



**AGENDA
REGULAR MEETING
CITY COUNCIL OF THE TOWN OF COLMA**

**Wednesday, April 28, 2021
7:00 PM**

On March 17, 2020, the Governor issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means. Pursuant to the Shelter-in-Place Orders issued by the San Mateo County Health Officer on March 16, 2020 and March 31, 2020, the statewide Shelter-in-Place Order issued by the Governor in Executive Order N-33-20 on March 19, 2020, and the CDC's social distancing guidelines which discourage large public gatherings, the Council Chamber will not be open to the public for this Town of Colma City Council Meeting. The purpose of these orders was to provide the safest environment for Council Members, staff and the public while allowing for public participation.

Members of the public may view the meeting by attending, via telephone or computer, the Zoom Meeting listed below:

**Join Zoom Meeting: <https://us02web.zoom.us/j/81289976261>
Passcode: 074407**

**Meeting ID: 812 8997 6261
Passcode: 074407**

One tap mobile

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+1 669 900 6833 US (San Jose)

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**Meeting ID: 812 8997 6261
Passcode: 074407**

Find your local number: <https://us02web.zoom.us/u/kco5bgxkcc>

Members of the public may provide written comments by email to the City Clerk at ccorley@colma.ca.gov before or during the meeting. Emailed comments should include the specific agenda item on which you are commenting or note that your comment concerns an item that is not on the agenda. The length of the emailed comment should be commensurate with the three minutes customarily allowed for verbal comments, which is approximately 250-300 words.

PLEDGE OF ALLEGIANCE AND ROLL CALL

ADOPTION OF AGENDA

PRESENTATION

- Proclamation in honor of National Poetry Month and Recognition of Daly City Youth Poet Laureate Madeleine Hur
- Commendation of Officers Kim Trask and Joshua Moreno

PUBLIC COMMENTS

Comments on the Consent Calendar and Non-Agenda Items will be heard at this time. Comments on Agenda Items will be heard when the item is called.

CONSENT CALENDAR

1. Motion to Accept the Minutes from the March 24, 2021 Regular Meeting.
2. Motion to Adopt a Resolution Authorizing the City Manager to Execute a Five-Year Financial Reporting and Transparency Contract with OpenGov for a Total Contract Value of \$85,575.

PUBLIC HEARING

3. ELECTRONIC SERVICE OF GOVERNMENT CLAIMS AND NOTICES

Consider: Motion to Introduce and Waive a Further Reading of an Ordinance Amending Colma Municipal Code Subchapter 1.14 to Provide for Filing of Electronic Claims.

4. FUTURE NEW OR INCREASED RATES FOR SEWER SERVICE FEES BY RESOLUTION

Consider: Motion to Introduce and Waive a Further Reading of an Ordinance Amending Sections 3.04.160 and 3.04.170 of Subchapter 3.04 of the Colma Municipal Code Authorizing the Town to Adopt Future New or Increased Rates for Sewer Service Fees by Resolution.

STUDY SESSION

5. DONATION OF LAND TO THE TOWN OF COLMA

This item is for discussion only; no action will be taken at this meeting.

6. FY 2021-22 BUDGET

This item is for discussion only; no action will be taken at this meeting.

REPORTS

Mayor/City Council

City Manager

ADJOURNMENT

The City Council Meeting Agenda Packet and supporting documents are available for review on the Town's website www.colma.ca.gov or at Colma Town Hall, 1198 El Camino Real, Colma, CA. Persons interested in obtaining an agenda via e-mail should call Caitlin Corley, City Clerk at 650-997-8300 or email a request to ccorley@colma.ca.gov.

Reasonable Accommodation

Upon request, this publication will be made available in appropriate alternative formats to persons with disabilities, as required by the Americans with Disabilities Act of 1990. Any person with a disability, who requires a modification or accommodation to view the agenda, should direct such a request to Pak Lin, ADA Coordinator, at 650-997-8300 or pak.lin@colma.ca.gov. Please allow two business days for your request to be processed.

**MINUTES
REGULAR MEETING**

City Council of the Town of Colma
Meeting Held Remotely via Zoom.us
Wednesday, April 14, 2021
7:00 PM

PLEDGE OF ALLEGIANCE AND ROLL CALL

Mayor Diana Colvin called the meeting to order at 7:05 p.m.

Council Present – Mayor Diana Colvin, Vice Mayor Helen Fisicaro, Council Members Raquel Gonzalez, Joanne F. del Rosario, and John Irish Goodwin were all present.

Staff Present – City Manager Brian Dossey, City Attorney Christopher Diaz, Chief of Police John Munsey, Administrative Services Director Pak Lin, Director of Public Works Brad Donohue, City Engineer Cyrus Kianpour, City Planner Michael Laughlin and City Clerk Caitlin Corley were in attendance.

The Mayor announced, “Welcome to another of our completely remote Council Meeting. A few notes about tonight’s meeting: We are accepting public comments through email— please email ccorley@colma.ca.gov to submit a public comment. You can also use the chat function to chat directly to our city clerk and she will be able to let us know that you would like to make a comment when your item comes up in the agenda. Thank you.”

