

**AGREEMENT
BETWEEN
THE CITY OF MENLO PARK AND THE COUNTY OF SAN MATEO
FOR THE CONSTRUCTION OF
IMPROVEMENTS INCLUDED IN THE
CITY 2019 STREET RESURFACING PROJECT**

THIS AGREEMENT (“AGREEMENT”) is made and entered into this 12 day of June 2019, by and between the CITY OF MENLO PARK, a municipal corporation of the State of California (hereinafter “CITY”) and the COUNTY OF SAN MATEO, a municipal corporation of the State of California (hereinafter “COUNTY”), and.

WITNESSETH:

WHEREAS, the CITY’S 2019 Street Resurfacing Project (hereinafter “PROJECT”) as part of the CITY’S Pavement Management Program, rehabilitates various streets within the CITY; and

WHEREAS, COUNTY requests inclusion of certain additional improvements within its right-of-way which are not within the original scope of the PROJECT but will be funded entirely by COUNTY and constructed by CITY as part of the PROJECT in a cooperative and cost-effective manner for the public’s benefits (hereinafter, “IMPROVEMENTS”); and

WHEREAS, CITY is the lead agency administering both the design and the construction phases of the PROJECT and IMPROVEMENTS; and

WHEREAS, COUNTY and CITY (hereinafter collectively “PARTIES” or each individually “PARTY”) desire to enter into this AGREEMENT to define the roles and responsibilities of each PARTY with respect to the IMPROVEMENTS and detail the scope and reimbursement of the IMPROVEMENTS.

NOW, THEREFORE, in consideration of their mutual promises, covenants and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the PARTIES hereby agree as follows:

1. **Scope of IMPROVEMENTS:** COUNTY acknowledges that the IMPROVEMENTS specified hereinafter are additional improvements that are not within the original scope of the PROJECT but may be constructed as part of the PROJECT at the sole cost and expense of COUNTY. The scope of the IMPROVEMENTS is described as follows for the portions of Bellair Way and Harkins Avenue within the COUNTY limits:

TABLE 1
Estimated cost of County improvements

<i>Item No.</i>	<i>Description</i>	<i>Unit</i>	<i>Estimated Quantity</i>	<i>Unit Price</i>	<i>Total</i>
1	Mobilization	LS	1	15,000	15,000
2	Traffic Control	LS	1	20,000	20,000
3	Waste Management	LS	1	1,000	1,000
4	Full Width Milling	CY	360	105	37,800
5	Manhole Adjustment	EA	6	1,000	6,000
6	Utility Cover/Monument Adjustment	EA	4	800	3,200
7	Hot Mix Asphalt Paving	TN	660	128	84,480
8	PCC Curb & Gutter	LF	40	135	5,400
9	PCC Sidewalk	SF	210	17	3,570
10	New ADA Accessible Curb Ramp	EA	2	7,000	14,000
11	Thermoplastic Pavement Striping, Markings, and Markers	LS	1	1,000	1,000
Subtotal					191,450
Change Order Contingency (10%)					19,145
City of Menlo Park Administrative Fees (10%)					19,145
Total County Improvement Estimated Cost					\$229,740

The IMPROVEMENTS listed above was bid by CITY as “Add Alternative” or “Revocable” items to the PROJECT, at CITY’s sole discretion. COUNTY shall be solely responsible for all costs and expenses associated with the IMPROVEMENTS as outlined in Section 5, “Payment of Costs,” of this AGREEMENT.

COUNTY, at its own direction, shall repair failed pavement areas and remove and replace damaged curb and gutter, at its own expense, prior to the issuance of a Notice to Proceed for the PROJECT construction.

2. Construction Administration and Inspection:

A. CITY shall administer the construction contract of the PROJECT and IMPROVEMENTS. CITY shall provide construction services such as construction administration, construction engineering, inspection, and coordination with COUNTY’s inspection team for installation of PROJECT elements and IMPROVEMENT elements and restoration of existing facilities affected by the IMPROVEMENTS in COUNTY during and through the completion of the construction of said PROJECT and IMPROVEMENTS.

