

AGREEMENT BETWEEN THE CITY OF SOUTH SAN FRANCISCO AND
THE TOWN OF COLMA FOR POLICE INFORMATION SERVICES

This Police Communications Services Agreement ("Agreement") is entered into on July 1, 2023, by and between the CITY OF SOUTH SAN FRANCISCO, hereinafter referred to as "SSF" and the TOWN OF COLMA, hereinafter referred to as "COLMA." (sometimes referred to individually as "Party" or collectively as the "Parties")

RECITALS

WHEREAS, COLMA desires SSF to furnish computerized police information services to COLMA through the utilization of SSF facilities and staff ("Services"); and

WHEREAS, SSF is willing to furnish said Services to COLMA for a mutually agreed cost; and

WHEREAS, the Parties to this Agreement have determined that the computer-aided dispatch and records management systems belonging to the Parties are compatible and will be an effective method of record keeping for both Parties; and

WHEREAS, it is necessary and desirable that the Parties enter into this Agreement to outline the terms and conditions of SSF's provision of the Services as set forth below;

NOW, THEREFORE, in consideration of the recitals and mutual obligations contained herein, SSF and COLMA agree as follows:

1. Description of Services

- (a) SSF shall provide and maintain computer hardware and system software at the SSF communications center to support COLMA computer aided dispatching (CAD) and automated records management (RMS). COLMA, at its own expense, shall procure the necessary compatible application software for computer aided dispatching and automated records management. Further, COLMA shall be responsible for paying all recurring software maintenance fees for all software that it has purchased and/or licensed in connection with this Agreement.
- (b) SSF shall provide services to COLMA for mobile computers to access CAD and RMS databases. COLMA shall be responsible for its own telecommunications and hardware expenses.
- (c) SSF shall pay the County of San Mateo for the state and regional criminal justice database queries processed through SSF systems made by COLMA, commonly known as message-switch fees. COLMA shall be responsible for its own message-switch fees for queries that do not traverse SSF systems.
- (d) SSF shall make the services of its telecommunications engineering and police technology team available to design and maintain the systems required to provide the Services identified herein. If the telecommunications engineering and police technology team costs increase during this Agreement, the Parties will meet to agree upon an additional amount to be paid by COLMA sufficient to cover the increased costs. Any telecommunications engineering and police

technology team cost increases must be set forth in a written amendment to this Agreement and executed by both Parties prior to implementation.

- (e) COLMA and SSF shall jointly maintain and update a computerized geographic information file, with each Party focusing on streets and premise data in its own jurisdiction.

2. Operational Responsibilities

- (a) The SSF Communications Information Systems shall be under the direction and management control of SSF's Chief of Police.

3. Compensation for Services

- (a) COLMA shall pay SSF the amounts detailed below as compensation for Services provided during each fiscal year beginning July 1, 2023, and ending on June 30, 2026. SSF shall invoice COLMA in advance on a quarterly basis beginning on July 1, 2023 in an amount equal to one-quarter (1/4) of the annual amount due. COLMA shall remit in full within forty-five (45) days of receiving an invoice from SSF.

2023-2024	2024-2025	2025-2026
\$25,000	\$30,000	\$30,500

- (b) Upon mutual written agreement, COLMA may request SSF to provide additional police communications services for special events at the rate of \$105 per hour per employee with a minimum of four (4) hours per event. COLMA must schedule special events with SSF at least thirty (30) days in advance of the event date.

4. Term

SSF shall furnish the agreed-upon Services as set forth above for a term of three (3) years, commencing July 1, 2023, and expiring June 30, 2026 ("Term"). The Term may be extended for up to a three (3) year period if mutually agreed by SSF and COLMA in writing prior to the termination of this Agreement.

5. Waiver/Immunities

- (a) Waiver.

COLMA is responsible for damages to or loss of its property and waives its right to sue SSF for any damages to or loss of its property or injury to its personnel that may occur in responding to Services pursuant to this Agreement, except for loss of COLMA'S property or injury to COLMA'S personnel that is caused by the gross negligence or willful misconduct of SSF.

- (b) Immunities.

By entering into this Agreement, neither Party waives any of the immunities provided by the California Government Code or other applicable provisions of law.

6. Termination of Agreement

This Agreement may be terminated in accordance with the following:

(a) Termination without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, the Parties to this Agreement shall have the right, in their sole discretion, to terminate this Agreement by giving one hundred eighty (180) days' written notice to the other Party.

(b) Termination for Cause

Notwithstanding any other provision of this Agreement, if either Party fails to perform or cure any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violates any of the terms of this Agreement, the other Party may immediately terminate this Agreement by giving written notice of such termination, stating the reason for the termination.

