AGREEMENT for ATHERTON CHANNEL MAINTENANCE
Between
City of Redwood City and City of Menlo Park

It is agreed between the City of Menlo Park (Menlo Park) and the City of Redwood City (Redwood City), as follows:

1. Services to be performed by Redwood City: In consideration of the payments set forth below, Redwood City shall perform the services for Menlo Park in accordance with terms, conditions and specifications set forth in the attached Exhibit A: Scope of Work for Atherton Channel Maintenance.

2. Contract Term: The term of this agreement shall be from the date of contract execution through October 31, 2016 unless extended by the City of Menlo Park.

3. Payments: Redwood City shall be paid on a time and materials basis as outlined in Exhibit A-1: Compensation and Payment, for a total amount not to exceed $28,755.60 and mutually agreed by both parties in writing.

4. Relationship of the Parties: Redwood City agrees and understands that the work/services performed under this agreement are performed as an Independent Contractor and not as an employee of Menlo Park. Redwood City agrees and understands that it acquires none of the rights, privileges, powers or advantages of Menlo Park employees.

5. Hold Harmless:
   a. Menlo Park agrees to indemnify, defend and hold harmless Redwood City, from any injury to any person which occurs as a result of the negligence of Redwood City, its officers, employees or agents in the performance of this Agreement.
   b. Redwood City agrees to indemnify, defend and hold harmless Menlo Park, from any injury to any person which occurs as a result of the negligence of Menlo Park, its officers, employees or agents in the performance of this Agreement.
   c. In the event of concurrent negligence, liability for any claims, suits, or actions arising out of this Agreement shall be apportioned between the two Cities under the established California rules of comparative negligence.

6. Non-assignability: Redwood City shall not assign this Agreement or any portion thereof to a third party without the prior written consent of Menlo Park, and any
attempted assignment without such prior written consent in violation of this Section shall automatically terminate this Agreement.

7. **Termination of Agreement.** Either party may, at any time after ten days from execution of this Agreement, terminate it, by giving ten days written notice specifying the effective date and scope of such termination. In the event of termination, Redwood City shall be entitled to receive payment for work/services provided prior to termination of the Agreement.

8. **Worker's Compensation Insurance.** Redwood City agrees and understands that Menlo Park does not provide Worker's Compensation Insurance to, or on behalf of, Redwood City for the work/services performed, but that said taxes are the sole responsibility of Redwood City.

9. **Merger Clause.** This Agreement, including the Exhibit attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the both parties. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in the Exhibit attached hereto, the terms, conditions, or specifications set forth herein shall prevail.

Date: ___________________________ Date: ___________________________

Alex D. McIntyre
City Manager
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Melissa Stevenson Diaz
City Manager
City of Redwood City
1017 Middlefield Rd
Redwood City, CA 94063-0391

Attest:

Pamela Aguilar, City Clerk

Silvia Vonderlinden, City Clerk

Exhibit A: Scope of Work for Atherton Channel Maintenance
Exhibit A-1: Compensation and Payment
Exhibit B: Dispute Resolution
EXHIBIT A
SCOPE OF WORK
Atherton Channel Maintenance for the City of Menlo Park

The proposed work shall consist of the removal of debris, vegetation, and roots from the side banks of the Atherton Channel (Channel) located in the City of Menlo Park. The work shall be limited to the side banks and no sediment shall be removed from the bottom of the Channel. The total area to be cleared is approximately 0.5 acres. All work shall conform to the requirements of the attached draft Streambed Alteration Agreement (SAA) with the California Department of Fish and Wildlife (CDFW) (Attachment A).

LOCATION OF WORK:

The work shall be performed within the Channel (described as Site 1 in the draft SAA) which is approximately 1000-foot long section between Interstate Highway 101 and Haven Court Bridge located at 3723 Haven Avenue. The Channel is approximately ten (10) to 15 feet wide. A Site Plan is included in Attachment B. Staging and access for the project will be from the public right of way on Marsh Road and Haven Avenue, adjacent to the Channel. No work shall be done within any culvert.

TASKS DESCRIPTION:

The following tasks shall be performed:

1. Remove trash and debris embedded within the Channel using hand tools and a clamshell bucket.

2. Tree and Vegetation Removal:
   a. Remove living vegetation in the Channel and on the lower half of the creek banks using hand tools. Trees and other woody vegetation shall only be trimmed, not removed, to the extent necessary to allow a specific level of access and for specific types of equipment (e.g. crane, clamshell bucket) or to restore normal streamflow.
b. Remove vegetation and mow levee slopes and top of bank using hand tools.

c. Remove trees, shrubs, and emergent wetland plants from the Channel if they are below ordinary high water and are restricting the capacity of the Channel or are causing erosion.

d. Prune branches overhanging the Channel and impacting water flows. Branches in the lower third of any woody plant and less than three (3) inches in diameter may be trimmed.

e. Trim understory ground cover and vines (e.g., mugwort, blackberry, ferns) only as needed.

f. Cut off woody and herbaceous plants, fallen trees or trunks lodged in the bed or bank causing flow restriction at the bed or bank invert with small tools and remove with winch and cable. Root structures shall not be excavated or disturbed. No vegetation shall be removed by excavation or cutting off below the soil.

g. No equipment shall be operated within the drip line of trees. Protective fencing shall be placed around the drip lines to prevent compaction of the root zone. No bulldozers, backhoes, or other heavy equipment shall be used to remove trees.

3. Remove invasive, non-native plants using hand tools.

4. Allow wildlife to leave the project site unharmed if encountered during the maintenance activities.

5. All personnel/work crew shall receive the education session conducted by a qualified biological monitor or biologist on species that may be present at the site before commencement of work.