B. COUNTY shall provide inspection services when necessary, as mutually determined by both PARTIES, to support the CITY’s inspection effort for construction of the IMPROVEMENTS in COUNTY during and through the completion of the construction of said IMPROVEMENTS. COUNTY shall also provide any inspection services related to permits issued by COUNTY for the IMPROVEMENTS.

- C. Each PARTY shall perform their inspection and acceptance of work in accordance with the approved PLANS AND SPECIFICATIONS and in a cooperative and diligent manner.
3. **PROJECT Manager:** The designated manager for COUNTY for the duration of the construction of the PROJECT and IMPROVEMENTS is Ms. Wency Ng at (650) 599-1432. COUNTY's manager shall review, approve and accept technical and professional work within the scope of this AGREEMENT and shall serve as the principal point of contact with CITY. The designated manager for the CITY for the duration of the construction of the PROJECT and IMPROVEMENTS is Mr. Rodolfo Ordonez at (650) 330-6761. CITY's project manager shall have all the necessary authority to review, approve and accept technical and professional work within the scope of the AGREEMENT and shall serve as the principal point of contact with COUNTY. At any time during the term of this AGREEMENT, if either party designates a manager different than listed herein, the designating PARTY shall notify the other PARTY in writing within five (5) working days.
4. **Permits:** COUNTY agrees to issue, at no cost to the CITY or to CITY's Contractor, all necessary encroachment permits and inspections required for the construction of said PROJECT and IMPROVEMENTS within COUNTY's jurisdiction, if any, in accordance with the PLANS AND SPECIFICATIONS and subject to the normal business practices of COUNTY.
5. **Payment of Costs:**
- A. CITY shall notify COUNTY and provide a copy of the actual contract prices upon determination of low bid. Within fourteen (14) days of receipt of the actual contract prices, COUNTY shall respond in writing to either 1) reject the total cost of IMPROVEMENTS or 2) proceed with construction of the IMPROVEMENTS, and if needed, adjust the quantities of each line item detailed in Table 1 above so that the total actual cost of the IMPROVEMENTS does not exceed the "TOTAL COUNTY IMPROVEMENT ESTIMATED COST" outlined in Table 1 in Section 1 of this AGREEMENT.
- a. If COUNTY rejects the total cost of IMPROVEMENTS, CITY will revoke the IMPROVEMENTS from the construction contract.
- b. If COUNTY desires to proceed with the construction of the IMPROVEMENTS, and if needed, adjust the quantities of each line item detailed in Table 1 above so that the total actual cost of the IMPROVEMENTS does not exceed the "TOTAL COUNTY IMPROVEMENT ESTIMATED COST" outlined in Table 1 in Section 1 of this AGREEMENT, COUNTY shall provide proposed quantity adjustments in writing to the CITY within fourteen (14) days of receiving a copy of the actual contract prices. CITY shall proceed with construction of the quantity-adjusted IMPROVEMENTS list by adjusting those items as a part of the construction contract or revoke the items that are not part of the quantity-adjusted IMPROVEMENTS list.
- c. If COUNTY does not provide written response within fourteen (14) days after receiving a copy of the actual contract prices, CITY will revoke the IMPROVEMENTS from the construction contract.