(c) Ability to Cure

In the event of any alleged failure to perform any terms or conditions of this Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which said breach or default may be satisfactorily cured, and the Party in breach shall have thirty (30) days following such notice ("**Cure Period**") to cure such breach. During the Cure Period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings. The failure of any Party to give notice of any breach shall not be deemed to be a waiver of that Party's right to allege any other breach at any other time.

(d) Payment Upon Termination

Upon termination of this Agreement, COLMA shall, within thirty (30) days of termination, pay SSF any outstanding balance for Services or materials provided by SSF.

7. Notices

All notices, demands, requests, consents, approvals, waivers, or communications ("Notices") that either Party desires or is required to give to the other Party or any other person shall be in writing and either personally served or sent by prepaid postage, first class mail. Notices shall be addressed as appears below for each Party except if either Party gives notice of a change of name or address, notices to the giver of that Notice shall thereafter be given as demanded in that Notice.

SSF: City of South San Francisco
 City Manager
 400 Grand Avenue
 South San Francisco, CA 94080

COLMA: Town of Colma
City Manager
1188 El Camino Real
Colma, CA 94014

8. Relationship of Parties

Both Parties agree and understand that the services performed under this Agreement are performed as an independent contractor, and that neither Party's employees acquire any of the rights, privileges, powers, or advantages of the other Party's employees, including any obligations related to PERS. No pension rights of COLMA or SSF employees will be affected by this Agreement.

9. Confidential Law Enforcement/Personal Health Information

- A. Law Enforcement Information. COLMA shall provide SSF with proof of eligibility to access State and Federal automated criminal justice databases. COLMA shall provide to SSF identifying information on its employees that require access to said databases to facilitate SSF maintaining computerized security tables that allow or prohibit access. SSF may restrict access if "reasonably necessary" from view by COLMA if SSF deems it necessary to protect security of its employee information. SSF and COLMA shall be individually responsible for complying with State and Federal training requirements for employees related to criminal justice databases. COLMA shall be responsible for proper use of criminal justice information disseminated to it by SSF. COLMA agrees to indemnify and hold harmless SSF in the event of misuse of confidential information by COLMA users.
- B. Personal Health Information. Each Party shall implement and maintain proper controls and procedures to ensure that any personal health information ("PHI") stored or accessed in the computer systems is properly protected and only accessed, stored, and disseminated in accordance with applicable local, state, and federal law and regulations. COLMA agrees to indemnify and hold harmless SSF in the event of improper handling and/or misuse of PHI by COLMA users.

10. Hold Harmless, Indemnification

- (a) COLMA shall defend, save harmless and indemnify SSF, its officers and employees from any and all claims which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of COLMA, its officers, employees and contractors, including any claims arising out of compliance with the California Public Records Act ("CPRA), Health Insurance Portability and Accountability Act ("HIPAA"), and adherence to record retention requirements.
- (b) SSF shall defend, save harmless, and indemnify COLMA, its officers and employees from any and all claims which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of SSF, its officers, employees and contractors, including any claims arising out of compliance with the California Public Records Act ("CPRA), Health Insurance

Portability and Accountability Act ("HIPAA"), and adherence to record retention requirements.

- (c) In the event of concurrent negligence of SSF, its officers and/or employees, and COLMA, its officers and/or employees, then the liability for any and all claims which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.
- (d) This section shall include, without limitation, any actions, claims, suits, demands, and liability of every name, kind, and description brought for, or on account of injuries to or death of any person, including COLMA or SSF, or damage to property of any kind whatsoever and to whomsoever belonging.
- (e) The duty to indemnify and hold harmless as set forth herein shall include the duty to defend as set forth in Civil Code Section 2778.

11. Radio Systems

COLMA shall own and operate its police radio system and be solely responsible for its procurement, maintenance and replacement. SSF shall not provide radio system services to COLMA as part of this agreement.

12. Ownership of Computerized Data

Both Parties acknowledge that automated law enforcement records information for SSF and COLMA will be compiled into a single computer database owned and managed by SSF. SSF agrees to allow COLMA to electronically copy its records for the purpose of maintaining its own archive without additional cost to COLMA.

13. Assignability and Subcontracting

Neither Party may assign the benefits nor delegate the duties set forth in this Agreement.

14. Insurance

Both Parties shall maintain sufficient insurance, self-insurance or a combination thereof to comply with the following requirements, and, if requested, each Party shall furnish the other Party with certificates of insurance evidencing the required coverage. Thirty (30) days' notice must be given, in writing as set forth in this Agreement of any pending change in the limits of liability or of any cancellation or modification of the policy.