6. Spoils shall not be placed where it could enter the stream, riparian or wetland areas. Spoils shall be deposited at the end of Haven Court cul-de-sac on the pavement to dry. Once dry, the debris will be disposed of by the City of Menlo Park and Recology. To the extent possible, vegetation, recyclable materials such as bottles and cans should also be separated out.

If the City of Menlo Park cannot accommodate the spoils, the City of Redwood City shall transport and dispose of the spoils in accordance with statutes and regulations. The City of Redwood City shall bill the City of Menlo Park for actual, full costs associated with the testing, transport and disposal of spoils.

**PROTECTION OF CHANNEL:**

Pursuant to the CDFW Draft SAA, the following measures shall be taken to protect the Channel:

1. A clamshell bucket, hand tools or a small mower shall be used to remove vegetation from the Channel.
2. No equipment shall be placed or operated in the Channel.
3. Mowing shall only occur on top of bank above ordinary high water level and shall not occur within the Channel or lower bank.
4. Staging and storage areas for equipment, materials, fuels, lubricants and solvents shall be located away from the wetted areas.

5. Any equipment or vehicles operated adjacent to the creek areas shall be checked and maintained daily to prevent leaks of materials into the water. Vehicles must be moved away 150 feet from the stream prior to refueling and lubrication.

6. All workers shall decontaminate waders, boots and other clothing that will come in direct contact with the water to prevent the spread of aquatic diseases. The decontamination of clothing and equipment shall comply with the methods included in the attached draft SAA - Avoidance and Minimization Measures item 2.5. These methods are summarized below, and one or more of these methods shall be used:

   a. All equipment shall be dried in an upland location following last aquatic use. The minimum drying time depends on the average daytime temperatures, at least 7 days of drying time for average daytime temperatures more than 80°F and at least 30 days of drying time for average daytime temperatures less than 80°F.

   b. Scalding water wash (at least 140°F) with varying high and low pressure spray to dislodge pathogens and vegetation.

   c. Freezing at a temperature less than 32°F for more than 72 hours.

   d. Soaking in a hospital-grade disinfectant solution for at least two minutes. Disinfected clothing and equipment shall be thoroughly rinsed in a water bath before entering the stream.

Repeat decontamination is required only if the equipment/clothing is removed from the site, used within a different waterbody, and returned to the project site.

PERMIT COMPLIANCE REQUIREMENT:

All permits will be or have been obtained by the City of Menlo Park. The City of Menlo Park shall provide copies of permits listed below by the date of commencement of work. The work to be done shall conform to the requirements of all permits:

1. The CDFW draft SAA (Attachment A).
2. The Regional Water Quality Control Board (RWQCB) Waste Discharge Requirement (WDR) Waiver Conditions. The Board did not recommend issuance of a 401 Water Quality Certification for this project due to its low threat to water quality.
3. The U.S. Army Corps of Engineers (USACE) 404 authorization. A 404 authorization is not required because disposal is off-site and there will be no violations of the Endangered Species Act.

TRAFFIC CONTROL - POSTING AND NOTIFICATION AND MAINTAINING TRAFFIC:

The City of Menlo Park shall provide traffic control devices (e.g., cones, barricades, warning signs, etc.) and other incidentals to control automobile traffic safely around the sites. The City of Menlo Park shall close the sidewalk next to the Channel and re-direct pedestrian traffic during the days mobilization and work is in progress and while spoils are de-watered. The City of Redwood City shall handle worksite safety and vehicle traffic control if it is required, which shall
comply with all City of Menlo Park standards. Construction operations shall be conducted in such a manner to cause as little inconvenience to vehicle traffic as possible.

SCHEDULE, WORK DURATION AND HOURS:

The maintenance activities are tentatively scheduled for the month of October 2016, and will be performed between 6:00 AM to 6:00 PM on Saturdays and Sundays, except when otherwise specified by Public Works. This work is estimated to be completed in five (5) days.

WORKER ACCESS TO FACILITIES:

The City of Redwood City shall provide access to toilet facilities for its workers. There are no public facilities near the work site.

POLLUTION CONTROL:

The City of Redwood City shall follow all City of Menlo Park NPDES requirements and Best Management Practices (e.g., straw or fiber rolls, storm drain filters) to keep miscellaneous litter and trash out of the Channel and storm drains. The City of Redwood City shall keep the City of Menlo Park right of way clean of debris, except for areas used for de-watering of spoils. After removal of de-watered spoils, the City of Redwood City shall leave the area in as clean a condition as it was before the work.

Attachments:
Attachment A – CDFW Draft Streambed Alteration Agreement
Attachment B - Site Plan
Attachment A

CDFW Draft Streambed Alteration Agreement
Attachment B

Site Plan
Attachment A

CDFW Streambed Alteration Agreement
September 24, 2015

Azalea Mitch
City of Menlo Park, Engineering Division
701 Laurel Street
Menlo Park, California 94025

Subject: Final Lake or Streambed Alteration Agreement
Notification No. 1600-2013-0356-R3
Atherton Channel Flood Control Maintenance

Dear Ms. Mitch:

Enclosed is the final Streambed Alteration Agreement ("Agreement") for the Atherton Channel Flood Control Maintenance project ("Project"). Before the Department may issue an Agreement, it must comply with the California Environmental Quality Act ("CEQA"). In this case, the Department, acting as a lead agency, determined your project is exempt from CEQA and filed a notice of exemption ("NOE") on September 24, 2015.

Under CEQA, filing a NOE starts a 35-day period within which a party may challenge the filing agency’s approval of the project. You may begin your project before the 35-day period expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Suzanne DeLeón, Environmental Scientist at (831) 440-9433 or suzanne.deleon@wildlife.ca.gov.