- B. If during construction of the IMPROVEMENTS, the CITY receives Contract Change Order (CCO) requests due to unforeseeable conditions that are directly related to IMPROVEMENTS, CITY shall notify COUNTY in writing within 24 hours of receiving such CCO requests. After consulting with COUNTY, CITY shall negotiate a CCO with the CITY's contractor consistent with direction provided by COUNTY. The CITY shall notify COUNTY of any additional cost above and beyond the "Change Order Contingency" outlined in Table 1 in Section 1 of this AGREEMENT. CITY is not obligated to proceed with any CCO work related to IMPROVEMENTS that COUNTY has not approved and agreed to fund.
- a. If COUNTY does not approve the CCO and any additional cost within 48 hours of receiving notice of the CCO and any additional cost, CITY shall not approve the CCO and shall direct its contractor to cease further work on the IMPROVEMENTS. CITY shall coordinate with COUNTY to direct CITY's contractor to return both the public right of way and the incomplete IMPROVEMENTS to a safe and secure condition, including restoration of the pavement surface to the same condition as existed prior to the start of construction, at the COUNTY'S sole expense. CITY shall submit an invoice to COUNTY for the cost for the additional required restoration work as agreed by COUNTY and CITY. COUNTY shall pay entire invoice within sixty (60) days of receipt.
 - b. If a CCO directly related to the IMPROVEMENTS delays the Contractor's progress and is a compensable delay, COUNTY shall approve and agree to fund the CCO in a timely manner that avoids any delays. If COUNTY does not approve and agree to fund the CCO in a timely manner, CITY shall submit an invoice to COUNTY for the total cost of the compensable delay, and COUNTY shall pay entire invoice within sixty (60) days of receipt.
6. **Change Orders**: All requests for CCOs related to the IMPROVEMENTS shall be forwarded to COUNTY for review and approval pursuant to Section 5.
7. **Final Accounting**: Upon completion of the PROJECT work and the IMPROVEMENTS, CITY shall pay to the CITY's Contractor the final construction costs of said PROJECT and IMPROVEMENTS. Upon completion and acceptance of PROJECT and IMPROVEMENTS by CITY and COUNTY, CITY shall forward to COUNTY, within thirty (30) days, a final accounting of all costs related to the IMPROVEMENTS and an invoice for funds due CITY for the IMPROVEMENTS. This final accounting shall list the costs of construction as set forth in Section 1 of this AGREEMENT and additional approved change orders as outlined in Section 5 and 6 of this AGREEMENT.
8. **Operations and Maintenance**:
- A. During construction of the PROJECT and IMPROVEMENTS, each PARTY shall continue to operate and maintain the existing facilities within its own jurisdiction as occurred prior to the implementation of said PROJECT and IMPROVEMENTS.
 - B. Upon completion and acceptance of the PROJECT and IMPROVEMENTS, each PARTY shall own, operate, and maintain the elements within its own jurisdiction

9. **Insurance:** In the CITY's construction contract with the CITY's contractor for the PROJECT and IMPROVEMENTS, CITY shall require the CITY's contractor to comply with COUNTY Permit Insurance Requirements attached hereto as "Exhibit A." CITY shall also require CITY's contractor to defend, hold harmless, and indemnify COUNTY, its officials, employees, and agents; to provide bodily injury insurance, property damage insurance, contractual liability, worker compensation and auto coverages with such coverages to be primary and non-contributing; and to name COUNTY, its officials, employees, and agents as additional insureds. COUNTY shall be provided with a copy of CITY's contractor's insurance certificates and endorsements prior to commencement of construction of PROJECT and IMPROVEMENTS.

10. **Hold Harmless / Indemnification:** In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by either Party shall not be shared pro rata. Instead, the PARTIES agree that, pursuant to Government Code Section 895.4, each PARTY hereto shall fully defend, indemnify and hold harmless the other PARTY, its officers, council members, employees, and agents, from any claim, loss or liability arising from or as a result of the death of any person or any accident, injury, loss or damage caused to any person or property of any person occurring by reason of the willful or negligent acts (active or passive) or omissions of the indemnifying PARTY, its officers, employees or agents, arising out of or relating in any way to the indemnifying PARTY's performance of this AGREEMENT. The CITY's acceptance of the PROJECT and IMPROVEMENTS and COUNTY's payment of any sum due hereunder shall not operate as a waiver of this right of indemnification. The PARTIES' obligation under this provision shall survive the expiration or sooner termination of this AGREEMENT.

11. Termination:

A. The PARTIES can terminate this AGREEMENT at any time by mutual, written agreement. Unless the PARTIES agree otherwise, the termination shall become effective thirty (30) days after the written agreement to mutually terminate.

B. If either PARTY fails to perform any of its material obligations under this AGREEMENT, the PARTY failing to perform is deemed to be in breach and in default of this AGREEMENT. In addition to all other remedies provided by law; the non-breaching PARTY may terminate this AGREEMENT upon seven (7) days advance written notice (hereinafter, "NOTICE PERIOD") to the defaulting PARTY and provide the defaulting PARTY with either the opportunity to cure the specified breach or, in those instances where the specified breach cannot reasonably be cured within the NOTICE PERIOD, with the opportunity to commence to cure the specified breach within the NOTICE PERIOD. In the event the defaulting PARTY fails to cure or to commence to cure the specified breach within the NOTICE PERIOD, this AGREEMENT shall be immediately terminated.

