AGREEMENT WITH PROJECT SPONSOR

Haven Avenue Improvements and Atherton Channel Pedestrian and Bicycle Bridge Project Initial Study, Mitigated Negative Declaration (Mitigation for Anton Menlo, LLC Project at 3639 Haven Avenue)

This Agreement with Project Sponsor ("Agreement") is entered into this 14th day of July, 2015, by and between the City of Menlo Park, a Municipal Corporation, hereinafter referred to as the "City", and Anton Menlo, LLC, hereinafter referred to as the "Project Sponsor".

WHEREAS, the Project Sponsor proposes to install new striping, bicycle lanes and sidewalks on Haven Avenue and a new pedestrian and bicycle bridge over Atherton Channel adjacent to Haven Avenue in Menlo Park, hereinafter referred to as the "Project"; and

WHEREAS, the City has determined that the Project requires the preparation of an Initial Study and Mitigated Negative Declaration, collectively referred to as the "MND," for compliance with the California Environmental Quality Act (CEQA); and

WHEREAS, the City in its sole discretion has selected David J. Powers & Associates, Inc., hereinafter referred to as the "Consultant" to prepare an Initial Study and MND for the Project, as described in Exhibit A; and

WHEREAS, the City Public Works Director is authorized to enter into an agreement with the Consultant for consulting services up to a maximum of $25,000 per purchase requisition.

NOW, THEREFORE, the parties agree as follows:

1. The City shall monitor the Consultant's performance of the contract for preparation of the MND. The City's obligation shall be limited to normal contract monitoring and shall not include City Attorney or other review of the legal adequacy of the MND. The Consultant shall conduct research and arrive at conclusions independently of the control and direction of the City or any City official other than normal contract monitoring. The Project Sponsor shall have no control or direction of the work of the Consultant;

2. The Project Sponsor agrees to (a) pay the City the sum of $22,880 for the preparation of the MND, (b) bear the sole financial responsibility for defending any lawsuit challenging the Project on any ground, and (c) defend and indemnify the City against any such lawsuit, including attorneys' fees and costs incurred as a result thereof;

3. Upon completion or abandonment of the Project, all sums paid to the City by the Project Sponsor under the terms of this Agreement shall be refunded to the Project Sponsor if the sum has not been paid by the City and is not due or claimed by the Consultant or other claimant; and
4. It is understood and agreed that the City has no responsibility for the legal adequacy of the MND and that the legal adequacy of this document is the sole responsibility of the Project Sponsor and its attorneys. The City may terminate this Agreement upon 10 days written notice.

By: __________________________

Ardie Zahedani
Anton Menlo, LLC (Project Sponsor)

Date 19 JULY 2015

By: __________________________

Jesse T. Quiroa
Public Works Director
City of Menlo Park

Date 8-11-15

June 22, 2015

Deanna Chow  
City of Menlo Park  
Community Development Department  
701 Laurel Street  
Menlo Park, CA 94025

RE: Atherton Channel Bicycle and Pedestrian Bridge – Revised CEQA Proposal

Dear Ms. Chow:

David J. Powers & Associates (DJP&A) is pleased to submit to you this revised scope of work to prepare an Initial Study (IS) for the proposed Atherton Channel Bicycle and Pedestrian Bridge project that satisfies the requirements of the California Environmental Quality Act (CEQA) and the regulations of the City of Menlo Park.

The proposed project site is located along Haven Avenue, north of Marsh Road, in the City of Menlo Park. Haven Avenue currently crosses Atherton Channel over an existing two-lane bridge with no bicycle lanes or sidewalks. The project proposes to install a new bicycle and pedestrian bridge along the north side of Haven Avenue, approximately thirty feet downstream of the existing two-lane bridge. The proposed bridge will be approximately ten feet wide by thirty-four feet long and will be constructed to meet the requirements of the Americans with Disabilities Act. The bridge will be constructed to clear span the channel and will not have pillars or bridge structures located within Atherton Channel. All project improvements will be constructed within the existing Caltrans right of way of Haven Avenue.

St. Anton Partners is currently building a 394 unit apartment complex located at 3639 Haven Avenue. Mitigation measures associated with the residential project require roadway improvements including the construction of the proposed bicycle and pedestrian bridge across Atherton Channel.

Based upon our existing understanding of the site and the scale of the project, we expect that mitigation measures are available to reduce any impacts to a less than significant level and, therefore, we propose to prepare an IS to support a Mitigated Negative Declaration (MND).

Our experience preparing CEQA documents for numerous projects throughout the Bay Area allows us to provide superior service and project management for the City. We appreciate your consideration of our firm for this work and look forward to working with you on this project.
DAVID J. POWERS & ASSOCIATES, INC.

Scope of Work to Prepare an Initial Study/Mitigated Negative Declaration
Atherton Channel Bicycle and Pedestrian Bridge

The Atherton Channel Bicycle and Pedestrian Bridge project proposes to construct and install a new bicycle and pedestrian bridge along the north side of Haven Avenue, approximately thirty feet downstream of the existing two-lane bridge. The proposed bridge will be approximately ten feet wide by thirty-four feet long and will be constructed to meet the requirements of the Americans with Disabilities Act. The bridge will be constructed to clear span the channel and will not have pillars or bridge structures located within Atherton Channel. All project improvements will be constructed within the existing Caltrans road right of way of Haven Avenue.

Based on our current understanding of the project, it is believed that the project will not result in significant adverse environmental impacts, and that all necessary mitigation measures will be incorporated into the project. The project would, therefore, be eligible for a Mitigated Negative Declaration (MND) under CEQA.1 The specific tasks included in this scope are outlined below.

1.0 Preparation and Circulation of Initial Study/Mitigated Negative Declaration

DJP&A will prepare an Initial Study, consistent with the requirements of the California Environmental Quality Act (CEQA) and the City of Menlo Park. An overview of the existing environmental setting will be provided, including a description of the land use characteristics of the project area. The IS will include a checklist based on the form recommended by the state CEQA Guidelines. Each impact identified in the checklist will be addressed, including a discussion of its potential significance and project-specific mitigation measures to reduce the impact, if warranted. Through the IS/MND process, DJP&A will confirm which regulatory agency permits are required for construction of the project.

1.1 Project Description

Based on information provided to DJP&A by the City of Menlo Park, the IS will include a detailed description of the proposed project. Construction, access, and staging areas will be described, as well as grading, bridge construction techniques, and excavation/fill activities. Project plans will be provided to DJP&A in PDF or similar format for use in the IS.

1.2 Environmental Setting, CEQA Checklist, Impacts & Mitigation

The IS will be divided into subsections for each subject area, such as land use, cultural resources, hazardous materials, and noise. The subsections will be formatted to include a description of the existing environmental setting followed by the relevant CEQA checklist section with a discussion of...

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1 In the event that the project would result in a significant, unavoidable impact, or the project does not propose to include necessary mitigation, then an Environmental Impact Report (EIR) would be required. DJP&A could prepare the EIR under a separate scope and budget.
Noise

The IS will address the ambient noise conditions and potential construction noise impacts from the proposed project, based on the noise analysis included in the Environmental Assessment prepared for the City of Menlo Park Housing Element Update, General Plan Consistency Update, and Zoning Ordinance Amendments and available information. The IS will also describe the projects consistency with Chapter 8.06 Noise, and other applicable sections of the City of Menlo Park Municipal Code.

Hydrology and Flooding

The project site is located within the Federal Emergency Management Agency (FEMA) 100-year Special Flood Hazard Area. The project site is subject to inundation by one percent annual chance flood with a base flood elevation of ten feet. The site is also located in an area potentially exposed to an approximate 55-inch sea level rise.

Stormwater and runoff associated with Atherton Channel flow into the Bayfront Canal and ultimately the San Francisco Bay. Historically flooding has occurred in the neighborhoods near the Bayfront Canal and Atherton Channel, particularly during storms that coincide with high tides. The Bayfront Canal and Atherton Channel do not have enough detention capacity to prevent flooding in low lying areas and during storm events the Canal and Channel cannot discharge sufficient stormwater flows to the Bay because of tide gate limitations.

