

draft AGREEMENT FOR REIMBURSEMENT FOR CONSTRUCTION WORK

This Agreement for Reimbursement for Construction Work (“Agreement”) is entered into by and between the City of South San Francisco, a municipal corporation organized under the laws of the State of California (the “City”), and the Town of Colma, a municipal corporation organized under the laws of the State of California (“Colma”), on [REDACTED] (“Effective Date”). The City and Colma may be individually referred to as a “Party” or collectively as the “Parties”.

RECITALS

- A. The City is currently undertaking the Hillside Boulevard Road Diet Improvements Project (“Project”) to construct pedestrian and bicyclist improvements along Hillside Boulevard and to perform road maintenance surface treatment consisting of slurry seal and restriping work (“Project Work”). After competitive bidding, the City’s Council awarded a contract for the Project to Ray’s Electric of Oakland, California (“City Contractor”).
- B. The Project is located along Hillside Boulevard between Lawndale Boulevard and Lincoln Street, which is adjacent to Colma’s jurisdictional boundaries. Colma has requested that the City extend the Project’s slurry seal and restriping work to the roadway within Colma’s boundaries along Hillside Boulevard between Serramonte Boulevard and Lawndale Boulevard, as identified in **Exhibit A** attached hereto and incorporated herein by reference (“Additional Scope of Work”), subject to reimbursement by Colma to City as set forth in this Agreement.
- C. The City is agreeable to Colma’s proposal and requested a cost proposal from the City Contractor for the Additional Scope of Work. The City Contractor provided Potential Change Order No. 3 (Additional Slurry Seal and Striping) attached hereto as **Exhibit B** and incorporated herein by reference (“PCO”) describing the Additional Scope of Work the City Contractor agreed to perform and requesting compensation in the amount of **\$293,605.46** (“Additional Work Costs”).
- D. The Parties determined that the Additional Work Costs constitute a reasonable cost estimate for the Additional Scope of Work, and Colma agrees to reimburse the City in an amount equal to: (1) the Additional Work Cost; (2) a contingency that shall cover costs not originally contemplated in the Additional Work Costs (“Construction Contingency”) that may be used as set forth in this Agreement; and (3) other additional costs actually incurred by the City to complete the Additional Scope of Work not included under Items (1) and (2). These three reimbursement items are collectively referred to as “Total Construction Costs”.

For purposes of providing an estimation to the Parties, the Additional Work Cost and Construction Contingency are broken down as follows:

Additional Work Cost	\$ 293,605.46
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Construction Contingency (Estimated amount to cover additional costs not included above)	\$ 29,360.54 (estimated)
Estimated Total Construction Costs:	\$ 322,966.00

- E. The City is agreeable to direct the City Contractor to perform the Additional Scope of Work through execution of the PCO and to administer the Additional Scope of Work, subject to Colma reimbursing the City for the Total Construction Costs pursuant to this Agreement, and approval of this Agreement by the Parties' respective governing bodies (each, a "Council").

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals & Exhibits. The recitals set forth above, and the exhibits attached to this Agreement, are true and correct and are incorporated into this Agreement as though fully set forth herein.
2. Term. This Agreement shall be effective as of the Effective Date, and shall continue in effect until the Additional Scope of Work is Complete. The Additional Scope of Work shall be deemed "Complete(d)" after the parties satisfy the terms of the "Completion" section of this Agreement.
3. Legal Sufficiency of PCO and Contract with City Contractor.
 - a) The City Contractor and the City entered into a contract for the construction of the Project on or about [REDACTED] ("Project Contract Documents"), and the City Contractor is already mobilized through itself or its subcontractors to perform the exact work on the Project contemplated by the Additional Scope of Work.
 - b) Through the approval of this Agreement by their Councils, the Parties find and declare that: (1) given that the City Contractor is already mobilized to perform the exact work on the Project contemplated by the Additional Scope of Work, there will be significant cost savings arising from the City Contractor performing the Additional Scope of Work; and (2) competitively bidding the Additional Scope of Work is not required given the substantial similarity between the Project Work and the Additional Scope of Work, and the purposes of competitive bidding would not be served given the advantage to the public arising from the cost efficiencies generated by having the City Contractor perform the Additional Scope of Work; and (3) competitive bidding would not produce an advantage and competitively bidding the Additional Scope of Work would be undesirable under the circumstances.

