

**CONSTRUCTION AGREEMENT**

City Manager's Office  
 701 Laurel St., Menlo Park, CA 94025  
 tel 650-330-6620



Agreement #: <span style="font-size: 1.2em;">002851</span>
<b>AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND GUERRA CONSTRUCTION GROUP</b>
THIS CONSTRUCTION CONTRACT ("Contract") is made and entered into this <u>6</u> day of <u>January</u> <u>2020</u> ("Execution Date") by and between the CITY OF MENLO PARK, a California municipal corporation, ("City") and Guerra Construction Group ("Contractor").
<b>RECITALS</b>
<p>A. Contractor is a <u>California Corporation</u> duly organized and in good standing in the State of California, License Number <u>915544</u>. Contractor represents and warrants that it has the background and experience set forth in the Contractor's responses to the notice inviting bids.</p> <p>B. 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 Contract.</p> <p>C. On <u>September 26, 2019</u>, the City issued a Notice to Contractors inviting bids for the Project. A copy of the Contractor's Bid proposal and List of Subcontractors is attached herein and incorporated by this reference.</p> <p>D. The City desires to retain Contractor as an independent contractor to provide the construction and other services identified in this Contract for the Project upon the terms and conditions contained herein.</p>
<b>AGREEMENT</b>
<p>NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants and conditions contained herein, the parties hereby agree as follows:</p> <p>1. DEFINITIONS. Capitalized terms used throughout the Contract Documents shall have the meanings set forth in this Contract and/or the Special Provisions. If there is a conflict between the definitions in this Contract and the Special Provisions, the definitions in this Contract shall prevail.</p> <p>2. PROJECT. The project is the construction of <u>Oak Grove Avenue Sidewalk &amp; Green Infrastructure Improvement</u> ("Project"). The work includes all labor, materials, equipment, services, permits, licenses and taxes, and all other things necessary for Contractor to perform its obligations and complete the Project, including, without limitation, any Change Orders executed by City and Contractor in accordance with the requirements of the Contract Documents ("Work").</p>

### 3. 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 Public Works Department and are hereby incorporated by reference.

- 1) Change Orders
- 2) Field Orders
- 3) Contract
- 4) Bidding Addenda
- 5) Special Provisions
- 6) Project Plans and Drawings
- 7) Technical Specifications
- 8) City Standard Details
- 9) State of California Department of Transportation Specifications, 2006 Edition (Cal Trans specifications)
- 10) Notice to Contractors
- 11) Contractor's Bid
- 12) Bidder Certifications, Questionnaire and Statements
- 13) Reports listed in the Contract Documents
- 14) City of Menlo Park Waste Management Form, Waste Management Daily Transport Report
- 15) City of Menlo Park Truck Route Map and Regulations
- 16) 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.

4. PERMITS. Contractor, at its sole expense, shall obtain and maintain during the term of this Contract, all appropriate permits, licenses and certificates that may be required in connection with the performance of the Work, including, but not limited to, a City business license.

5. DEPARTMENT OF INDUSTRIAL RELATIONS. Contractor and any subcontractor performing Work on this Project shall be registered with the Department of Industrial Relations ("DIR") pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5, with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a). This Project is subject to compliance monitoring and enforcement by the DIR. It is the responsibility of the Contractor to ensure all DIR requirements and regulations are met and stay current. For more information see <http://dir.ca.gov/Public-Works/SB854.html>.

6. TERM. This Contract is effective on the Execution Date set forth in the initial paragraph of this Contract and shall remain in effect until the Project has been satisfactorily completed by

Contractor, unless earlier terminated pursuant to the terms of this Contract.

7. TIME OF COMPLETION. Time is of the essence with respect to all time limits set forth in the Contract Documents. Contractor shall commence the Work on the date specified in the City's Notice to Proceed. Contractor shall diligently prosecute the Work to Substantial Completion within 60 working days after the date specified in the City's Notice to Proceed ("Contract Time"). The Contract Time may only be adjusted for extensions of time approved by the City and agreed to by Change Order executed by City and Contractor in accordance with the requirements of the Contract Documents.

