palo Alto Urban Forestry Division's qualified arborist, shall be printed on numbered Sheet T-1 (T-2, T-3, etc.) and added to the sheet index for the construction plans.

2. The applicant will follow the recommendations outlined in the Tree Preservation Report in consultation with Urban Forestry.

#### **FIRE DEPARTMENT**

1. Post the names of the gates (e.g. North Gate and South Gate) on the main vehicle entrance gates to the airport. Please spell out "North Gate" and "South Gate".
2. Prior to construction the applicant will contact the Fire Prevention Bureau (650-329-2184) for the placement of knox boxes.
3. Fire extinguishers that will be replaced shall be re-installation with the top of the extinguishers 42" from the ground.

# San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

June 30, 2016

Received  
Palo Alto Airport  
JUL 11 16  
City of Palo Alto  
Public Works

City of Palo Alto  
1925 Embarcadero Road  
Palo Alto, California 94303

**ATTENTION:** Andrew Swanson

**SUBJECT:** BCDC Permit No. M1976.058.02 (Amendment No. Two)

Ladies and Gentlemen:

Enclosed please find an original of BCDC Permit No. M1976.058.02, stamped "BCDC Original," and one copy stamped "Permittee's Copy," both executed by the Executive Director, incorporating the amendment requested in your letter dated March 12, 2016. In the amended permit, deleted language has been ~~struck through~~ and added language has been underlined.

I am issuing this amendment, which is included in the attached amended permit, on behalf of the Commission and upon the following findings and declarations:

1. This amendment to the permit is issued pursuant to Regulation Section 10810 upon the same criteria provided for the issuance of administrative permits in that the project authorized by this amendment, the replacement of a perimeter fence, is a "minor repair or improvement" for which the Executive Director may issue a permit, pursuant to Government Code Section 66632(f) and Regulation Section 10622(a).
2. The amendment to the permit is consistent with the San Francisco Bay Plan and the McAteer-Petris Act because the proposed project will not adversely affect the Bay nor public access to and enjoyment of the Bay consistent with the project.

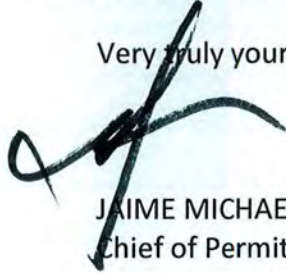
You must (1) **complete** the acknowledgment section of the amended permit stamped "BCDC Original," which indicates that you have read and that you understand all of the terms and conditions of the amended permit, and (2) **return** that entire executed "BCDC Original" to the Commission's office within the ten-day time period. The copy stamped "Permittee's Copy" should be retained by you for your records along with the Notice of Completion and Declaration of Compliance form, which you must return to the Commission upon project completion.

Furthermore, your permit contains special conditions which require you to take certain specific actions. Please understand that **no** work may commence on the project until the permit stamped "BCDC Original" is executed and returned to the Commission. Until the Commission receives the executed permit, you do not have the necessary authorization for the work authorized under the permit. The commencement of any work within the Commission's jurisdiction without the necessary authorization from the Commission is a violation of the McAteer-Petris Act and could subject you to substantial fines.

Andrew Swanson  
City of Palo Alto  
June 30, 2016  
Page 2

If you should have any questions regarding the amended permit or the procedure outlined above, please contact Jhon Arbelaez-Novak of our staff at 415-352-3649 or [jhon.arbelaez@bcdca.gov](mailto:jhon.arbelaez@bcdca.gov).

Very truly yours,

A handwritten signature in black ink, appearing to read 'JAIME MICHAELS', with a large, stylized flourish extending from the end of the signature.

JAIME MICHAELS  
Chief of Permits

JM/JAN/ra  
Enc.

**PERMIT NO. M1976.058.02**  
(Issued Originally on July 28, 1976, As  
Amended Through June 30, 2016)  
**AMENDMENT NO. TWO**

**CITY OF PALO ALTO**

**NOTICE OF COMPLETION AND DECLARATION OF COMPLIANCE**

San Francisco Bay Conservation  
and Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, CA 94102

Ladies and Gentlemen:

You are hereby informed that the work authorized by the above-referenced amended permit was completed on \_\_\_\_\_.

I have personally reviewed the terms and conditions of the amended permit, the final plans approved by or on behalf of the Commission, and the completed project and hereby certify that the project is in compliance with all terms and conditions of the amended permit and conforms to the plans previously reviewed and approved by or on behalf of the Commission. I further certify that all conditions of the amended permit, particularly with regard to plan review, public access areas and improvements, recordation, open space restrictions and other special conditions have been met.

I, \_\_\_\_\_, hereby declare under penalty of perjury that the foregoing is true and correct and that if called upon to testify to the contents of this notice, I would so testify.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_, at \_\_\_\_\_, California.

\_\_\_\_\_  
**(Permittee)**

\_\_\_\_\_  
**(Print Name and Title)**