ADOPTION OF THE AGENDA

Mayor Colvin asked if there were any changes to the agenda; none were requested. She asked for a motion to adopt the agenda.

Action: Council Member del Rosario moved to adopt the agenda; the motion was seconded by Council Member Goodwin and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisicaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	5	0			

PRESENTATION

- The Mayor presented a proclamation in honor of the 100th anniversary of V. Fontana & Company. Stephanie Fontana was present to accept the proclamation on behalf of her family and the business. Congratulations to V. Fontana on their success and longevity!

PUBLIC COMMENTS

Mayor Colvin opened the public comment period at 7:17 p.m. Daly City Council Member Raymond Buenaventura spoke about the importance of standing in solidarity with the Asian and Asian American Community. The Mayor closed the public comment period.

CONSENT CALENDAR

1. Motion to Accept the Minutes from the March 14, 2021 Regular Meeting.
2. Motion to Approve Report of Checks Paid for March 2021.
3. Motion to Accept Informational Report on Recreation Department Programs, Activities, Events, and Trips for the First Quarter of 2021.
4. Motion to Adopt a Resolution Approving Contract for Landscape Maintenance Services with Segale & Cerini, Inc.

Action: Council Member Goodwin moved to approve the consent calendar items #1 through 4, with one correction from staff to item #4 to modify the compensation amount in the landscape agreement from \$227,220 per month to the correct number which is \$18,935 per month; the motion was seconded by Council Member del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fiscaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	5	0			

NEW BUSINESS

5. UNFUNDED LIABILITIES POLICY AND STRATEGY

Administrative Services Director Pak Lin presented the staff report. Mayor Colvin opened the public comment period at 7:56 p.m. and seeing no one request to speak, she closed the public comment period. Council discussion followed.

Action: Council Member Goodwin moved to Adopt a Resolution Amending the Town's Budget Procedure and Reserve Policies (Administrative Code (CAC) Subchapter 4.01); the motion was seconded by Vice Mayor Fiscaro and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fiscaro	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				

John Irish Goodwin	✓			
	5	0		

STUDY SESSION

6. SEWER SERVICE ENTERPRISE FUNDS

Director of Public Works Brad Donohue, City Engineer Cyrus Kianpour and Dennis Diemer of CSG Consulting presented the staff report. Mayor Colvin opened the public comment period at 8:35 p.m. Residents Thomas Taylor and Maureen O'Connor made comments. The Mayor closed the public comment period at 8:48 p.m. Council discussion followed.

This item was for discussion only; no action was taken at this meeting.

COUNCIL CALENDARING

The next Regular Meeting will be on Wednesday, April 28, 2021 at 7:00 p.m. and it will be held remotely.

REPORTS

City Manager Brian Dossey gave an update on the following topics:

- This week is National Public Safety Telecommunicators Week. A huge thank you to our incredible dispatch staff for all that they do to keep our community and our Police Officers safe! Congratulations to Thelma Coffey, Colma's Dispatcher of the Year!
- San Mateo County is still in the Orange tier of the State's Reopening Plan; it may be several more weeks until we are moved in the Yellow tier.
- Colma has a fantastic vaccination rate; the County is reporting Colma as 100% vaccinated!
- Staff is working with Congresswoman Jackie Speier's office to submit grant applications for several road work projects.
- There will be Anti-Harassment Training next week on Thursday, April 22 at 3:00 p.m.

ADJOURNMENT AND CLOSE IN MEMORY

Mayor Colvin adjourned the meeting at 9:18 p.m. and closed in memory of Gene Mullin, former Assembly Member, Mayor of South San Francisco, and father of current Assembly Speaker pro Tem Kevin Mullin.

Respectfully submitted,

Caitlin Corley
City Clerk





STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Pak Lin, Administrative Services Director
 VIA: Brian Dossey, City Manager
 MEETING DATE: April 28, 2021
 SUBJECT: OpenGov Contract Renewal

RECOMMENDATION

Staff recommends that the City Council adopt:

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FIVE-YEAR
 FINANCIAL REPORTING AND TRANSPARENCY CONTRACT WITH OPENGOV FOR A
 TOTAL CONTRACT VALUE OF \$85,575.

EXECUTIVE SUMMARY

The Town has utilized OpenGov platforms for its financial reporting and transparency and budgeting tools since 2014. Over the years, the Town added OpenGov tools to enhance its ability to collaborate effectively during budget and present financial information to the public in the digital age. To continue the services into FY 2021-22, the total contract value with OpenGov will exceed the City Manager's signing authority. To date, the Town spent a total of \$74,000 in annual subscription fees.

The attached renewal is for five additional years at \$17,118 per year through February 28, 2026. With the new 5-year contract, Staff intends to expand its use of OpenGov and explore new ways to present real-time financial data to the public with the use of OpenGov Stories, Reporting, and Budgets tool.

FISCAL IMPACT

The Finance annual budget includes the yearly renewal fee for OpenGov. The annual fee is \$17,115 and the contract is for 5-years, through February 28, 2026.

BACKGROUND AND ANALYSIS

Since 2014, the Town has utilized OpenGov platforms for financial reporting and transparency services. Over the years, the Town added other OpenGov tools to enhance its budget and present real-time financial information to the public.

The OpenGov financial reporting tool is very powerful and easy to use. It allows users to change the financial presentation based on their preferences. With a simple click of the mouse, the user

can change the financial information from tables to line charts to pie charts, etc. This is important for usability as it presents the financial data in the most meaningful way to the user. It also allows users to drill down to specific departments or expenditure categories.

In 2017, the Town added OpenGov Budget Builder to allow better budget collaboration. Each department can enter and itemize their budgets and during the year, the Budget Builder tool becomes a reference point for the department in coding and processing invoices.

Starting 2019, the Town added OpenGov Stories, right before the COVID-19 pandemic. This tool expanded the Town's ability to present the City Council adopted budget in a new way. Previously, budgets are consolidated and converted into PDF, which is non-ADA compliant. With the OpenGov Stories tool, the Town's FY 2020-21 Budget is entirely online and is ADA-compliant. This year, the Town plans to continue using OpenGov Stories to provide useful information to the public in a new way.

Since the Town has partnered with OpenGov for many years, the total contract value will exceed the City Manager's signing authority with this upcoming renewal. The current renewal fee for OpenGov Reporting and Transparency, Budget Builder, and Stories is \$17,115 per year. The attached contract is for 5-years at the \$17,115 per year annual fee.

The attached contract (Attachment B) has been reviewed and approved by OpenGov's legal counsel and the Town's City Attorney's office.

Reasons for the Recommended Action/Findings

As the public relies more on their smart devices, it is important for the Town to present its financial information in new ways. OpenGov platform allows for this to be done easily. By approving the attached 5-year contract, the Town will explore the opportunity to present real-time financial data in a new way.

Council Adopted Values

The Town's partnership with OpenGov showcases the Town's commitment towards financial transparency (part of the Honesty and Integrity Value) and its ability to be innovative in its effort to communicate with the public (part of the Vision Value).

Alternatives

The City Council may direct Staff to shorten the term in the agreement.

CONCLUSION

The City Council should adopt the resolution authorizing the City Manager to execute a five-year financial reporting and transparency contract with OpenGov for a total contract value of \$85,575.

ATTACHMENTS

- A. Resolution
- B. Contract

RESOLUTION NO. 2021-____
OF THE CITY COUNCIL OF THE TOWN OF COLMA

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FIVE-YEAR
FINANCIAL REPORTING AND TRANSPARENCY CONTRACT WITH OPENGOV FOR A
TOTAL CONTRACT VALUE OF \$85,575**

The City Council of the Town of Colma does resolve as follows:

1. Background

- (a) The Town has utilized OpenGov financial reporting and transparency tool since 2014; and
- (b) The Town has implemented online OpenGov Financial Reporting and Transparency tool, OpenGov Budgets tool, OpenGov Stories, and OpenGov Integration tools; and
- (c) The Town has paid \$74,000 in total subscription cost to OpenGov since 2014; and
- (d) The Town is currently using the OpenGov Budgets tool for the development of FY 2021-22 Budget and OpenGov Stories tool for FY 2020-21 Budget presentation; and
- (e) The total contract value with OpenGov will exceed the City Manager's signing authority with this renewal; and
- (f) Based on the above, staff is recommending the Town enter into a five year financial reporting and transparency contract with OpenGov to continue the existing relationship so that the Town can continue to provide budget information to the public through the OpenGov platform.

2. Findings

- (a) The City Council finds that this purchase is consistent with Colma Municipal Code Subchapter 1.06, Purchasing and Contracting, as this agreement is an extension of an existing arrangement which can be entered into without competitive bidding pursuant to Section 1.06.180(n). Further, the City Council finds that pursuant to Colma Municipal Code Section 1.06.180(o) that this OpenGov contract should not be subject to competitive bidding as it would not be in the best interest of the Town based on the high level of satisfaction with their past services and a desire to avoid any unnecessary disruption in services.

3. Approval and Authorization

- (a) The contract between the Town of Colma and OpenGov, a copy of which is attached to the Staff Report for this matter, shall be and hereby is approved by the City Council of the Town of Colma.

(b) The City Manager shall be, and hereby is, authorized to execute said contract on behalf of the Town of Colma, with such technical amendments as may be deemed appropriate by the City Manager and the City Attorney.

Certification of Adoption

I certify that the foregoing Resolution 2021-XX was duly adopted at a regular meeting of said City Council held on April 28, 2021 by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor					
Helen Fisicaro					
Raquel "Rae" Gonzalez					
Joanne F. del Rosario					
John Irish Goodwin					
<i>Voting Tally</i>					

Dated _____

Diana Colvin, Mayor

Attest: _____
Caitlin Corley, City Clerk

OPENGOV SOFTWARE SERVICES AGREEMENT

This Software Services Agreement (this “**Agreement**”) is entered into by OpenGov, Inc., a Delaware corporation with a principal place of business at PO Box 41340, San Jose, CA 95160 (“**OpenGov**”) and the customer listed on the signature block below (“**Customer**”), as of the date of the Subscription Start Date listed on the Order Form (as defined below). This Agreement sets forth the terms under which Customer will be permitted to use OpenGov’s hosted software services.

1. DEFINITIONS

“Customer Data” means data that is provided by Customer to OpenGov pursuant to this Agreement (for example, by email or through Customer’s software systems of record). Customer Data shall not include any confidential personally identifiable information.

“Documentation” means the documentation for the Software Services at the Customer Resource Center page found at <https://opengov.zendesk.com>.

“Feedback” means suggestions, comments, improvements, ideas, or other feedback or materials regarding the Software Services provided by Customer to OpenGov, including feedback provided through online developer community forums.

“Intellectual Property Rights” means all intellectual property rights including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature.

“Order Form” means OpenGov’s Software Services order form that: (a) specifies the Software Services provided by OpenGov; (b) references this Agreement; and (c) is signed by authorized representatives of both parties. Attached hereto as Exhibit A and incorporated herein by reference is the initial Order Form.

“Term” means the initial license term specified in number of years on the Order Form, commencing on the Subscription Start Date.

2. SOFTWARE SERVICES, SUPPORT AND PROFESSIONAL SERVICES

2.1 Software Services. Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to perform the software services identified in the applicable Order Form entered into by OpenGov and Customer (“**Software Services**”).

2.2 Support. Customer support is available by email to support@opengov.com or by using the chat messaging functionality of the Software Services, both of which are available during OpenGov’s standard business hours. Customer may report issues any time. However, OpenGov will address issues during business hours. OpenGov shall provide the support described in its “SUPPORT AND SOFTWARE SERVICE LEVELS” attached to the Agreement as Exhibit C.

2.3 Professional Services.

(a) If OpenGov or its authorized independent contractors provides professional services to Customer, such as implementation services, then these professional services will be described in a statement of work (“**SOW**”) agreed to by the parties (the “**Professional Services**”). For Professional Services performed on a time and materials basis, any pre-paid Professional Services Fees must be utilized within one (1) year from the Effective Date. Any unused pre-paid Professional Services Fees shall be forfeited.

(b) Unless the SOW provides otherwise, all reasonable travel expenses, pre-approved by Customer and incurred by OpenGov in performing the professional services will be reimbursed by Customer. Travel expenses include cost of coach airfare travel round trip from the individual’s location to Customer’s location, reasonable hotel accommodations, ground transportation and meals.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Restrictions. Customer may not use the Software Services in any manner or for any purpose other than as expressly permitted by the Agreement. Customer shall not, and shall not permit or enable any third party to: (a) use or access any of the Software Services to build a competitive product or service; (b) modify, disassemble, decompile, reverse engineer or otherwise make any derivative use of the Software Services (except to the extent applicable laws specifically prohibit such restriction); (c) sell, license, rent, lease, assign, distribute, display, host, disclose, outsource, copy or otherwise commercially exploit the Software Services; (d) perform or disclose any benchmarking or performance testing of the Software Services; (e) remove any proprietary notices included with the Software Services; (f) use the Software Services in violation of applicable law; or (g) transfer any confidential personally identifiable information to OpenGov or the Software Services platform.

3.2 Responsibilities. Customer shall be responsible for obtaining and maintaining computers and third party software systems of record (such as Customer's ERP systems) needed to connect to, access or otherwise use the Software Services. Customer also shall be responsible for: (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) all uses of Customer user accounts by any party other than OpenGov.

4. INTELLECTUAL PROPERTY RIGHTS; LICENSE GRANTS; ACCESS TO CUSTOMER DATA

4.1 Software Services. OpenGov retains all right, title, and interest in the Software Services and all Intellectual Property Rights in the Software Services. The look and feel of the Software Services, including any custom fonts, graphics and button icons, are the property of OpenGov and Customer may not copy, imitate, or use them, in whole or in part, without OpenGov's prior written consent. Subject to Customer's obligations under this Agreement, OpenGov hereby grants to Customer a non-exclusive, royalty-free license during the Term to use the Software Services.

4.2 Customer Data. Customer retains all right, title, and interest in the Customer Data and all Intellectual Property Rights therein. Customer hereby grants to OpenGov a non-exclusive, non-transferrable, royalty-free license to, and permit its partners to, use, store, edit and reformat the Customer Data, and to use Customer Data for purposes of sales, marketing, business development, product enhancement, customer service, or for analyzing such data and publicly disclosing such analysis ("**Insights**"), provided that in all such uses Customer Data is rendered anonymous such that Customer is no longer identifiable.

4.3 Access to Customer Data. Customer may download the Customer Data from the Software Services at any time during the Term, other than during routine software maintenance periods. OpenGov has no obligation to return Customer Data to Customer.

4.4 Feedback. Customer hereby grants to OpenGov a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use and incorporate into the Software Services and Documentation Customer's Feedback. OpenGov will exclusively own any improvements or modifications to the Software Services and Documentation based on or derived from any of Customer's Feedback including all Intellectual Property Rights in and to the improvements and modifications.

5. CONFIDENTIALITY; DATA SECURITY

5.1 Each party (the "**Receiving Party**") agrees not to disclose any Confidential Information of the other party (the "**Disclosing Party**") without the Disclosing Party's prior written consent, except as provided below. The Receiving Party further agrees: (a) to use and disclose the Confidential Information only in connection with this Agreement; and (b) to protect such Confidential Information using the measures that Receiving Party employs with respect to its own Confidential Information of a similar nature, but in no event with less than reasonable care. Notwithstanding the above, the Receiving Party may disclose Confidential Information to the extent required by law or court order, provided that prior written notice of such required disclosure and an opportunity to oppose or limit disclosure is given to the Disclosing Party.

5.2 "**Confidential Information**" means all confidential business, technical, and financial information of the disclosing party that is marked as "Confidential" or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the

disclosure (including the terms of the applicable Software Agreement). OpenGov's Confidential Information includes, without limitation, the software underlying the Software Services and all Documentation. Customer's Confidential Information also includes personal information or data of Customer's citizens that is protected from unauthorized disclosure under any federal or state law, including but not limited to, California Civil Code, Section 1798.29

5.3 Notwithstanding the foregoing, "Confidential Information" does not include: (a) "**Public Data**," which is data that the Customer has previously released to the public, would be required to release to the public, upon request, according to applicable federal, state, or local public records laws, or Customer requests OpenGov make available to the public in conjunction with the Software Services. Confidential Information does not include (b) information that has become publicly known through no breach by the receiving party; (c) information that was rightfully received by the Receiving Party from a third party without restriction on use or disclosure; or (d) information independently developed by the Receiving Party without access to the Disclosing Party's Confidential Information.

5.4 Data Security. OpenGov will maintain safety and security procedures with respect to its access and maintenance of Customer's account and Confidential Information, which provide reasonably appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to Customer's Confidential Information. OpenGov shall establish and maintain administrative, technical, and physical safeguards designed to protect against the destruction, loss, unauthorized access or alteration of Customer Data and Confidential Information in the possession or under the control of OpenGov or to which OpenGov has access, which are: (a) no less rigorous than those maintained by OpenGov for its own information of a similar nature; (b) no less rigorous than generally accepted industry standards; and (c) required by applicable laws. If a breach of security or confidentiality occurs, and it requires notification to the Customer's users/customers under any federal or state law, then the Customer shall work with OpenGov regarding the timing, content, and method of such notification. If OpenGov or its subcontractor(s)/vendor(s) is/are responsible for the breach, then OpenGov shall reimburse the Customer for its reasonable costs in providing the notification. If OpenGov utilizes a third-party subcontractor(s) or other vendor(s) to provide the services under this Agreement, OpenGov shall ensure that such subcontractor(s) or vendor(s) complies with the terms of this Agreement.

6. PAYMENT OF FEES

6.1 Fees; Invoicing; Payment; Expenses.

(a) Fees. The fees for the Software Services for the Initial Term and any Renewal Term ("**Software Services Fees**") and the fees for Professional Services ("**Professional Services Fees**") are set forth in the applicable Order Form. Software Services Fees and Professional Services Fees shall hereafter be referred to as "**Fees**".

(b) Invoicing and Payment. OpenGov will invoice the Customer according to the Billing Frequency listed on the Order Form. Customer shall pay all invoices according to the Payment Terms listed on the Order Form.

(c) Travel Expenses. Unless the SOW provides otherwise, OpenGov will invoice Customer for pre-approved travel expenses incurred in connection with each SOW as they are incurred. Customer shall pay all such valid invoices within thirty (30) days of receipt of invoice. Each invoice shall include receipts for the travel expenses listed on the invoice.

6.2 Credit Card Customers. If applicable, Customer will provide OpenGov with valid credit card information and promptly notify OpenGov of any changes necessary to charge the credit card at billing@opengov.com. Please update your credit card information when necessary. The provision of credit card information to OpenGov authorizes OpenGov to charge the credit card for all applicable Fees plus a 3% credit card processing fee. OpenGov processes credit card payments through a secure third party processing partner and does not take receipt of credit card information itself.

6.3 Taxes. All Fees under this Agreement are exclusive of any applicable sales, value-added, use or other taxes ("**Sales Taxes**"). Customer is solely responsible for any and all Sales Taxes, not including taxes based solely on OpenGov's net income. If any Sales Taxes related to the Fees under this Agreement are found at any time to be payable, the amount may be billed by OpenGov to, and shall be paid by, Customer. If Customer fails to pay any

Sales Taxes, then Customer will be liable for any related penalties or interest. In the event Customer or the transactions contemplated by the Agreement are exempt from Sales Taxes, Customer agrees to provide OpenGov, as evidence of such tax exempt status, proper exemption certificates or other documentation acceptable to OpenGov.

7. TERM & TERMINATION

7.1 Term. Subject to compliance with all terms and conditions, the term of this Agreement shall commence on the Subscription Start Date and shall continue until the Subscription End Date each as specified on the Order Form (the “**Term**”).

7.2 Termination. If either party materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days after notice by the non-breaching party (ten (10) days in the case of non-payment), the non-breaching party may terminate this Agreement. Additionally, Customer may terminate this Agreement, upon providing at least 60 days notice prior to the end of the then-current fiscal year upon the occurrence of an Event of Nonappropriation as defined below. An “**Event of Nonappropriation**” occurs when prior to end of the Customer’s fiscal year: a) Customer uses all efforts that are lawful and within Customer’s official power, to secure the appropriate funds for the next fiscal year’s Fees; and b) Customer has not acquired, used or issued a proposal for similar products or services during this period or has not hired any third party to perform comparable services in place of the Software Services. Customer shall permit OpenGov to assist with the efforts in a) above, including providing OpenGov with direct access to Customer’s applicable appropriations team. Notwithstanding the above, failure to give such 60 days notice will not extend the term beyond such fiscal year in the Event of Nonappropriation.

7.3 Effect of Termination.

(a) In General. Upon termination or expiration of this Agreement: (a) Customer shall pay in full for all Software Services and Professional Services performed up to and including the effective date of termination, (b) all Software Services provided to Customer hereunder shall immediately terminate; and (c) each party shall return to the other party or, at the other party’s option, destroy all Confidential Information of the other party in its possession.

(b) Deletion of Customer Data. If Customer requests deletion of its Customer Data in writing prior to the date of termination or expiration of this Agreement, then OpenGov will permanently and irrevocably delete Customer Data, excluding any Insights, stored by its cloud hosting provider within ten (10) days of the date of termination or expiration of this Agreement. Such request must be addressed to “OpenGov Vice President, Customer Success” at OpenGov’s address for notice described at Section 10.

7.4 Survival. The following sections of this Agreement shall survive termination: Section 5 (Confidentiality), Section 6 (Payment of Fees), Section 7.4(b) (Deletion of Customer Data), Section 8.3 (Warranty Disclaimer), Section 9 (Limitation of Liability) and Section 12 (Miscellaneous).

8. REPRESENTATIONS AND WARRANTIES; DISCLAIMER; INDEMNIFICATION

8.1 By OpenGov.

(a) General Warranty. OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with the related statement of work and generally prevailing industry standards. For any breach of the Professional Services warranty, Customer’s exclusive remedy and OpenGov’s entire liability will be the re-performance of the applicable services. If OpenGov is unable to re-perform all such work as warranted, Customer will be entitled to recover all fees paid to OpenGov for the deficient work. Customer must make any claim under the foregoing warranty to OpenGov in writing within ninety (90) days of performance of such work in order to receive such warranty remedies.

(b) Software Services Warranty. OpenGov further represents and warrants that for a period of ninety (90) days, the Software Services will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software Services that have been used in a manner other than as set forth in the Documentation and authorized under this Agreement. OpenGov does not warrant that the Software Services will be uninterrupted or error-free. Any claim submitted under this Section 8.1(b) must be submitted in writing to OpenGov during the Term. OpenGov’s entire liability for any breach of the foregoing warranty is to repair

or replace any nonconforming Software Services so that the affected portion of the Software Services operates as warranted or, if OpenGov is unable to do so, terminate the license for such Software Services and refund the pre-paid, unused portion of the Fee for such Software Services.

8.2 By Customer. Customer represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) OpenGov's use of the Customer Data pursuant to this Agreement will not infringe, violate or misappropriate the Intellectual Property Rights of any third party.

8.3 Disclaimer. OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8.4 Indemnification. OpenGov shall indemnify and hold Customer, its elected and appointed officials, employees, and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) to the extent arising out of or in connection with a third party claim alleging that the Software Services infringes a copyright, patent (U.S. only), or a trademark of, or has caused harm to the rights of, a third party. If the Software Services becomes, or in OpenGov's opinion is likely to become, the subject of an infringement claim, OpenGov may, at its option and expense, either (a) procure for Customer the right to continue using the Software Services, (b) replace or modify the Software Services so that it becomes non-infringing, or (c) terminate the licenses granted hereunder and give Customer a pro-rata refund for any pre-paid, unused fees paid by Customer. Notwithstanding the foregoing, OpenGov will have no obligation under this Section or otherwise with respect to any infringement claim based upon (i) any use of the Software Services not in accordance with this Agreement or for purposes not intended by OpenGov, (ii) any use of the Software Services in combination with other products, equipment, software, or data not supplied by OpenGov, (iii) any use of any release of the Software Services other than the most current release made available to Customer, or (iv) any modification of the Software Services by any person other than OpenGov or its authorized agents or subcontractors. Customer shall (a) promptly give notice of a claim to OpenGov; (b) give OpenGov sole control of the defense and settlement of the claim (provided that OpenGov may not settle such claim unless such settlement unconditionally releases Customer of all liability and, does not adversely affect OpenGov's business or the Software Service); (c) provide to OpenGov all available information and reasonable assistance; and (d) not compromise or settle such third-party claim. THE FOREGOING IS OPENGOV'S SOLE OBLIGATION AND CUSTOMER EXCLUSIVE REMEDY WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION

9. LIMITATION OF LIABILITY

9.1 By Type. NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.2 By Amount. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO OPENGOV (OR, IN THE CASE OF CUSTOMER, PAYABLE) FOR THE SOFTWARE SERVICES UNDER THIS AGREEMENT IN THE 24 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

9.3 Limitation of Liability Exclusions. The limitations of liability set forth in Sections 9.1 and 9.2 above do not apply to, and each party accepts liability to the other for: (a) claims based on either party's intentional breach of its obligations set forth in Section 5 (Confidentiality), (b) claims arising out of fraud or willful misconduct by either party and (c) either party's unauthorized use, distribution, or disclosure of the other party's intellectual property.

9.4 No Limitation of Liability by Law. Because some jurisdictions do not allow liability or damages to be limited to the extent set forth above, some of the above limitations may not apply to Customer.

10. **INSURANCE**. At all times during the Term, OpenGov shall maintain insurance coverage in the form and not less than the amounts contained in Exhibit B.

11. **VERIFICATION OF EMPLOYMENT ELIGIBILITY**. By executing this Agreement, OpenGov verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors of any tier to comply with the same.

12. MISCELLANEOUS

12.1 Logo Use. Subject to Customer's prior written permission, OpenGov may use and display Customer's logos and trade names for marketing and promotional purposes in connection with OpenGov's website and marketing materials, subject to Customer's trademark usage guidelines provided to OpenGov, or as set forth in Colma Administrative Code Section 1.11.030, as may be amended from time to time.

12.2 Notice. Ordinary day-to-day operational communications may be conducted by email, live chat or telephone communications. However, for notices required by the Agreement (in Sections where the word "notice" appears) the parties must communicate more formally in a writing given by personal delivery, by pre-paid first-class mail or by overnight courier to the address specified in the most recent Order Form (or such other address as may be specified in writing in accordance with this Section).

12.3 Anti-corruption. OpenGov has not offered or provided any bribe, kickback, illegal or improper payment, gift, or thing of value to any Customer personnel in connection with the Agreement, other than reasonable gifts and entertainment provided Customer in the ordinary course of business. If OpenGov become aware of any violation of the above restriction then OpenGov shall promptly notify Customer.

12.4 Injunctive Relief. The parties acknowledge that any breach of the confidentiality provisions or the unauthorized use of a party's intellectual property may result in serious and irreparable injury to the aggrieved party for which damages may not adequately compensate the aggrieved party. The parties agree, therefore, that, in addition to any other remedy that the aggrieved party may have, it shall be entitled to seek equitable injunctive relief without being required to post a bond or other surety or to prove either actual damages or that damages would be an inadequate remedy.

12.5 Force Majeure. Neither party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of this Agreement, other than payment obligations, due to any act of god, act of governmental authority, or due to war, riot, labor difficulty, failure of performance by any third-party service, utilities, or equipment provider, or any other cause beyond the reasonable control of the party delayed or prevented from performing.

12.6 Severability; Waiver. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. There are no third-party beneficiaries to this Agreement.

12.7 Assignment. Except as set forth in this Section, neither party shall assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations to a third party without the other party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Either party may assign, without such consent but upon written notice, its rights and obligations under this Agreement to: (i) its corporate affiliate; or (ii) any entity that acquires all or substantially all of its capital stock or its assets related to this Agreement, through purchase, merger, consolidation, or otherwise. Any other attempted assignment shall be void. This Agreement shall inure to the benefit of and bind each party's permitted assigns and successors.

12.8 Independent Contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect.

12.9 Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

12.10 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Exclusive jurisdiction for litigation of any dispute, controversy or claim arising out of or in connection with this Agreement shall be only in the Federal or State court with competent jurisdiction located in San Mateo County, California, and the parties hereby submit to the personal jurisdiction and venue therein.

12.11 Complete Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement. No modification of this Agreement will be binding, unless in writing and signed by an authorized representative of each party.

Signatures

Customer : Town of Colma

OPENGOV, INC.