Sincerely,

Craig J. Weightman
Environmental Program Manager
Bay Delta Region

cc: Lieutenant James Ober

Conserving California's Wildlife Since 1870
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
BAY DELTA REGION
7329 SILVERADO TRAIL
NAPA, CALIFORNIA 94558
(707) 944-5500
WWW.WILDLIFE.CA.GOV

STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2013-0356-R3
Atherton Creek

CITY OF MENLO PARK
ATHERTON CHANNEL FLOOD CONTROL MAINTENANCE

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the City of Menlo Park (Permittee) as represented by Azalea Mitch.

RECATALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on September 6, 2013 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement

PROJECT LOCATION

This Agreement authorizes routine maintenance in areas of Atherton Creek that fall under the jurisdiction and responsibility of the Permittee. Atherton Creek is tributary to Bayfront Canal which flows into Flood Slough and ultimately into San Francisco Bay; in Redwood City, State of California.

Project locations include:
Site 1. Atherton Creek between Highway 101 and Haven Avenue; Latitude 37°29'06.83"N, Longitude 122°10'54.50"W; adjacent to Assessor's Parcel Number (APN): 055-231-060 and including APN 055-232-110.
Site 2. Atherton Creek between Marsh Road and Rolison Road; Latitude 37°28'54.02"N, Longitude 122°11'01.07"W; adjacent to APNs: 055-251-250 and 055-251-350.

PROJECT DESCRIPTION

As part of routine maintenance activities, to maintain channel capacity and prevent flooding of adjacent commercial and industrial areas in the vicinity of Atherton Creek, the project includes removal of sediment, in-stream vegetation, vegetation on the bank, and debris and trash within the channel.

Routine maintenance activities authorized under this Agreement are limited to the following:

- **Removal of Sediment in the Stream Channel Bottom and around Bridges, Culverts, Storm Drain Outlets and Water Diversion Inlets** – Utilizing a clamshell bucket for removal of sediment in a concrete-lined portion and an earthen bottom portion of Atherton Creek to maintain channel capacity;

- **Removal of Obstructions around Structures and Facilities** – Utilizing hand tools and a clamshell bucket for removal of trash and debris embedded within the stream channel and utilizing hand tools where clamshell bucket cannot reach;

- **Vegetation Management within the Channel and Lower Stream Bank** - Utilizing hand tools for removal of living vegetation in the channel and on the lower half of the creek banks. Trees and other woody vegetation shall only be trimmed, not removed;

- **Vegetation Management on Upper Half of Bank and Top of Levee** - Utilizing hand tools for removal of vegetation and mowers for mowing levee slopes and top of bank;

- **Removal of Invasive, Non-native Plants** – Removal of invasive, non-native plants utilizing hand tools.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: saltmarsh harvest mouse, a species listed as Endangered under both the Endangered Species Act (ESA) and the California Endangered Species Act (CESA) and fully protected under FGC; saltmarsh common yellowthroat, designated as a Species of Special Concern; other migratory, foraging and nesting birds; bats; water quality; and temporary impacts to 950 linear feet of emergent vegetation.

The adverse effects the project could have on the fish or wildlife resources identified
above, without implementation of the Measures to Protect Fish and Wildlife Resources specified below, include: increase in sediment transport; increase in turbidity during project activities; reduction in water quality during project activities; direct take of species during project activities; change in gradient and cross-section of channel and disruption to nesting birds and other wildlife.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.

1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.

1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.

1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project sites at any time to inspect routine maintenance activities performed and to verify compliance with this Agreement.

1.5 Additional Measures. As a result of any field inspection, CDFW may require that additional measures be applied to specific activities to protect sensitive biological resources. Such measures may be amended into this Agreement with the agreement of both parties, or if an exception to authorized activities is identified, Permittee may be asked to submit separate written notification to CDFW pursuant to Measure 1.7.
1.6 **Authorized Routine Maintenance Activities.** Only those activities specifically described in the Project Description shall be conducted under this Agreement.

1.7 **Exceptions to Authorized Activities.** Permittee shall submit separate written notification (Forms FG 2023 and FG 2024) pursuant to Section 1602 of the FGC, together with the required fee prescribed in the CDFW Streambed Alteration Agreement fee schedule, and otherwise follow the normal notification process prior to the commencement of work activities in all cases where one or more of the following conditions apply:

- The proposed work does not meet the criteria established for routine maintenance activities in the Project Description of this Agreement;

- The nature of the proposed work is substantially modified from the work described in the Project Description of this Agreement;

- CDFW advises Permittee that conditions affecting fish and wildlife resources have substantially changed at a specified work site or that such resources would be adversely affected by the proposed maintenance activity; and/or

- The proposed work would adversely impact a State of California (State) Species of Special Concern or State or federally listed rare, threatened, endangered or candidate species or its habitat.

1.8 **Traversing Another Property.** To the extent that any provisions of this Agreement provide for activities that require Permittee to traverse another owner's property, such provisions are agreed to with the understanding that Permittee possesses the legal right to so traverse. In the absence of such right, any such provision is void.

1.9 **Unauthorized Take.** This Agreement does not authorize the take, including incidental take, of any State or federally listed threatened or endangered listed species, or of species that are otherwise protected under FGC. Permittee may be required, as prescribed in the California and U.S. Endangered Species Acts, to obtain take coverage for State and federally listed species prior to commencement of the project. Any unauthorized take of listed species may result in prosecution and nullification of this Agreement.
2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

2.1 Work Location Restriction. At Site 1, to protect saltmarsh harvest mouse and other saltmarsh species, routine maintenance activities shall be limited to Atherton Creek upstream of the bridge at the intersection of 3723 South Haven and Bayfront Expressway.

2.2 Seasonal Work Period. To protect fish and wildlife and their habitats, work within the stream and riparian zone shall be limited to April 15 to October 31.

2.2.1 Work Period Modification. If Permittee needs more time to complete project activities, work may be authorized outside of the work period and extended on a day-to-day basis by CDFW representative, Suzanne Deleon, at suzanne.deleon@wildlife.ca.gov, or if unavailable, through contact with the CDFW Bay Delta Regional Office by mail, phone (707-944-5500) or fax (707-944-5553). Permittee shall submit a written request for a work period variance to CDFW for approval at least five (5) calendar days prior to November 1. The work period variance request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; and 4) provide photographs of both the current work completed and the proposed site for continued work. Work period variances are issued at the discretion of CDFW. CDFW will review the written request to work outside of the established work period and may require additional measures to protect fish and wildlife resources as a condition for granting the variance. Any additional measures shall be made part of this Agreement.

2.3 Work Period in Dry Weather Only. Work within the stream and riparian zone shall be restricted to periods of no or low stream flow, low rainfall (less than ¼" per 24 hour period) and dry weather as allowed during the work period specified in Measure 2.1.

2.4 Weather Forecasts. Precipitation forecasts and potential increases in stream flow shall be considered when planning construction activities. Permittee shall monitor the 72-hour forecast from the National Weather Service (NWS; http://www.nws.noaa.gov). When there is a forecast of more than 40% chance of rain, or at the onset
of unanticipated precipitation, the Permittee shall remove all equipment and shall implement erosion and sediment control measures and all project activities shall cease.

2.5 **No Equipment in Channel.** No equipment shall be operated in a flowing stream at any time except as may be necessary to construct the dewatering system or divert water flow around the work site.

2.6 **Decontamination of Clothing and Equipment.** To prevent the spread of aquatic diseases, such as ranavirus, and invasive aquatic species, such as quagga mussel, Permittee shall decontaminate waders, boots and other clothing that will come in direct contact with the water. Decontamination of clothing and equipment shall be done through one or more of the following methods:

- Drying equipment in an upland location following last aquatic use. If average daytime temperatures exceed 80°F, drying times shall be at least 7 days. If average daytime temperatures are below 80°F, drying times shall be at least 30 days;
- Scalding water wash (at least 140°F) with varying high and low pressure spray to dislodge pathogens, vegetation, and contaminated sediment;
- Freezing at a temperature of less than 32°F for more than 72 hours; and/or
- Soaking in a hospital-grade disinfectant solution for at least two minutes (or longer, based on product directions). To avoid harm to non-target species, disinfected clothing and equipment shall be thoroughly rinsed in a water bath before entering the stream.

Repeat decontamination is required only if the equipment/clothing is removed from the site, used within a different waterbody, and returned to the project site. Decontamination shall take place in an upland location, and any chemicals used during decontamination shall be prevented from entering water bodies or stormwater drains.

2.7 **CDFW-Approved Qualified Biologist(s) and Biological Monitor(s).** Permittee shall submit to CDFW for written approval, the names and resumes of all qualified biologists and biological monitors involved in conducting surveys and/or monitoring work.
A qualified biologist is an individual who shall have a minimum of five years of academic training and professional experience in biological sciences and related resource management activities with a minimum of two years conducting surveys for each species that may be present within the project area.

A biological monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this project, experience with construction-level biological monitoring, be able to recognize species that may be present within the project area, and be familiar with the habits and behavior of those species.

2.8 Nesting Bird Survey. If project activities are scheduled during the nesting season of raptors and migratory birds, a focused survey for active nests of such birds shall be conducted by the CDFW-approved qualified biologist within 15 days prior to the beginning of project-related activities. Surveys shall be conducted in all suitable habitat located at project work sites and in staging and storage areas. The minimum survey radii surrounding the work area shall be the following: i) 250 feet for passerines; ii) 500 feet for other small raptors such as accipiters; iii) 1,000 feet for larger raptors such as buteos. The bird survey methodology and the results of the survey shall be submitted to CDFW prior to commencement of project activities.

Nesting seasons are typically defined as followed: i) March 15 to August 30 for smaller bird species such as passerines; ii) February 15 to September 15 for raptors.

2.9 Active Nests. If active nests are found, Permittee shall consult with CDFW and the USFWS regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and the FGC. If a lapse in project-related work of 15 days or longer occurs, another focused survey shall be conducted before project work is reinitiated. If an active nest is found, Permittee shall consult with CDFW and the USFWS prior to resumption of project activities.

2.10 Active Nest Buffers. Active nest sites shall be designated as "Ecologically Sensitive Areas" (ESA) and protected (while occupied) during project activities with the establishment of a fence barrier surrounding the nest site. The typical minimum distances of the protective buffers surrounding each identified ESA are the following: i) 1,000 feet for large raptors such as buteos; ii) 500 feet for small raptors such as accipiters; iii) 250 feet for passerines. A biological monitor or qualified biologist shall monitor the behavior of the birds.
(adults and young, when present) at the nest site to ensure that they are not disturbed by project-related activities. Nest monitoring shall continue during project-related construction work until the young have fully fledged, are no longer being fed by the parents and have left the nest site, as determined by a biological monitor.

2.11 Nesting Habitat Removal or Modification. No trees, shrubs or wetland habitat shall be disturbed that contain active bird nests until all eggs have hatched, and young have fully fledged (are no longer being fed by the adults, and have completed left the nest site). To avoid potential impact to tree or shrub-nesting birds, any trimming or pruning of trees or shrubs shall be conducted during the time period of September 16 to February 14. No habitat removal or modification shall occur within the ESA fenced nest zone even if the nest continues to be active beyond the typical nesting season for the species (refer to Measure 2.8), until the young have fully fledged and will no longer be adversely affected by the project.