- a) **Worker's Compensation and Employer's Liability Insurance.** Both Parties shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance, or an acceptable program of self-insurance providing full statutory coverage. In signing this Agreement, Parties certify, as required by Section 1861 of the California Labor Code, that they are aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and Parties will comply with such provisions before commencing the performance of the work of this Agreement.

b) **Liability Insurance.** COLMA and SSF shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from COLMA's and SSF's operations under this Agreement, whether such operation be by itself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than:

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

c) **Cyber and Privacy Insurance.** Each Party under this AGREEMENT shall maintain cyber risk coverages including network and internet security liability coverage, privacy liability coverage, first party privacy coverage, and media coverage. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, or information that can be linked to a specific individual, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, license plate numbers, protected health information or other similar information (collectively, "Personally Identifiable Information"), stored or transmitted in electronic form. If such policy is written on a claims-made (rather than an occurrence) basis, Parties shall maintain continuous coverage in effect for the Term of Agreement and for at least one (1) year beyond the termination or completion of services.

15. Non-Discrimination

No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, child birth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

COLMA and SSF shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. COLMA's and SSF's equal employment policies shall be made available to either Party upon request.

16. Retention of Records

Each Party agrees to provide to the other Party, to any federal or state department having monitoring or reviewing authority, to SSF's or COLMA's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules, and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed. COLMA shall maintain and preserve all records relating to this Agreement for

a period of five (5) years from the termination date of this Agreement, or until audit findings are resolved, whichever is greater. SSF shall maintain and preserve all records relating to this Agreement in accordance with SSF's adopted records retention schedule.

17. Response to Public Records Act Requests, Subpoenas, and DOJ Audits

COLMA and SSF shall be individually responsible for complying with requests for their respective records under the California Public Records Act ("CPRA"). COLMA and SSF shall each defend, save harmless and indemnify the other, its officers and employees from any and all claims which arise out of each Party's compliance with records requests for their respective records under the CPRA, including but not limited to, a Party's decision to withhold or release records in connection with a CPRA request. SSF shall provide technical assistance to COLMA if the request to COLMA involves records contained in SSF's automated systems.

The Parties agree for purposes of section 7921.505 of the California Government Code that any and all information exchanged between SSF and COLMA pursuant to this Agreement will be treated as confidential, that only persons authorized in writing by the SSF City Manager or the COLMA City Manager or their delegees shall be permitted to obtain such information, subject to all applicable laws and regulations, and that any and all information exchanged between SSF and COLMA pursuant to this Agreement will only be used for purposes consistent with existing law.

COLMA and SSF shall be individually responsible for responding to California Department of Justice audits related to the California Law Enforcement Telecommunications System (CLETS) and the Department of Justice Criminal Justice Information System (CJIS) databases. SSF shall provide technical assistance to COLMA to extract the necessary information from the computer aided dispatch and records management systems when requested.

18. Merger Clause

This Agreement, including any Exhibit(s) hereto 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 Parties.

19. Controlling Law

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the Parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

20. Amendment

This Agreement may be amended at any time upon the written mutual approval of the Parties.

21. Severability

If any provision of this Agreement shall be held to be invalid, void or unenforceable, the validity, legality or enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

22. Waiver

A waiver by either Party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenant or condition, nor shall the delay or forbearance by either Party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

23. Remedies Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties hereunder are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default. Upon the occurrence of an event of default, the Parties may pursue all remedies at law or in equity which are not otherwise provided for in this Agreement, expressly including the remedy of specific performance of this Agreement.

24. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

25. Attorneys' Fees

In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement, the prevailing Party shall recover attorneys' fees and other costs, including, but not limited to court costs and expert and consultants' fees incurred in connection with such action, in addition to any other relief awarded, and such attorneys' fees and costs shall be included in any judgment in such action.

26. Captions; Interpretation

The captions used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

27. Disputes

If a dispute arises between the Parties regarding performance of either Party under this Agreement, the Parties shall attempt to resolve such dispute informally by a meeting with representatives of each Party. If, after a good faith attempt by both Parties to resolve the dispute informally no resolution can be reached, the Parties may, at their sole and mutual discretion, agree to engage in mediation prior to initiating any legal action, the costs of which shall be divided equally between the Parties, unless otherwise agreed.

28. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

29. Further Assurances

The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and to undertake such actions, as either shall reasonably request or as may be necessary to carry out the intent of this Agreement.

30. Time is of the Essence

Time is of the essence and is a material term for all conditions and provisions contained in this Agreement.

31. Authority

Each person executing this Agreement on behalf of one of the Parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such Party and that this Agreement is binding on such Party in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have affixed their hands on the day and year in this Agreement first above written.

City Manager
City of South San Francisco

City Manager
Town of Colma

ATTEST By:

COLMA

Dated

City Attorney

Approved as to form:

SOUTH SAN FRANCISCO

Dated

City Attorney

Approved as to form: