

# REIMBURSEMENT AGREEMENT

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



## AGREEMENT # 3279

THIS REIMBURSEMENT AGREEMENT (the "Reimbursement Agreement"), is made and entered in the City of Menlo Park, on and as of this 9/3/2021, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY" and West Bay Sanitary District, a public agency of the State of California hereinafter called "WEST BAY";

### RECITALS:

- A. WHEREAS, the CITY will resurface certain streets along Willow Road between Middlefield Road and Chester Street Project;
- B. WHEREAS, all sanitary manhole covers within the construction limit need to be adjusted to grade;
- C. WHEREAS, WEST BAY is responsible for adjusting sanitary sewer manhole covers to grade, but prefers the CITY's contractor to adjust said manholes to grade; and
- D. WHEREAS, the list of WEST BAY'S sanitary manhole covers needed to be adjusted to grade is shown on the Exhibit "A" attached; and

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties herein contained, the City and the West Bay agree as follows:

### 1. INCORPORATION OF RECITALS

The foregoing recitals are hereby incorporated into this Reimbursement Agreement as if set forth in full herein.

### 2. CITY WORK

The CITY shall include in the construction contract of the PROJECT the adjustment of all WEST BAY sanitary manhole covers to grade as more particularly shown in Exhibit "A".

### 3. TERM

This Reimbursement Agreement, and the obligations herein, shall become effective commencing on the date set forth above and shall terminate upon the payment of West Bay's Reimbursement to City. This Reimbursement Agreement may also be terminated at any time upon written mutual agreement of the Parties, provided West Bay shall remain obligated to reimburse City for all costs expended by City through the termination date, plus any termination expenses due to City's contractor for early termination of this Agreement.

### 4. REIMBURSEMENT

- A. WEST BAY agrees to reimburse the CITY for the total actual cost incurred by the CITY for performing the work requested by WEST BAY. The estimated cost for WEST BAY'S work is forty-eight thousand two hundred thirty dollars (\$48,230). Said estimated total cost includes six percent (6%) to be reimbursed to CITY for engineering and administrative expenses. Details of the estimated cost are shown on Exhibit "A" attached. It is understood that the total sum to be reimbursed to the CITY shall be determined from actual costs to the CITY paid to the contractor to adjust to grade the manhole covers plus six percent (6%) for administrative and engineering expenses. It is agreed that the CITY shall transmit to WEST BAY the invoice for the actual amount of work completed by the contractor and the value thereof for payment. Upon receipt of the invoice, WEST BAY agrees to reimburse the City within ten (10) working days for the work completed.

- B. No change orders for WEST BAY'S portion of the work will be added without WEST BAY'S written consent.
- C. It is understood and WEST BAY agrees that upon completion of the work specified under this agreement, and mutual acceptance by the parties hereto, maintenance responsibilities for the improvements installed under this agreement shall vest in WEST BAY.
- D. WEST BAY shall inspect and approve the adjustment of all sanitary manhole covers to grade and all work shall conform to the approved plans, details and specifications.

**5. NOTICES**

Any notice to either party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail or express mail, return receipt requested with postage prepaid, to the party's mailing address. The respective mailing addresses of the parties are, until changed, the following:

**City:**

Public Works Director  
City of Menlo Park  
701 Laurel St.  
Menlo Park, CA 94025

**Copy to:**

City Attorney  
City of Menlo Park  
701 Laurel St.  
Menlo Park, CA 94025

**West Bay**

Attn: Sergio Ramirez – District Manager  
West Bay Sanitary District  
500 Laurel St.  
Menlo Park, California 94025

Either Party may change its mailing address at any time by giving ten (10) days' notice of such change in the manner proved in this paragraph. All notices shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

**6. SEVERABILITY**

In the event any one or more of the provisions of the Reimbursement Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of the Reimbursement Agreement shall remain in effect and the Reimbursement Agreement shall be read as though the offending provision had not been written or as the provision shall be determined by such court to be read.

**7. GOVERNING LAW**

This Reimbursement Agreement is made under, shall be governed by and construed in accordance with the laws of the State of California.

This Reimbursement Agreement has been reviewed and revised by legal counsel for both the District and the City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of the Reimbursement Agreement.

**8. INDEMNIFICATION**

- A. WEST BAY shall indemnify and hold harmless the CITY from all claims, suits, or action of every name, kind and description, arising out of or relating to the matters covered by this agreement to the extent such claims, suits or actions are due to the negligence or willful misconduct of WEST BAY or WEST BAY'S failure to perform obligations required of WEST BAY under this Agreement.

- B. The CITY shall indemnify and hold harmless WEST BAY from all claims, suits or action of every name, kind and description, arising out of or relating to the matters covered by this agreement to the extent such claims, suits or actions are due to the negligence or willful misconduct of CITY or CITY'S failure to perform obligations required of the CITY under this Agreement.
- C. The duty to indemnify and hold harmless includes duties to defend as set forth in Section 2778 of the California Civil Code.

**9. FURTHER ASSURANCES**

Each Party covenants, on behalf of itself and its successors and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents, instruments and writings as may be necessary or proper to achieve the purposes and objectives of the Reimbursement Agreement.

**10. ATTORNEY'S FEE'S:**

In the event of any litigation arising out of this Reimbursement Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs of such litigation.

SIGNATURE PAGE TO FOLLOW

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

**WEST BAY SANITARY DISTRICT,  
A CALIFORNIA PUBLIC AGENCY**

DocuSigned by:  
*Sergio Ramirez*  
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\_\_\_\_\_  
Signature

8/30/2021  
\_\_\_\_\_  
Date

Sergio Ramirez  
\_\_\_\_\_  
Name

District Manager  
\_\_\_\_\_  
Title

**APPROVED AS TO FORM:**

DocuSigned by:  
*Nira Doherty*  
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\_\_\_\_\_  
Nira F. Doherty, City Attorney

8/30/2021  
\_\_\_\_\_  
Date

**CITY OF MENLO PARK:**

DocuSigned by:  
*Nicole Nagaya*  
0318D4361A35434...  
\_\_\_\_\_  
Nicole H. Nagaya, Public Works Director

9/3/2021  
\_\_\_\_\_  
Date

**ATTEST**

DocuSigned by:  
*Judi A. Herren*  
39280A20D0BE491...  
\_\_\_\_\_  
Judi A. Herren, City Clerk

9/7/2021  
\_\_\_\_\_  
Date

7/15/2021

**EXHIBIT A**

**WILLOW RD RESURFACING PROJECT BETWEEN MIDDLEFIELD RD  
AND CHESTER STREET PROJECT**

WBSD MANHOLES TO BE ADJUSTED TO GRADE	35 EA. (Estimated)
Estimated Cost per each	\$1,300
Subtotal	\$45,500
6% Administration and Eng.	<u>\$ 2,730</u>
TOTAL	\$48,230