The IS will describe the change in site drainage and hydrological conditions resulting from the project, in accordance with the City of Menlo Park floodplain and stormwater ordinances. This scope assumes that the project engineer will prepare and provide to DJP&A (via the City) an analysis of the current flooding conditions at the bridge site and the potential for the project to affect flooding conditions off-site. Any mitigation measures necessary to reduce impacts will be identified.

Water quality in stormwater runoff is regulated by the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP), which include the C.3 provisions set by the San Francisco Bay Regional Water Quality Control Board. Adherence to these regulations require new development to incorporate treatment measures and site design features that reduce pollutants in run off. The project is also required to comply with National Pollution Discharge Elimination System (NPDES) Permit and implement construction Best Management Practices (BMPs) to control sedimentation and erosion. This scope assumes the project engineer will calculate the runoff from the proposed bridge and its effect on the storm drain system, as necessary. Identification of best management practices will be provided for construction impacts to stormwater quality. This information will be provided to DJP&A by the City.
INFORMATION TO BE PROVIDED TO DJP&A

This scope assumes that technical reports and other information provided by the City will be sufficient for preparation of the IS. In the event additional technical analysis is required, it can be added on a time and materials basis, upon your authorization. This scope assumes that the following technical information will be provided to DJP&A:

- Project plans; including bridge design showing limits of work disturbance, erosions control plans, and other pertinent project information, both as hard copies and in electronic form (PDF).

- Hydrology and flooding analysis describing existing flood conditions and potential impacts of the project on flooding conditions, and measures to reduce impacts, as necessary, and proposed stormwater control measures consistent with the Low Impact Development requirements of the Regional Water Quality Control Board Municipal Regional Stormwater Permit.

- Preliminary Geotechnical Report regarding existing soil conditions, if available.

- Hazardous materials reports, including current Phase I and Phase II Environmental Site Assessments prepared for projects near the Atherton Channel including any studies or reports prepared for the St. Anton Partners residential development at 3639 Haven Avenue, in order to evaluate whether any soils contamination present in the project vicinity.

- The project engineer will provide detailed graphics indicating all areas of temporary and permanent disturbance, including all staging areas and limits of work. All temporary and permanent disturbance areas will be calculated in square feet and provided to DJP&A. All engineered project drawings and graphics will be provided to DJP&A in CAD or ArcGIS format.
COST ESTIMATE

The cost for preparation of the IS/MND is estimated not to exceed a maximum of $22,880 based upon our understanding of the project and the following budget breakdown. Our work will be billed on a time-and-materials basis, commensurate with work completed, in accordance with the attached charge rate schedule. Payment will be due and payable on a monthly basis.

Please note that the cost estimate shown below is a not-to-exceed amount for all tasks combined. Within this not-to-exceed total, actual amounts spent on individual tasks may be more or less than the estimates. If we can complete the environmental review for this project for less than the total budget, you will only be billed for actual time spent and work completed.

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<tbody>
<tr>
<td>• Preparation of the Initial Study, habitat assessment, MMRP, notices, coordination, and meeting attendance</td>
<td>$20,640</td>
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<tr>
<td>• Reimbursable expenses* (printing, mileage, CDs, etc.)</td>
<td>$2,240</td>
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<tr>
<td><strong>Subtotal DJP&amp;A:</strong></td>
<td><strong>$22,880</strong></td>
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<tr>
<td><strong>Total for Project:</strong></td>
<td><strong>$22,880</strong></td>
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*Subconsultant and expenses include a 15% administrative fee.

This scope of work is valid for 90 days.
EXHIBIT "B"

DISPUTE RESOLUTION

B1.0 All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:

B2.0 Mediation

B2.1 The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph 3.1.

B3.0 Arbitration

B3.1 Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph 2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the contract.

B3.2 The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:

B3.3 Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.

B3.4 The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.

B3.5 All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.

B3.6 The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.

B3.7 Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.

B3.8 The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.

B3.9 Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.

B3.10 The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.