C. The CITY's Director of Public Works is empowered to terminate this AGREEMENT on behalf of the CITY.

D. If this AGREEMENT is terminated, within thirty (30) days of termination, CITY shall invoice the COUNTY all actual costs related to IMPROVEMENTS, including but not limited to accrued construction, authorized by COUNTY and incurred by CITY up to the date of termination, in an amount not to exceed the "TOTAL COUNTY IMPROVEMENTS ESTIMATED COST" outlined in Table 1 of Section 1 of this AGREEMENT plus any approved change orders exceeding the total "Change Order Contingency" amount indicated in Table 1 of Section 1 of this AGREEMENT and any amount to restore the facilities to previous condition.

12. **Entire Agreement:** This AGREEMENT contains the entire agreement between the PARTIES relating to the PROJECT and IMPROVEMENTS. Any prior agreements, promises, negotiations, or representations not expressly set forth in this AGREEMENT are of no force or effect.
13. **Governing Law:** This AGREEMENT shall be governed and construed in accordance with the laws of the State of California. In the event that suit is brought by either PARTY, the PARTIES agree that trial of such action shall be exclusively vested in a state court in the County of San Mateo or, if federal jurisdiction is appropriate, in the United States District Court for the Northern District of California, San Jose, California.
14. **Acquisition of Property:** It is understood and agreed that the PROJECT and IMPROVEMENTS as described herein are totally within existing rights-of-way and no property acquisition or dedication is necessary.
15. **Terms of Agreement:** The term of this AGREEMENT shall commence upon execution of the AGREEMENT by both PARTIES and terminate upon PROJECT and IMPROVEMENTS acceptance and final payments. Warranty period shall be one (1) year from the acceptance date as specified in the PROJECT Specifications.
16. **Severability:** Should any part of this AGREEMENT be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of this AGREEMENT which shall continue in full force and effect; provided that the remainder of the AGREEMENT, absent the excised portion, be reasonably interpreted to give effect to the intentions of the PARTIES.
17. **Non Waiver:** A failure by either PARTY to require full compliance with any requirement or condition of this AGREEMENT shall not be deemed to be waiver of that requirement or condition or of any subsequent breach of the same or any other requirement or condition. Acceptance of performance or fulfillment of a requirement or a condition by the other PARTY, including CITY's payment to its CONTRACTOR, shall not be deemed to be a waiver of any preceding breach, regardless of knowledge or such preceding breach at the time of acceptance.
18. **Notices:** All notices required to be given hereunder, or which either PARTY may wish to give, shall be in writing and shall be served either by personal delivery or by mail, postage prepaid, addressed as follows, or to such other place as either PARTY may designate by written notice:

Mr. Jim Porter
Director of Public Works
County of San Mateo
555 County Center, 5th Floor
Redwood City, CA 94063

Mr. Justin Murphy
Director of Public Works
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attn: Chris Lamm


Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.


WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

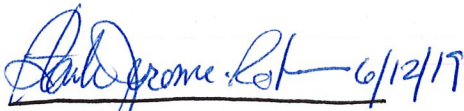
“CITY”

APPROVED AS TO FORM:

CITY OF MENLO PARK,
A Municipal Corporation


WILLIAM L. MCCLURE
City Attorney
6/12/19
Date

By 
JUDI A. HERREN
City Clerk
701 Laurel Street
Menlo Park, CA 94025
6/12/19
Date


Starla Jerome-Robinson
City Manager

“COUNTY”

COUNTY OF SAN MATEO,
A Municipal Corporation

By _____
CAROLE GROOM
President, Board of Supervisors
County of San Mateo
400 County Center, 1st Floor
Redwood City, CA 94063
Date

ATTEST:

Clerk of the Board of Supervisors Date

EXHIBIT A
County Permit Insurance Requirements

- 1) Comprehensive General Liability..... \$1,000,000**
- 2) Motor Vehicle Liability Insurance \$1,000,000**