4. City Obligations.

- a) **Construction.** The City shall be solely responsible for construction of the Additional Scope of Work by the City Contractor. The City is responsible for ensuring that the Additional Scope of Work is performed in compliance with all applicable local, state and federal laws including, without limitation, the Public Contract Code and the Labor Code, and shall be responsible for obtaining all applicable approvals from authorities having jurisdiction, including, without limitation, environmental clearances and permits necessary to complete the Additional Scope of Work. Colma shall reimburse the City for actual costs incurred in obtaining the foregoing approvals as provided in this Agreement.
- b) **Cost Accounting.** The City shall prepare a final accounting of all construction costs associated with the Additional Scope of Work and provide such final accounting to Colma within twenty (20) business days after the Additional Scope of Work is Complete.
- c) **Plan Review.** The City shall, if it has not done so already, provide Colma a reasonable opportunity to review and approve all design documents generated for the Additional Scope of Work that the City Contractor will rely upon to construct the Additional Scope of Work.
- d) **City Contractor Permits.** The City shall require the City Contractor to obtain all required permits and approvals for the Additional Scope of Work and shall require that the City Contractor comply with all applicable local, state and federal laws while performing the Additional Scope of Work. The City shall ensure that the City Contractor shall construct the Additional Scope of Work consistent with the Project Contract Documents and any design documents applicable to the Additional Scope of Work.
- e) **Site Access.** The City shall direct the City Contractor to allow Colma staff access to the site at which the Additional Scope of Work is performed at all reasonable times to perform observation of the Additional Scope of Work.
- f) **Close-out Documents.** The City shall provide Colma with all close-out documentation, including, without limitation, as-built record drawings and any warranties, within a reasonable time after the Additional Scope of Work is Complete. Upon Completion, ownership of and responsibilities for the Additional Scope of Work shall rest solely with Colma.

5. Colma's Obligations.

- a) **Cost Reimbursement.** Colma agrees to reimburse the City for the Additional Scope of Work in the amount equal to the Total Construction Costs as described in

this Agreement. As a condition of payment, when the Additional Scope of Work is Complete, Colma shall have the right to inspect and confirm that the Additional Scope of Work complies with the Project's plans and specifications as approved by the City pursuant to the process for deeming the Project Complete as set forth in Section 6(d), which confirmation shall not be unreasonably withheld.

Prior to authorizing the Additional Scope of Work or approving any additional change order submitted by the Contractor for any subsequent work, Colma shall have a reasonable opportunity to review and approve any proposed costs solely to determine whether the costs are necessary to complete the Additional Scope of Work as authorized by the Project Contract Documents. The City shall provide Colma with an invoice setting forth the amount of Total Construction Costs incurred at that point by the City, detailing all actual costs incurred for completing the Additional Scope of Work. Thereafter, Colma agrees to pay the undisputed portion of the Total Construction Costs to the City within thirty (30) days of Colma's confirmation of the Additional Scope of Work's compliance with the Project Contract Documents as set forth above. Any disputed portion of the Total Construction Costs shall be resolved in accordance with Section 11 below and, upon resolution, be paid to the City by Colma within thirty (30) days of resolution in accordance with the then agreed upon terms between the Parties.

- b) **Cooperation with Contract Administration.** To the extent necessary, Colma shall review and respond to all requests for information, inspection, change orders and approvals related to the Additional Scope of Work and cost reimbursement described in subsection (a) above and provide its comments within five (5) business days after submission by City to Colma.
- c) **Maintenance.** Colma, as the owner of the Additional Scope of Work, shall be solely responsible for all future maintenance after the Additional Scope of Work is Complete. The City shall have no responsibilities whatsoever with respect to the Additional Scope of Work after it is Completed.

6. Administration of Construction Work.

- a) **Contract Administration.** Colma has no contractual privity with the City Contractor and the City agrees to administer the Additional Scope of Work consistent with the Project Contract Documents. The City shall administer and supervise the Additional Scope of Work as it would the Project.
- b) **Cooperation for Incorrect Work.** If Colma determines that the City Contractor and/or the Additional Scope of Work fails to comply with the Project Contract Documents, applicable law, or the work is non-conforming or defective (collectively, "Incorrect Work"), Colma shall give written notice to City within a reasonable time. The City shall reasonably cooperate with Colma to provide the City Contractor with any required notice under the law or Project Contract

Documents and shall take reasonable steps to ensure City Contractor corrects the Incorrect Work, including, without limitation, the assessment of liquidated damages or withholding progress payments and/or retention (if applicable). If City disagrees with Colma, the City may assign Colma any claim arising from the Incorrect Work and Colma may elect to pursue the claim at its sole cost and expense, except that the City shall reasonably cooperate with Colma to substantiate any claims or damages. Any such assignment shall be executed in a separate agreement signed by the Parties.