2.12 Bat Surveys. The qualified biologist shall survey the bridges for bats within a minimum of 30 days prior to the beginning of Project construction work planned either on or within 50 feet of the Bridge. The biologist shall make an effort to identify the bat species and its use of the bridge (maternity, bachelor, day roosting), but shall avoid disturbing bats during surveys. The pallid bat forms maternity or bachelor colonies from spring (March to May) until October, and although the young are weaned at 6 to 8 weeks of age, they are not self-sufficient until the fall. Bats may hibernate in the same structure as the spring/summer roost or in another nearby location. Permittee or qualified biologist shall notify CDFW within 24 hours if bats are found during surveys. CDFW may submit additional written avoidance, minimization and mitigation measures if bats are found in the project area. Those additional measures shall be considered part of this Agreement.

2.13 Bat Protection. Bats shall not be disturbed by any project-related activities without specific notice to and consultation with CDFW. Project activities shall not start under the bridges, or within 50 feet of the bridges, if bats are found nesting/roosting within them. If bats are documented using the bridge or bridges, the qualified biologist shall conduct weekly surveys until the bats have left the area for the fall/winter season.

2.14 Stream Diversion. If water is present in the channel during project activities, the water shall be diverted around the work area to isolate it. To isolate the work area, water tight coffer dams shall be constructed upstream and downstream of the work area and water
diverted through a suitably sized pipe, from upstream of the upstream coffer dam and discharged downstream of the downstream coffer dam. Coffer dams shall be constructed of a non-erodible material which does not contain soil or fine sediment. Coffer dams and the stream diversion system shall remain in place and functional throughout the construction period. If, the coffer dams or stream diversion fail, they shall be repaired immediately. Normal flow shall be restored to the affected stream immediately upon completion of work at that location.

2.15 **Water Surface Elevation.** Flows to downstream reaches shall mimic natural flow patterns. Said flows shall be of sufficient quality and quantity and appropriate temperature to support fish and other aquatic life both above and below the diversion structure. During dewatering of the channel, the decrease in water surface elevation (WSE) shall be controlled such that WSE does not change at a rate that increases turbidity to the creek that could be deleterious to aquatic life and the likelihood of stranding aquatic life up- and downstream of the creek.

2.16 **Check for Stranded Aquatic Life.** The biological monitor shall check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This measure does not allow for the take or disturbance of any State or federally listed species.

2.17 **Designation of Work Area.** Prior to project activities, a biological monitor shall clearly mark/flag or erect temporary construction fencing to designate the work area and to delineate the areas that shall be avoided. The biological monitor shall clearly mark/flag all trees within the designated work area that shall be avoided. Flagging and or temporary construction fencing shall be removed immediately after the completion of construction work.

2.18 **Trimming of Vegetation.** Trimming is defined herein as the removal of vegetation to the extent necessary to allow a specific level of access and for specific types of equipment (e.g. crane, clam bucket) or to restore normal streamflow. There shall be no vegetation removal in excess of what is necessary to allow the level of access needed or to restore normal streamflow. Trees, shrubs and emergent wetland plants may be removed from natural channels if they are below ordinary high water (OHW) and are restricting the
capacity of the stream channel or are causing erosion or flooding. Branches and/or limbs overhanging the channel and impacting water flows shall be properly pruned. Only those branches in the lower third of any woody plant and less than three (3) inches in diameter may be trimmed to accommodate maintenance activities. Understory ground cover and vines, such as mugwort, blackberry, and ferns, may be trimmed only as needed to accommodate maintenance activities. No bulldozers, backhoes, or other heavy equipment shall be used to remove tree branches or trees or remove sediment. No vegetation shall be removed by excavation or cutting off below the soil. All pruned material shall be removed from the area and properly disposed of.

2.19 **Leave Wildlife Unharmed.** If any wildlife is encountered during routine maintenance activities, said wildlife shall be allowed to leave the Project site unharmed.

2.20 **Existing Access Roads.** Access to the project sites shall be via existing roads and access ramps. The crane truck with bucket or any other heavy equipment shall be positioned on the existing paved road located outside the top-of-bank.

2.21 **Dripline Protection.** No equipment shall be operated within the dripline of trees. Protective fencing shall be placed around the driplines of those trees to prevent compaction of the root zone.

2.22 **Spoils.** Spoil shall not be placed where it could enter the stream, riparian or wetland areas. Spoil shall not be placed over riparian or wetland vegetation except as specifically noticed to and accepted by CDFW.

2.23 **Education Session before Commencement of Work.** The biological monitor or qualified biologist shall conduct an education session on species that may be present at the project work site. The training shall consist of basic identification of the species, their basic habits, how they may be encountered in the work area, and procedures to follow when they are encountered. Any personnel joining the work crew later shall receive the same training before beginning work. The penalties for noncompliance of conditions in this Agreement shall be relayed to all project personnel.

2.24 **Stop Work Authority.** The biological monitor or qualified biologist shall have the responsibility and authority of stopping the project if any crews or personnel are not complying with the provisions outlined in this Agreement.
2.25 **Change of Conditions.** If, in the opinion of CDFW, conditions arise, or change, in such a manner as to be considered deleterious to the stream or wildlife, operations shall cease until corrective measures approved by CDFW are taken.

2.26 **Limitations on Sediment Removal.** Annual sediment removal at the two sites shall be the following:

- **Site 1, Haven Avenue to Bayshore.** In 2015, 2017 and 2019, Permittee shall be authorized to remove up to 600 cubic yards (cy) of sediment as one continuous activity within the 1,000 linear-foot (lf) reach. Removal equipment shall be staged on the existing road located outside top-of-bank.

- **Site 2, Concrete-lined channel between Marsh Road and Rollison Road.** In 2015, 2017 and 2019 Permittee shall be authorized to remove 200 cy of sediment as one continuous activity; limited to 750 lf.

2.27 **Limitations on Sediment Removal around Bridges, Culverts, Storm Drains and Water Diversion Inlets.** Annual sediment removal by hand tools around these structures shall not exceed 50 cy per site.

2.28 **Limitations on Bank Stabilization/Bank Repair.** This Agreement does not authorize placement of bank or channel fill, such as imported soils, riprap, etc.

2.29 **Limitations on Vegetation Removal.** The disturbance or removal of vegetation shall not exceed the minimum necessary to prevent potential flooding. Precautions shall be taken to avoid other damage to vegetation by work crew or equipment. Woody and herbaceous plants, fallen trees, or trunks or limbs lodged in the bed or bank causing flow restriction shall be cut off at the bed or bank invert with small tools and removed with winch and cable or other equipment operated from top of bank. Root structures are not to be excavated or disturbed.

2.29.1 **Mowing.** Mowing shall only occur on top of bank above Ordinary High Water and shall not occur within the stream channel or lower bank.

2.29.2 **Limitation of Vegetation Removal in the Earthen Channel.** Hand tools shall be used to weed or trim vegetation to clear the earthen channel.

2.29.3 **Embedded Objects.** Objects embedded/anchored in the
bank, such as tree stumps, shall not be removed during periods of heavy flow if removal would result in release of sediment into the channel. However, protruding objects that could capture additional debris and result in obstruction of the channel (e.g. the branches and trunk of a downed tree) may be trimmed. If an embedded object must be removed to prevent a debris jam, Best Management Practices (BMPs) (See Measure 2.33) shall be used to prevent release of sediment into the channel, and the bank shall be reseeded, re-vegetated, mulched and/or covered with erosion-control fabric following removal.

2.29.4 No Tree Removal. No trees over 4 inches diameter at breast height (DBH) shall be removed. Exceptions require the prior written approval of a CDFW representative. Any trees removed shall be replaced according to Measure 2.42 and exposed/disturbed areas shall be re-vegetated as described in Measure 2.34.

2.30 Disposal of Invasive Plant Material. Invasive plant material removed during work activities shall be bagged and appropriately incinerated or disposed of in a landfill or permitted composting facility.

2.31 Removal of Native Material. Except as explicitly described in this Agreement, the removal of native soils, rock, gravel, vegetation, and vegetative debris from the stream bed or stream banks is prohibited.

2.32 Removal of Trash and Debris. Permittee shall remove all raw construction materials and wastes from work sites following the completion of maintenance activities. Food-contaminated wastes generated during work shall be removed on a daily basis to avoid attracting predators to work sites. All temporary fences, barriers, and/or flagging shall be completely removed from work sites and properly disposed of upon completion of maintenance activities. Permittee or its contractors shall not dump any litter or construction debris within the riparian/stream zone.

2.33 Erosion Control Best Management Practices (BMPs). All exposed soils within the work area shall be stabilized immediately following the completion of earthmoving activities to prevent erosion into the stream channel. Erosion control BMPs, such as silt fences, straw hay bales, gravel or rock lined ditches, water check bars, and broadcasted straw shall be used. Erosion control fabrics shall be constructed of biodegradable materials, such as coir or jute, unless otherwise authorized by CDFW. Erosion control BMPs shall be monitored during and after each storm event for effectiveness.
Modifications, repairs and improvements to erosion control BMPs shall be made as needed to protect water quality. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream.

2.34 Treat exposed areas. All exposed/disturbed areas and access points within the stream zone left barren of vegetation as a result of the project activities shall be restored by seeding with a blend of native erosion control propagules (seeds, cuttings and/or divisions) of locally-collected native plants. Local native grass species include meadow barley (Hordeum brachyantherum ssp. californicum), blue wildrye (Elymus glaucus), California brome (Bromus carinatus), creeping wildrye (Elymus triticeoides), California oatgrass (Danthonia californica) and California melic (Melica californica). Locally native wildflower and/or shrub seeds may also be included in the seed mix. Re-vegetation shall be completed as soon as possible after construction activities in those areas cease. Seeding placed after October 15 must be covered with broadcast straw, jute netting, or similar erosion control blanket.

2.35 Erosion Control Methods. Other disturbed areas around the creek shall be revegetated with propagules (seeds, cuttings, divisions) of locally-collected native plants. If locally collected native plants are not available, sterile or short-lived revegetation plants shall be used (e.g. cereal barley, Regreen). Disturbed areas shall be protected with correctly installed erosion control measures (e.g. jute, certified weed free straw, coconut fiber, or coir logs). Materials containing monofilament or plastic or similar material containing netting shall not be used within the project area due to documented evidence of amphibians and reptiles becoming entangled or trapped in such material.

2.36 Prohibited Plant Species. Permittee shall not plant, seed, or otherwise introduce invasive plant species. Prohibited exotic plant species include those categorized as "High" and "Moderate" in the California Invasive Plant Council's Inventory Database, which is accessible at: http://www.cal-ipc.org/paf/

2.37 Staging and Storage Areas. Building materials and/or construction equipment shall not be stockpiled or stored where they could be washed into the water or where they will cover aquatic or riparian vegetation.

2.38 Equipment over Drip-tems. Staging and storage areas for equipment, materials, fuels, lubricants and solvents shall be located away from the wetted areas. Stationary equipment such as motors,
pumps, generators, compressors and welders, located within or adjacent to the creek shall be positioned over drip-pans.

2.39 **Maintenance of Vehicles.** Any equipment or vehicles driven and/or operated adjacent to the creek areas shall be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life, wildlife or riparian habitat. Vehicles must be moved away 150 feet from the stream prior to refueling and lubrication.

2.40 **Hazardous Materials.** Any hazardous or toxic materials that could be deleterious to aquatic life that could be washed into state waters or its tributaries shall be contained in water tight containers or removed from the project site.

2.41 **Debris and Waste Disposal.** Permittee/contractor shall not dump any litter or construction debri within the project area. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site.

2.42 **Tree Replacement.** If trees need to be removed for routine maintenance activities and removal is approved by CDFW, trees shall be replaced at the following ratios (replacement trees to removed trees):  

- Oaks – 6:1 ratio  
- For native trees other than oaks - 3:1 ratio  
- Non-native trees – 2:1 ratio.

Replacement trees shall consist of 5-gallon saplings, stakes, or other suitable nursery stock and shall be native species adapted to the lighting, soil and hydrological conditions at the replanting site. If replanting within the work area is infeasible due to slope steepness or other physical constraints, replacement trees may be planted at an alternate location along the stream corridor. Trees shall be replaced by December 31 of the year impacts occur in a location that is not subject to future maintenance or construction work. Permittee shall contact CDFW a minimum of 30 days prior to replanting work for review and written approval of the replanting site.

2.43 **Re-vegetation Survivorship and Monitoring.** To ensure a successful re-vegetation effort, all plants shall be monitored and maintained as necessary for eight (8) years. The following success criteria shall apply:
All plantings shall have a minimum of 80% survival at the end of 8 years.

Vegetation cover shall consist of no more than 10% non-native species.

If the survival and/or cover requirements are not meeting these goals, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting.

Re-vegetation monitoring shall be conducted annually for a period of eight (8) years to determine whether these goals have been met. If the survival and/or cover requirements are not projected to meet these goals, based on annual monitoring, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice(s) that would to achieve these requirements.

3. Reporting Measures

Permittee shall meet each reporting requirement described below.

3.1 Notification of Proposed Activities. Permittee shall provide CDFW written notification of proposed routine maintenance activities to be performed in the upcoming year by March 15 each year. Notification reports shall describe the project location, general topography, hydrological features, vegetative cover within 50 feet of the work area, length and width of impact area, cubic yards of sediment to be removed and a detailed description of proposed modifications to the banks and/or channel. Reports shall be submitted to CDFW regardless of whether work is proposed.

CDFW shall append annual notification reports of proposed maintenance activities to this Agreement. For streamlined tracking, Permittee shall label annual notification reports according to the following convention: Exhibit C-[year] (e.g. Exhibit C-2015, Exhibit C-2016).

3.2 Annual Reports for Completed Projects. On an annual basis, Permittee shall provide CDFW written notification of maintenance projects completed. Annual reports shall include the project identification (site name and location), a brief project description, and the appropriate fee from the current CDFW Streambed Alteration
Agreement Fee Schedule for work completed under this Agreement based upon the number of projects completed in the reporting period. The annual report is due on December 15 of each year. A report shall be submitted to CDFW regardless of whether work was completed. CDFW may terminate this Agreement if reports and fees are not submitted by this deadline.

3.3 **Bird and Bat Survey Methods and Results.** Permitee shall submit the bird and bat survey methodology and results to CDFW prior to commencement of project activities. Refer to Notification Number 1600-2013-0356-R3 when submitting the report to CDFW.

3.4 **List of Nonnative Species.** Permitee shall submit to CDFW within two weeks of project completion, a list of location and species of any non-native invasive species found in the project area.

3.5 **Notification to the California Natural Diversity Database (CNDDB).** If any listed, rare, or special status species are detected during project surveys or on or around the project site during project activities, the Permitee shall submit CNDDB Field Survey Forms to CDFW in the manner described at the CNDDB website (http://www.CDFW.ca.gov/biogeodatapub/cnddb/submitting_data_to_cnddb.asp) within 14 working days of the sightings. Copies of such submittals shall also be submitted to the CDFW regional office as specified below.

**CONTACT INFORMATION**

Any communication that Permitee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permitee or CDFW specifies by written notice to the other.

**To Permitee:**

Azalea Mitch  
City of Menlo Park, Engineering Division  
701 Laurel Street  
Menlo Park, California 94025  
Phone (650) 330-6742  
Fax (650) 327-5497  
aamitch@menlopark.org
LIABILITY

 Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

 This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

 SUSPENSION AND REVOCATION

 CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

 Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

 ENFORCEMENT

 Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

 Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.
OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW’s current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW’s current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).
EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement’s term. To request an extension, Permittee shall submit to CDFW a completed CDFW “Request to Extend Lake or Streambed Alteration” form and include with the completed form payment of the extension fee identified in CDFW’s current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective after January 1, 2014 and CDFW's signature, which shall be: 1) after Permittee’s signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on December 31, 2019 unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a) (2) requires.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee’s behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.
CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR CITY OF MENLO PARK

Azalea Mitch Permittee

9/14/15 Date

FOR DEPARTMENT OF FISH AND WILDLIFE

Craig J. Weightman Environmental Program Manager

9/24/15 Date

Prepared by: Suzanne DeLeón Environmental Scientist

Date Sent: December 13, 2013; September 11, 2015
EXHIBIT A
DEFINITION OF TERMS
As used herein and for purposes of the Agreement

**Debris:** non-living vegetative or woody matter, trash, concrete rubble, etc. This definition does not include living vegetation.

**Emergency project:** is defined in the State Fish and Game Code, section 1600.

**Heavy equipment:** any equipment used that is larger than a pick-up truck.

**Natural channel:** a stream or watercourse that has not been modified by human acts such as lining the channel with cement, or creating an artificial channel for drainage or flood control. A natural channel may have in it erosion control structures, culverts or other minor modifications.

**Project:** a routine maintenance activity performed by Permittee during a given year. Each annual activity at one location shall be construed as one project for fee purposes. A project does not include minor debris removal by hand such as a shopping cart or a bag of garbage.

**Special-status species:** any species identified as a candidate or sensitive species in local or regional plans, policies or regulations, or listed by CDFW or the U.S. Fish and Wildlife Service. Plants on Lists 1A, 1B, or 2, published by the California Native Plant Society, are also considered special-status species for the purposes of this Agreement.
Authorized Activities:

A. Vegetation Management:

A.1. Woody and Herbaceous Vegetation. Parts of woody and herbaceous plants, fallen trees, or trunks and limbs lodged in the bed or bank of the creek may be removed if such vegetation is causing streamflow restriction. Woody vegetation may be removed with a winch and cable. The main body of any heavy equipment used shall be operated from the top of bank. Root structures shall not be disturbed and the debris shall be disposed of at a location where it cannot re-enter State waters.

A.2. Removal of Native Trees and Shrubs. Trees and shrubs (dead, dying or live) that are less than four (4) inches diameter at breast height (dbh) may be removed if these trees are located below the Ordinary High Water Mark of the Channel, and are restricting flow capacity and causing erosion or flooding.

A.3. Removal of Non-native Trees and Shrubs. Non-native shrubs such as giant reed (Arundo donax), Scotch broom (Genista monspessulana), French broom (Cytisus scoparius) and pampas grass (Cortaderia selloana) may be removed in order to maintain channel capacity and improve native riparian habitat. Non-native trees such as Eucalyptus spp. and tree-of-heaven (Ailanthus altissima) that are less than four (4) inches dbh may also be removed. The root mass of any tree or shrub removed shall be left in place to maintain bank stability.

A.4. Habitat Enhancement. Channel habitat may be enhanced with activities such as planting of native trees and shrubs that are appropriate to the local area and maintenance of the enhancement plantings.

B. Debris and Sediment Removal

B.1. Removal Quantities. A one-time removal of a large quantity of sediment and debris, as stated below, at each site in the channel and around the bridges and culverts. After this one time removal, annual removal of small amounts of debris and sediment from within the channel and around bridges and culverts according to the following limits:

B.1.1. Site 1, Haven Avenue to Bayshore. Permittee shall be authorized to remove up to 600 cubic yards (cy) of sediment as one continuous activity within the 1000 linear-foot (lf) reach in years 2015, 2017 and 2019.

B.1.2. Site 2, Concrete-lined channel between Marsh Road and Rolison Road. Permittee shall be authorized to remove up to 200 cy of sediment as one continuous activity; limited to 750 lf of the creek channel.
B.2. **Sensitive Fisheries.** Notwithstanding the foregoing, no routine maintenance shall be conducted in watercourses having sensitive fisheries without prior consultation with CDFW, at which time CDFW shall evaluate the project and add any additional conditions that it might see fit for the preservation of the resource.

This RMA shall be amended as a list of sensitive areas is developed.

C. **Temporary Water Diversions**

C.1. Temporary water diversions associated with other related maintenance activities using structures such as cofferdams not exceeding 3 feet in height or sumps, with or without pumps, provided that all water is discharged into a silt control structure before release and provided that the channel is restored to its original configuration after work is completed.

D. **Exempt Activities**

The following routine maintenance activities are not subject to the provisions of the RMA and are not subject to the provisions of Section 1600 of the FGC if performed within the parameters stated below.

a. Trash and debris removal by hand, not including silt removal (baby diapers, shopping carts, car bodies, metal, wood, plastic, etc).

b. Removal of fallen trees from the flow line of the channel that would cause flooding or serious erosion of the banks.

Note: Materials embedded in the bottom of the channel are subject to the provisions of Section 1600.
Attachment B

Site Plan
Exhibit A-1
Public Works Services Dept.
Account Receivable Request for Work Performed

Date: September 21, 2016
Department: Public Works Services
Employee Submitting Request: Eduardo Pastrano
Fund and Account Number: 261-34872-2568
Amount: $28,755.60

Bill To Name, Address, Phone Number:
Attn: Azalea A. Mitch, P. E., Senior Civil Engineer
Name: City of Menlo Park
Address: 701 Laurel Street, Menlo Park, CA 94025
Phone: (650) 330-6742

Description of Charges:
The proposed work shall consist of the removal of debris, vegetation, and roots from the side banks of the Atherton Channel (Channel) located in Menlo Park. The work shall be limited to the side banks and no sediment shall be removed from the bottom of the Channel. Work estimated to be completed in 10 hour increments on each of the following days: 10/08/16, 10/09/16 and 10/15/16, 10/16/2016

Cost Breakdown:

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<th>Total Contractor</th>
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<td>40.00 $163.00</td>
<td>$6,520.00</td>
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TOTAL PERSONNEL COSTS: $26,080.00
TOTAL CONTRACTOR COSTS: $0.00

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<td>Clam Attachment</td>
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<td>Utility Truck</td>
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TOTAL EQUIPMENT COSTS: $2,675.60
TOTAL MATERIAL COSTS: $0.00

* Note: Based on CalTrans Equipment Rental Rate Schedule effective on April 1, 2016 through March 31, 2017

Other Services / Activities

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TOTAL OTHER SERVICES / ACTIVITIES COSTS: $0.00

Personnel Total: $26,080.00
Contractor Total: $0.00
Equipment Total: $2,675.60
Material Total: $0.00
Other Services / Activities Total: $0.00
Grand Total for Work Performed: $28,755.60

Other Comments:
THIS ESTIMATE COVERS LABOR AND EQUIPMENT TO CLEAN THE CHANNEL. MENLO PARK WILL HAUL AND DISPOSE OF DEBRIS.

REV: 09-29-16 VR
ATTY/AGR/2016.286/CITY OF MENLO PARK — ATHERTON CHANNEL MAINTENANCE
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.