8. COMPENSATION. The City agrees to compensate Contractor for its satisfactory completion of the Work in compliance with the Contract Documents for the not to exceed amount of Five hundred twenty six thousand five hundred forty (\$526,540.00) ("Contract Sum"). Payment shall be as set forth in the Plans, Special Provisions and/or Technical Specifications. The Contract Sum may only be adjusted by Change Orders issued, executed and satisfactorily performed by Contractor in accordance with the requirements of the Contract Documents. The Contract Sum shall be adjusted (upward or downward) only to account for Change Orders. The Contract Sum is and shall be full compensation for all Work performed by Contractor. The Contract Sum shall cover all losses arising out of the nature of the Work or from the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by the City, all risks connected with the Work and any and all expenses incurred due to the suspension or discontinuance of the Work.

9. STANDARD OF PERFORMANCE. As a material inducement to the City to enter into this Contract, Contractor hereby represents and warrants that it has the qualifications and experience necessary to undertake the Work to be provided and the Project to be completed pursuant to this Contract. Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. The Work performed pursuant to this 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.

10. COMPLIANCE WITH LAW. This Project constitutes a public work within the meaning of California Labor Code Section 1720 et. seq. and is subject to prevailing wage laws. The Work performed by Contractor pursuant to this Contract shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the City, and any federal, state or local governmental agency having jurisdiction in effect at the time the work is rendered.

11. REPRESENTATIVE. Jaime Guerra is hereby designated as the project manager/superintendent/foreman of Contractor authorized to act on its behalf with respect to the Work specified in this Contract. It is expressly understood that the experience, knowledge, capability and reputation of Guerra Contruction were a substantial inducement for City to enter into this Contract. Therefore, Jaime Guerra shall be responsible during the term of this Contract for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. The representative may not be changed by Contractor without the express written approval of the City.

## 12. LIQUIDATED DAMAGES.

12.1 Entitlement. City and Contractor acknowledge and agree that if Contractor fails to fully and satisfactorily complete the Work within the Contract Time, the City will suffer, as a result of Contractor's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Such damages may include, but are not limited to: (a) loss of public confidence in the City and its contractors; (b) loss of public use of public facilities; and (c) extended disruption to public.

12.2 Daily Amount. City and Contractor have reasonably endeavored, but failed, to ascertain the actual damage that the City will incur if the Contractor fails to achieve Substantial Completion of the Work within the Contract Time. Therefore, the parties agree that in addition to all other damages to which the City may be entitled other than delay damages, in the event the Contractor shall fail to achieve Substantial Completion of the Work within the Contract Time, Contractor shall pay City as liquidated damages the amount of five hundred Dollars (\$500.00) per day for each calendar day after the expiration of the Contract Time until Contractor achieves Substantial Completion of the Work. The liquidated damages amount is not a penalty, but a reasonable estimate of the amount of damages the City will suffer.

12.3 Apportionment. Such liquidated damages shall be subject to reduction for delays for which Contractor is entitled to receive an extension of time under the Contract Documents ("Apportionment"). Such Apportionment shall not be affected by the fact that liquidated damages may not be applied for periods of time during which delays have occurred that are caused by both City and Contractor. It is agreed that the liquidated damages shall not be applied for portions of the Work completed prior to the expiration of the Contract Time.

12.4 Exclusive Remedy. City and Contractor acknowledge and agree that this Section 11, Liquidated Damages, shall be the City's only remedy for delay damages caused by the Contractor's failure to achieve Substantial Completion of the Work within the Contract Time.

12.5 Damages upon Abandonment. In the event that the Contractor either abandons the Work or is terminated for default in accordance with the provisions of this Contract, City shall have the right, in its sole discretion exercised by written notice issued either before or after Substantial Completion, to elect to either assert or waive its right to liquidated damages. If City elects to assert its right to liquidated damages, then the liquidated damages shall be calculated from expiration of the Contract Time to the date that Substantial Completion of the Work is achieved by the City or its replacement contractor employed to complete Contractor's performance. If City elects to waive its right to liquidated damages, then Contractor shall be liable to the City, in lieu of the liquidated damages, for all actual Losses (as defined in the General Conditions) proximately resulting from Contractor's failure to complete the Work within the Contract Time.

12.6 Other Remedies. The parties further acknowledge and agree that the 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 Work within the Contract Time.

13. INDEPENDENT CONTRACTOR. Contractor is, and shall at all times remain as to the City, a wholly independent contractor and not an agent or employee of the City. Contractor shall receive no premium or enhanced pay for work normally understood as overtime, nor shall Contractor receive holiday pay, sick leave, administrative leave, or pay for any other time not actually worked. The intention of the parties is that Contractor shall not be eligible for benefits and shall receive no compensation from the City except as expressly set forth in this Contract. Contractor shall have no power to incur any debt, obligation, or liability on behalf of the City or otherwise act on behalf of the City as an agent. Neither the City, nor any of its agents shall have control over the conduct of Contractor, any of Contractor's employees, or any subcontractors, except as set forth in this Contract. Contractor shall at no time, or in any manner, represent that it or any of its agents or employees or subcontractors are in any manner employees of the City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Contract, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Contract. Contractor shall fully comply with the worker's compensation law regarding Contractor, Contractor's employees and subconsultants. Contractor further agrees to indemnify and hold the City harmless from any failure of Contractor and any subconsultants to comply with applicable worker's compensation laws.

14. CONFLICT OF INTEREST. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the work to be performed by Consultant under this Contract, or which would conflict in any manner with the performance of its services hereunder. Contractor further covenants that, in performance of this Contract, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest which would conflict in any manner with the performance of the work pursuant to this Contract. Contractor agrees not to accept any employment during the term of this Contract which is or may make Contractor financially interested, as provided in California Government Code Sections 1090 and 87100, in any decision made by the City on any matter in connection with which Contractor has been retained pursuant to this Contract. However, nothing herein shall preclude Contractor from accepting other engagements with the City.

#### 15. INDEMNIFICATION.

15.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, with independent counsel approved by the City, and hold harmless the City, and its elective or appointive boards, officers, employees agents and volunteers ("Indemnatee") from and against any and all claims, losses, or liability that may arise out of or result from damages to property or personal injury received by reason of, or in the course of work performed under this Contract due to the acts or omissions of Contractor or Contractor's officers, employees, agents or subcontractors. The indemnification provisions survive completion of the Work or the termination of this Contract. The acceptance of such services shall not operate as a waiver of such right of indemnification. Notwithstanding the foregoing, nothing contained herein shall be construed as obligating Contractor to indemnify any Indemnatee for any claims, losses or liability resulting from the sole or active negligence or willful misconduct of the

Indemnitee. Contractor shall pay City for any costs incurred in enforcing this provision.

15.2 The City does not and shall not waive any rights that they may possess against Contractor because of the acceptance by the City or the deposit with the City of any insurance policy or certificate required pursuant to this Contract. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

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

16. ASSIGNABILITY. The parties agree that the experience and qualifications of Contractor as set forth in the Contractor's Bid are material considerations for the City entering into this Contract. Consultant shall not assign or transfer any interest in this Contract, without the prior written consent of the City, and any attempt by Contractor to do so shall be void and of no effect and a breach of this Contract. For purposes of this section, the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor or of any general partner or joint venturer or syndicate member of Contractor, if a partnership or joint venture or syndicate or co-tenancy exists, which 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.

#### 17. INSURANCE AND BOND REQUIREMENTS.

17.1 Prior to the commencement of any Work, the Contractor shall provide the City with evidence that it has obtained the insurance required by this Section and all bonds, including, but not limited to, payment and performance bonds, required in the Special Provisions. Failure to obtain and maintain the required insurance and bonds to so shall be deemed a material breach of this Contract.

17.2 Insurance Requirements. Contractor shall obtain the following insurance.

A. Worker's Compensation and Employer's Liability Insurance: The CONTRACTOR shall have in effect during the entire life of this Contract workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Contract, the CONTRACTOR makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California 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 the Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

B. Commercial General Liability Insurance: The CONTRACTOR shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Contract from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any sub-consultant or by anyone directly or indirectly employed by



either of them. The amounts of such insurance shall be not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) in aggregate, or four million dollars (\$4,000,000) combined single limit bodily injury and property damage for each occurrence. CONTRACTOR shall provide the City with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions.

C. Automobile Liability Insurance: CONTRACTOR shall maintain Automobile Liability Insurance pursuant to this Contract in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.

17.3 CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

17.4 In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this Contract to the contrary, immediately declare a material breach of this Contract and suspend all further work pursuant to this Contract.

17.5. Before the execution of this Contract, any deductibles or self-insured retentions must be declared to and approved by CITY.

18. SUSPENSION. The City may, at any time and from time to time, without cause, order Contractor, in writing ("Suspension Order"), 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, as City may determine, with such period of suspension to be computed from the date of the Suspension Order. Upon receipt of a Suspension Order, Contractor shall, at City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of work stoppage. Within the period of the above noted aggregate time, or such extension to that period as is agreed upon by Contractor and City, City shall either cancel the Suspension Order or delete the work covered by the Suspension Order by issuing a Change 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.

19. BOOKS AND RECORDS. Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract in accordance with generally accepted accounting principles and practices consistently applied. City and City's accountants shall be afforded access at all times during normal business

hours, to 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, and Contractor shall preserve these for a period of three years after the later of (i) final payment or (ii) final resolution of all Contract Disputes and other disputes or for such longer period as may be required by law. Contractor's compliance with any request by City pursuant to this Section 18 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. Any failure by Contractor to provide access to its business records for inspection or copying by City shall be specifically enforceable 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.

20. WAIVER. Waiver by either party of any breach or violation of any one or more terms or conditions of this Contract shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. Acceptance by the City of the performance of any work by the Contractor shall not be deemed to be a waiver of any term or condition of this Contract. In no event shall the City's making of any payment to Contractor constitute or be construed as a waiver by the City of any breach of this Contract, or any default which may then exist on the part of Contractor, and the making of any such payment by the City shall in no way impair or prejudice any right or remedy available to the City with regard to such breach or default.

21. DEFAULT. In the event the 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, the City may give written notice of default to Contractor in the manner specified for this giving of notices in this Contract. Except for emergencies, Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) business days 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 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.

## 22. CITY RIGHTS AND REMEDIES.

22.1 Remedies Upon Default. In the event that Contractor fails to cure any default of this Contract within the time period set forth in Section 20, then City may pursue any remedies available under law or equity, including, without limitation, the following: (1) the City may, without terminating the Contract, delete certain portions of the Work, reserving to itself all rights to losses related thereto; (2) the City may, without terminating the Contract, engage others to perform the Work or portion of the Work that has not been performed by the Contractor and withhold the cost thereof to City from future payments to the Contractor, reserving to itself all rights to Losses related thereto; or (3) the City may, without terminating the 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; (4) the City may terminate all or any part of this Contract for default, reserving to itself all rights of Losses related thereto; or (5) the City may, without terminating the Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

22.2 Additional Provisions. All of City's rights and remedies under this 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 be construed as implying that other breaches not so designated are not material nor shall such designations be construed as limiting City's right to terminate the Contract, or the exercise of its other rights or remedies for default, to only material breaches. City's determination of whether there has been noncompliance with the Contract so as to warrant exercise by City of its rights and remedies for default under the 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.

22.3 Delays by Sureties. Without limitation to any of City's other rights or remedies under the law, City has the right to suspend the performance by Contractor's sureties in the event of any of the following: (1) failure of the sureties to begin Work within a reasonable time in such manner as to insure full compliance with the Contract within the Contract Time; (2) abandonment of the Work; (3) if at any time City is of the opinion the Work is unnecessarily or unreasonably delayed; (4) willful violation of any terms of the Contract; (5) failure to perform according to the Contract Documents; or (6) failure to follow instructions of City for its completion within the Contract Time. City will serve notice of such failure upon the sureties and in the event the sureties neglect or refuse to cure the breach within the time specified in such notice, City shall have the power to suspend the performance or any part thereof of the sureties.

22.4 Damages to the City. The City will be entitled to recovery of all Losses under law or equity in the event of Contractor's default under the Contract Documents. In the event that City's Losses arise from Contractor's default under the Contract Documents, City shall be entitled to withhold monies otherwise payable to Contractor until Final Completion, as defined in the General Conditions, of the Project. If City incurs Losses due to Contractor's default, then the amount of Losses shall be deducted from the amounts withheld. Should the amount withheld exceed the amount deducted, the balance will be paid to Contractor or its designee upon Final Completion of the Project. If the Losses incurred by City exceed the amount withheld, Contractor shall be liable to City for the difference and shall promptly remit same to City.

22.5 Termination of the Contract for Default. Without limitation to any of City's other rights or remedies at law or in equity, and reserving to itself all rights to Losses related thereto, City shall have the right to terminate this Contract, in whole or in part, upon the failure of Contractor to promptly cure any default. City's election to terminate the 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 Contract. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein.

22.6 Termination Without Cause. City shall have the option, at its sole discretion and without cause, of terminating this Contract in part or in whole by giving thirty (30) days written notice to Contractor. Contractor agrees to accept such sums as allowed under this Section as its sole and exclusive compensation and 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.

22.7 Compensation. Following termination without cause and within forty-five (45) days after receipt of a billing from Contractor seeking payment of sums authorized by this Section, City shall pay to Contractor as its sole compensation for performance of the Work the following: (1) 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) reasonable costs of Contractor and its Subcontractors and Sub-subcontractors for demobilizing and 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 in an amount not to exceed the daily sum payable to Contractor for Compensable Delays; (3) previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

22.8 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 Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor under this Section.

22.9 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: (1) immediately discontinue the Work to the extent specified in the notice; (2) 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 as is not discontinued; (3) 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; (4) 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 (5) hereafter 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.

23. CONTRACTOR'S RIGHTS AND REMEDIES. Contractor may terminate this Construction Contract for cause only upon the occurrence of one of the following: (1) 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; or (2) if the City does not make payment of sums that are not in good faith disputed by the City and does not cure such default within ninety (90) days after receipt of notice from Contractor, then upon an additional thirty (30) days' notice to City, Contractor may terminate the Contract.

23.1 Damages to Contractor. In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Section 21 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.

24. NOTICES. Any notices or other communications required or permitted to be given under this Contract shall be given in writing by personal delivery, by a recognized courier service, or by U.S. mail, postage prepaid, and return receipt requested, addressed to the respective parties as follows:

<p>To City:</p> <p>Assistant Public Works Director/City Engineer                  City of Menlo Park                  City Hall, 701 Laurel St.                  Menlo Park, CA 94025</p>	<p>To Contractor:</p> <p>Jaime Guerra, President                  Guerra Construction Group                  984 Memorex Drive                  Santa Clara, CA 95050</p>
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25. Notice shall be deemed communicated on the earlier of actual receipt or 48 hours after deposit in the U.S. mail, or the date of delivery shown on deliverer's receipt. In the event of any change of address, the moving party is obligated to notify the other party of the change of address in writing within a reasonable period of time.

In addition, copies of all Claims by Contractor under this contract shall be provided to the City Attorney as follows:

To City Attorney:

City Attorney  
 Jorgenson, Siegel, McClure & Flegel  
 1100 Alma Street, Suite 210  
 Menlo Park, CA 94025

All claims shall be delivered personally or sent by certified mail.

26. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. In the performance of this Contract, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition. Contractor will take affirmative action to ensure that employees are treated without regard to race, color, creed, religion, sex, marital status, sexual orientation, national

origin, ancestry, age, physical or mental handicap, or medical condition.

27. **CONTRACT DOCUMENTS AND PRECEDENCE.** The Contract Documents shall consist of the following documents. In case of inconsistencies between Contract Documents, the documents are listed in order of precedence.

28. **PUBLIC WORKS CLAIMS.** This Contract is subject to Public Contracts Code Section 9204 governing contractor claims.

29. **ATTORNEYS' FEES; VENUE.** In the event that any party to this Contract commences any legal action or proceeding to enforce or interpret the provisions of this Contract, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled. The venue for any litigation shall be San Mateo County.

30. **COOPERATION.** In the event any claim or action is brought against the City relating to Contractor's performance or services under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

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

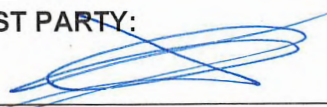
32. **GOVERNING LAW.** This Contract shall be construed in accordance with and governed by the laws of the State of California.

33. **COMPLETE AGREEMENT; SEVERABILITY.** This Contract, and any other documents incorporated herein by reference, represent the entire and integrated agreement between the City and Contractor. This Contract supersedes all prior oral and written negotiations, representations or agreements. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Contract may only be modified by a written amendment duly executed by the parties to this Contract. In case a provision of this Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

34. **COUNTERPARTS.** This Contract may be signed in multiple counterparts, which shall, when executed by all the parties constitute a single binding contract.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:



Signature

Jaime Cerverra

Printed name

20 - 2473636

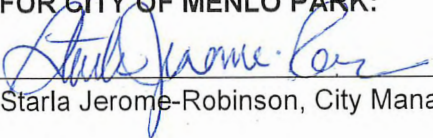
Tax ID#

APPROVED AS TO FORM:



William L. McClure, City Attorney

FOR CITY OF MENLO PARK:



Starla Jerome-Robinson, City Manager

11/27/19

Date

President

Title

01/02/2020

Date

01/02/2020

Date

ATTEST:

For Walwan

Judi A. Herren, City Clerk

1/6/2020

Date



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Santa Clara

On November 27, 2019 before me, Kristin Mejia, Notary Public  
(insert name and title of the officer)

personally appeared Jaime Guerra,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~  
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in  
his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