- c) **Liquidated Damages Assessment.** If City assesses liquidated damages against the City Contractor (if applicable), Colma shall be entitled to the total amount of liquidated damages assessed against the City Contractor. Colma may elect to deduct the amount of liquidated damages from any amount due by Colma to the City under this Agreement.
 - d) **Completion.** The Additional Scope of Work shall be deemed “Complete” when the Parties comply with the following process:
 - i. When the City Contractor has indicated that the Additional Scope of Work is complete consistent with the Project Contract Documents, the City shall notify Colma.
 - ii. Colma shall, within a reasonable time, inspect the Additional Scope of Work and identify minor, corrective work that needs to be completed by City Contractor (“Punchlist Work”).
 - iii. The City Contractor shall complete the Punchlist Work and this process shall be repeated until Colma reasonably determines that the Additional Scope of Work is fully complete consistent with the Project Contract Documents.
 - iv. Thereafter, Colma shall transmit a written notice to the City indicating that it accepts the Additional Project Work as fully completed.
 - v. Nothing in the foregoing shall be construed as deeming the Project completed pursuant to applicable law and the Project Contract Documents.
7. **Insurance.** The City shall ensure that the City Contractor maintains all policies of insurance with applicable endorsements as indicated in the Project Contract Documents with coverage extended to the Additional Scope of Work. The City shall ensure that the City Contractor adds Colma as an additional insured to every policy of insurance required by the Project Contract Documents.
8. **Indemnification.** Each Party shall indemnify, defend and hold the other Party, its officials, officers, employees, agents, consultants and contractors free and harmless from any and all

claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any failure to comply with this Agreement, negligent acts or omissions, or willful misconduct, of the indemnifying Party, its officials, officers, employees, agents, consultants or contractors in the performance of the indemnifying Party's obligations under this Agreement and/or the Additional Scope of Work, including the payment of all reasonable attorneys' fees. City shall include language in the PCO requiring the City Contractor to defend and indemnify Colma in a form substantially similar to this indemnity provision, except that Colma will not defend and indemnify City Contractor.

9. Force Majeure. The failure of performance by either Party (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other Party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the Parties); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement between the Parties.

10. Time is of the Essence. Each Party warrants that it shall make its best efforts to perform all obligations assigned to it related to the Additional Scope of Work in such a manner as to allow the Additional Scope of Work to progress as scheduled.

11. Dispute Resolution. Unless otherwise specified herein, the Parties shall submit any unresolved dispute to City's Public Works Director or designee and Colma's Public Works Director or designee for negotiation. The Parties agree to undertake good faith attempts to resolve said dispute, claim, or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if the matter is not resolved within thirty (30) calendar days after conducting the first negotiating session, either Party may, but is not required to, request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.

12. Legal Action. If a matter is not resolved within thirty (30) calendar days after the first negotiating session between the Parties, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity.

13. Written Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

COLMA:
Town of Colma
[INSERT ADDRESS]
Attention: [INSERT CONTACT]

CITY:
City of South San Francisco
[INSERT ADDRESS]
Attention: [INSERT CONTACT]

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

14. Relationship of the Parties. This Agreement does not create any partnership or joint venture between the City and Colma. City and City Contractor are independent contractors and nothing contained in this Agreement shall be construed as creating an employer/employee or principal/agent relationship between City and Colma. Except for review Colma's right to review the Additional Scope of Work as set forth in the "Colma's Obligations" section above, Colma shall not exercise any control over City, City Contractor, or the Project.

15. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

16. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue to be in full force and effect.

17. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, shall survive any such expiration or termination.

18. Assignment of Agreement. Neither Party may assign or transfer its respective rights or obligations under this Agreement without the express written consent of the other Party. Any purported assignment or transfer by one Party without the express written consent of the other Party shall be null and void and of no force or effect.

19. Execution in Counterparts. This Agreement may be executed in counterparts and/or by facsimile or other electronic means, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one Agreement, which shall be binding upon and effective as to all parties.

20. Entire Agreement. This Agreement represents the entire and integrated agreement between the parties. This Agreement may be modified or amended only by a subsequent written agreement signed by both parties.

21. Knowing and Voluntary Execution. Both parties to this Agreement have had the opportunity to be advised by and to have this Agreement reviewed by legal counsel of their choosing.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

CITY OF SOUTH SAN FRANCISCO

By: _____
Sharon Ranals, Interim City Manager

Attest:

City Clerk

Approved as to form:

City Attorney

TOWN OF COLMA

By: _____

Name: _____

Title: _____

Exhibit A
Description of Additional Scope of Work

[INCLUDE A DETAILED DESCRIPTION OF THE SCOPE OF WORK **OR** ATTACH THE
PLANS AND SPECIFICATIONS]

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Exhibit B
Potential Change Order (PCO) No. 3 (Additional Slurry Seal and Striping)

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