

**PROJECT AGREEMENT TO ADDRESS ALTERNATIVE MITIGATION
RESULTING FROM THE LOSS OF RECREATIONAL OPPORTUNITIES DUE
TO DEVELOPMENT RESULTING FROM STANFORD UNIVERSITY’S 2000
GENERAL USE PERMIT**

for

The Holbrook-Palmer Park Access and Circulation Project

by and between the County of Santa Clara and the Town of Atherton

This Project Agreement to Address Alternative Mitigation Resulting from the Loss of Recreational Opportunities Due to Development Resulting from Stanford University’s 2000 General Use Permit (“Project Agreement”) is made and entered into between the COUNTY OF SANTA CLARA, a political subdivision of the State of California (hereinafter referred to as the “County”), and Town of Atherton, a Municipal Corporation, (“Project Applicant”).

RECITALS

WHEREAS, the Project Applicant submitted an application to the County for funding for the Holbrook-Palmer Park Access and Circulation Project, (hereinafter referred to as “Project”), which Project is described in the attached Exhibit 1 — Scope of Work; and

WHEREAS, the County Board of Supervisors (“Board”), on May 12, 2020 reviewed the merits of the Project Applicant’s proposal and found that the Project will mitigate the significant environmental impacts on the availability of recreational facilities caused by the development authorized under the Stanford University 2000 General Use Permit (“GUP”); and

WHEREAS, Holbrook-Palmer Park is an approximately 22-acre regional park directly serving residents of Atherton, Menlo Park, pockets of Unincorporated San Mateo County, Palo Alto and other adjacent communities, including Stanford University faculty, students and staff; and

WHEREAS, there is currently no sidewalk or designated pedestrian walkway from Watkins Avenue to the park along either the park entry or exit drives; and

WHEREAS the construction of accessible pathways along the entry and exit drives and through the park are needed to improve pedestrian access and circulation through the park to various recreational opportunities and amenities within the park; and

WHEREAS the Project Applicant proposes to provide new accessible pathways to the park from Watkins Avenue along both the entry and exit drives and linking to various

recreational opportunities in the park; to provide an accessible picnic area and additional pathway improvements, landscaping and other site amenities; and

WHEREAS, the Project Applicant has determined that the Project is categorically exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein, the County and Project Applicant agree as follows:

SECTION I. PROJECT APPLICANT RESPONSIBILITIES

1. Project Applicant, at Project Applicant’s sole cost and expense, will perform or cause to be performed in the attached Scope of Work, and the Project Applicant shall act promptly and without delay with respect to such matters in relation to the Project. In performing the Project, the Project Applicant will:
 - a. Prepare all environmental documents and take all other actions required for approval and completion of the Project pursuant to the California Environmental Quality Act and any rules and/or regulations promulgated thereunder.
 - b. Secure all approvals by government agencies required for completion of the Project.
 - c. Publicly acknowledge the Grant by providing a plaque permanently affixed to the Project, or erecting signage in a prominent location on the Project site, visible to the public. The acknowledgement credit shall include an image of the County seal and shall read: “Project made possible in part by funding from the County of Santa Clara.” Project Applicant will obtain County review and approval of the plaque/sign prior to manufacture and installation.
 - d. Publicly acknowledge the Grant by giving credit to the County in project-related materials including newsletters, brochures, and internet messages.
 - e. Submit a Project progress report to the County no later than November 1 and May 1 of each year, until the Project is completed and reimbursement received.
 - f. Provide any requested documentation about the Project to the County for review before construction work begins in order to ensure that the proposed Project is consistent with the purposes of mitigating the adverse effect on recreational opportunities for existing or new development approved by the 2000 Stanford University General Use Permit.

- g. Comply with the following conditions for the grant funding as approved by the Board of Supervisors:
 - i. Expend Grantee Cash Contribution
 - ii. If Project is located on Stanford lands provide written consent from Stanford University prior to grant funding award by the Board of Supervisors.
- h. Make a presentation at a regularly scheduled Board meeting discussing the completed Project within three (3) months of Project completion.

2. Capital Contributions by Parties to Project Agreement.

- a. Project Applicant will expend the Grant exclusively for third party expenses arising from services, permits, fees, labor, materials and equipment required for the attached Scope of Work and consistent with the attached Exhibit 2 — Itemized Project Budget for completion of the Project (“Eligible Costs”). No portion of the Grant shall be used for Project Applicant’s internal salary or administrative expenses, including office overhead or expenses.
- b. Project Applicant shall demonstrate expenditure of Grantee’s cash contribution funds prior to reimbursement through the Grant. Additional funds needed to complete the Project shall be identified in the attached Itemized Project Budget.
- c. County recognizes that the Project Budget identified in the attached Itemized Project Budget is an estimate and may include a contingency. To the extent Eligible Costs vary from this budget:
 - i. Project budget savings shall inure to the benefit of the County only, subject to third party funding requirements, that the third party share in project savings; and
 - ii. Costs between Project elements may be adjusted to reflect actual costs, however material changes (even if there is minor or no change in cost) that would necessitate County funding of a non-mitigation element that the Project Applicant was financing with other funds will not be reimbursed by the County. Project Applicant is solely responsible for expenditures that may exceed the Grant amount.

3. Prevailing Wages

The Project is a public work within the meaning of Labor Code Section 1720, to which the provisions of Labor Code Section 1771 *et seq.* apply. The Project Applicant will comply with all of the applicable provisions of the Labor Code, including, but not limited

to, payment or cause payment to be made, or prevailing wages. The Project Applicant will include prevailing wage requirements in all agreements with third parties for work or services needed to complete the Project.

SECTION II. OPERATION, MAINTENANCE, AND PUBLIC ACCESS

1. Operation and Maintenance

Upon completion of the Project, the Project Applicant will open the Project to the public, and operate and maintain the Project for the benefit of the public. On-going maintenance is solely the responsibility of the Project Applicant.

2. Public Access

The Project Applicant shall provide for continual use of the Project to the public. The Project Applicant shall demonstrate continual use of the Project to the satisfaction of the Board of Supervisors.

SECTION III. COMPENSATION/REIMBURSEMENT

1. Reimbursement Amount

The County will reimburse the Project Applicant the maximum Grant amount of Three Hundred Thousand Dollars (\$300,000) for Eligible Costs. County's obligation to pay is expressly conditioned upon the Project Applicant's demonstrated compliance with all of the conditions of this Project Agreement.

2. Invoice Requirements

Project Applicant shall provide County a detailed, itemized invoice requesting reimbursement of Eligible Costs containing information noted below. No advances will be made. If a reimbursement request is not completed, the County will return the request for payment with deficiencies noted. The County, in its sole discretion, may pay the part of the reimbursement request that is complete, or decline payment until the reimbursement request is complete. All reimbursement requests shall include the following information:

- a. A letter itemizing Eligible Costs being claimed for reimbursement. Itemizations shall clearly show the relationship between the eligible cost and the matters listed in the attached Itemized Project Budget.
- b. Clear copies of invoices that are for the Project and addressed to the Project Applicant.
- c. Evidence that all invoices submitted for reimbursement have been paid. For example, a clear copy of the front side of the check or warrant issued

to pay said invoices, or a receipt evidencing such payment. Account statements will not be accepted.

- d. Evidence that Grantee's cash contributions identified in the recitals were provided and expended.
- e. A report on the status of the Project, which shall include construction inspection reports.

Project Applicant may submit requests for reimbursement any time that they have claimable expenditures exceeding a minimum of \$1,000. However, Project Applicant shall send the County reimbursement requests on a quarterly basis when it has claimable expenditures during that quarter that exceed \$1,000. The quarterly submittal dates are January 1, April 1, July 1, and October 1.

Requests for final payment of the County's contributions toward the Project pursuant to the Grant shall include:

- (1) At least six (6) different photos of the Project; and
- (2) Demonstration of compliance with the acknowledgement required under Section I, item 1(c) (a photograph of the installed sign will suffice); and
- (3) A statement describing how each of the conditions in Section I, item (g), of this Project Agreement have been met.

If the reimbursement request is satisfactory, the County will provide payment to the Project Applicant within 30 days.

The County of Santa Clara shall have received Project Applicant's requests for reimbursement within the Term of this Project Agreement set forth in Section 5 or any written extension thereof. Upon expiration of the Term of this Project Agreement, the Grant will revert to the County for reprogramming unless the Project Applicant has requested an extension to the Term of the Project Agreement at least 30 days prior to expiration of the Term of the Project Agreement and the Board of Supervisors has approved the extension. It is the Project Applicant's responsibility to keep track of the expiration of the Term of this Project Agreement and to ensure that the Project is completed and reimbursements submitted in advance of the Project Agreement's expiration date.

3. Project Records, County Audit and Inspection

Project Applicant shall maintain Project records (including paper and electronic media, as appropriate) showing compliance with all aspects of this Project Agreement for three (3) years after completion of the Project or until all claims are settled, whichever occurs last. All Project records shall be available to County within five (5) working days of County's reasonable notice. If the County determines that the Project Applicant used the Grant for ineligible costs, or that other terms of the Project Agreement were breached, County may

take any authorized actions under this Project Agreement and require the Project Applicant to repay the Grant, with interest at the rate earned on the County's investments, and the cost of the audit.

In addition to an audit of Project Records, County staff shall have access to the Project during business hours any time during construction, and, following completion of the Project, during business hours following reasonable notice by County. County personnel will follow any required safety protocols during construction.

SECTION IV. INDEMNIFICATION AND INSURANCE

Project Applicant shall agree to the indemnification requirements set forth in the attached Exhibit 3 — Insurance Requirements for Grant Agreement. During the construction phase, the Project Applicant, at its sole cost and expense, shall provide the insurance set forth in the Insurance Requirements for Grant Agreement. As insurance requirements may differ from those in effect at time of grant application, Project Applicant will comply with requirements in effect at time of execution of this Project Agreement.

SECTION V. TERM OF PROJECT AGREEMENT/EXTENSIONS

1. Term

This Project Agreement shall become effective upon its full execution by the parties and shall remain effective for five years or until completion of the Project and reimbursement by the County, whichever occurs first ("Term").

2. Extension

The Board of Supervisors may approve an extension of the Term of this Project Agreement. To allow sufficient time for processing the request, the Project Applicant shall make a written request for the extension at least 30 days prior to the expiration of the Term of the Project Agreement. Any extension shall comply with the requirements of the provisions of Section VIII pertaining to amendments of this Project Agreement.

SECTION VI. PROJECT APPLICANT AUTHORIZED SIGNATURES

The City Manager has been authorized to execute this Project Agreement on behalf of the Project Applicant.

SECTION VII. NOTICES

Any notices provided pursuant to this Project Agreement shall be sent by regular mail to the respective parties addressed as follows:

//

COUNTY OF SANTA CLARA
Sylvia M. Gallegos
Deputy County Executive
County of Santa Clara
Office of the County Executive
Eleventh Floor – East Wing
70 West Hedding Street
San Jose, California 95110

PROJECT APPLICANT
George Rodericks
City Manager
Town of Atherton
80 Fair Oaks Lane
Atherton, California 94027

SECTION VIII. COMPLETE AGREEMENT

This Project Agreement, including attachments, constitutes the complete agreement between the parties. No modifications or amendments of this Project Agreement will be binding on either party unless acknowledged in writing by all parties.

//

//

//

//

//

//

//

//

//

//

//

//

SECTION IX. EXHIBITS

The exhibits listed below are substantive portions of this Project Agreement and are hereby attached to and incorporated in this Project Agreement by this reference as though fully set forth herein:

- Exhibit 1 – Scope of Work
- Exhibit 2 – Itemized Project Budget
- Exhibit 3 – Insurance Requirements for Grant Agreement
- Exhibit 4 – Current Certificate of Insurance

IN WITNESS WHEREOF, the duly authorized representative of each party hereto has executed this Project Agreement on the date shown.

COUNTY OF SANTA CLARA

GRANTEE

SUSAN ELLENBERG, President
Board of Supervisors

George Rodericks, City Manager

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest:

TIFFANY LENNEAR
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

ELIZABETH PIANCA
Assistant County Counsel

Mona G. Ebrahimi
City Attorney

EXHIBIT 1

SCOPE OF WORK

GENERAL PROJECT DESCRIPTION

The Project Applicant shall:

Construct access and circulation improvements at Holbrook-Palmer Park including pedestrian pathway and associated improvements at the park entry and exit drives; replacement of asphalt pathways with decomposed granite pathways in and around the main entry lawn and frontage; install an accessible picnic area, landscaping and site furnishings.

All work will be performed to meet the terms of the Agreement and any conditions noted therein.

EXHIBIT 2

ITEMIZED PROJECT BUDGET
(CORRESPONDING WITH
THE SCOPE OF WORK)

WORK TO BE PERFORMED	GRANTEE CASH CONTRIBUTION	GRANT	TOTAL
<u>Mobilization, Demolition and Grading</u>	<u>\$150,000</u>	<u>\$50,000</u>	<u>\$200,000</u>
<u>Pathways and Hardscapes</u>	<u>\$125,000</u>	<u>\$125,000</u>	<u>\$250,000</u>
<u>Fencing and Site Furnishings</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$50,000</u>
<u>Utilities</u>	<u>\$20,000</u>	<u>\$0</u>	<u>\$20,000</u>
<u>Landscape and Irrigation</u>	<u>\$125,000</u>	<u>\$100,000</u>	<u>\$250,000</u>
TOTAL PROJECT AMOUNT	<u>\$470,000</u>	<u>\$300,000</u>	<u>\$770,000</u>

EXHIBIT 3

INSURANCE REQUIREMENTS FOR GRANT AGREEMENT

Indemnity

To the fullest extent allowed by law, the Project Applicant shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Project Applicant and/or its agents, employees or sub-Grantees, excepting only loss, injury or damage caused by the sole or active negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Grantee shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Grantee is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

Without limiting the Project Applicant's indemnification of the County, the Project Applicant shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Project Applicant shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Project Applicant upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Project Applicant shall not receive the Grant Award under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Project Applicant.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the

Project Applicant shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Project Applicant or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Project Applicant and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Project Applicant pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Project Applicant. However, this shall not in any way limit liabilities assumed by the Project Applicant under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial

capacity. Project Applicant's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Project Applicant shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Project Applicant may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Project Applicant in the event of material noncompliance with the insurance requirements outlined above.

Rev. 07/2012

EXHIBIT 3

CERTIFICATE OF INSURANCE

[The Project Applicant shall provide evidence of meeting the insurance requirements as shown in the County's Insurance Exhibit attached.]

DRAFT