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

Approved As To Form:

Christopher Diaz
City Attorney

Approved:

Pak Lin
Risk Manager/Director of Admin Services

EXHIBIT A
ORDER FORM
See Attached



OpenGov Inc. PO Box 41340
 San Jose, CA 95160
 United States

Created On: 2/22/2021
Order From Expiration: 3/31/2021
Subscription Start Date: 3/1/2021
Subscription End Date: 2/28/2026

Prepared By: Julian Jackson
Email: jjackson@opengov.com
Contract Term: 5 Year

Customer Information			
Customer:	Town of Colma, CA	Contact Name:	Pak Lin
Bill To/Ship To:	1198 El Camino Real Colma, CA 94104 United States	Email:	pak.lin@colma.ca.gov
		Billing Contact:	Pak Lin
		Email:	pak.lin@colma.ca.gov

Order Details	
Billing Frequency:	Annual
Payment Terms:	Net Thirty (30) Days

SOFTWARE SERVICES:

Product / Service	Start Date	End Date	Annual Fee	Total Price
OpenGov Reporting and Transparency, Budget Builder, Stories, and Integration	3/1/2021	2/28/2026	\$17,115.00	\$85,575.00
			Annual Subscription Total:	\$17,115.00

Billing Table:	
Billing Date	Amount Due
March 1, 2021	\$17,115.00
March 1, 2022	\$17,115.00
March 1, 2023	\$17,115.00
March 1, 2024	\$17,115.00
March 1, 2025	\$17,115.00

Order Form Legal Terms

Welcome to OpenGov! Thanks for using our Software Services. This Order Form is entered into between OpenGov, Inc., with its principal place of business at PO Box 41340 San Jose, CA 95160 ("OpenGov"), and you, the entity identified above ("Customer"), as of the Effective Date. This Order Form includes and incorporates the OpenGov Software Services Agreement ("SSA") executed by the parties and attached, or if no such SSA is executed or attached, the SSA at <https://opengov.com/terms-of-service> and the applicable Statement of Work ("SOW") incorporated herein in the event Professional Services are purchased. The Order Form, SSA and SOW shall hereafter be referred to as the "Agreement". Unless otherwise specified above, fees for the Software Services and Professional Services shall be due and payable, in advance, on the Effective Date. By signing this Agreement, Customer acknowledges that it has reviewed, and agrees to be legally bound by, the OpenGov Terms and Conditions. Each party's acceptance of this Agreement is conditional upon the other's acceptance of the terms in the Agreement to the exclusion of all other terms.

Town of Colma, CA

Signature: _____
 Name: _____
 Title: _____
 Date: _____

OpenGov, Inc.

Signature: _____
 Name: _____
 Title: _____
 Date: _____

EXHIBIT "B"

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below. **Those that have an "X" indicated in the space before the requirement apply to Contractor's or Consultant's Agreement. For purposes of this Exhibit B, OpenGov shall be deemed the Contractor or Consultant.**

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish Town with copies of original endorsements affecting coverage required by this Exhibit B. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by Town before work commences. Town has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies the general aggregate limit shall be twice the required occurrence limit.

Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000.00 combined single limit for bodily injury and property damage.

___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Technology Liability (Errors and Omissions):

 x Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

___ (If Design/Build), with limits no less than \$1,000,000.00 per occurrence or claim, and \$2,000,000.00 policy aggregate.

___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

___ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the Town, its elected and appointed officials, officers, attorneys, agents, and employees.

Builder's Risk (Course of Construction):

___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. If the project does not involve new or major reconstruction, at the option of the Town, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the Town's site.

Contractor's or Consultant's Pollution Legal Liability:

___ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000.00 per occurrence or claim and \$2,000,000.00 policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the Town requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Town.

Cyber Liability Insurance

Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor or Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

Surety Bonds:

Contractor shall provide the following Surety Bonds:

- Bid Bond
- Performance Bond
- Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

Additional Insured Status and Primary/Non-Contributory Language:

Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the Town's coverage and be endorsed to add the Town and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Town (if agreed to in a written contract or agreement) before the Town's own insurance or self-insurance shall be called upon to protect it as a named insured.

Loss Payee Status – Builder's Risk/Course of Construction Insurance (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the Town as a loss payee as their interest may appear.

___ **Notice of Cancellation, Suspension or Otherwise Voiding Policies:**

Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the Town.

___ **Waiver of Subrogation:**

Contractor or Consultant hereby grants to Town a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the Town by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Town has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the Town for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

___ **Completed Operations**

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the Town at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"):

Any deductibles or self-insured retentions must be declared to and approved by Town. The Town may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the Town, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the Town.

Town reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to Town.

Claims Made Policies: (note - should be applicable only to technology liability, see below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the Town for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Town is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and Town in the same manner and to the same extent as Contractor is bound to Town under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the Town indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the Town with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Town before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The Town reserves the right to

require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

Town reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

EXHIBIT C

SUPPORT AND SOFTWARE SERVICE LEVELS

See attached

Exhibit C

SUPPORT AND SOFTWARE SERVICE LEVELS

This Support and Software Services Levels Exhibit (“**Support Exhibit**”) is to OpenGov’s Software Services Agreement (the “**Agreement**”). Capitalized terms not defined herein have the meaning indicated in the Agreement and its associated Order Form(s).

I. SUPPORT FOR OPENGOV SOFTWARE SERVICES:

A. SUPPORT PLANS

OpenGov offers two types of technical support plans for all support issues relating to the OpenGov Software Services in accordance with Table 1:

TABLE 1

Benefits	Standard	Premium
Unlimited Number of Support Cases per Year*	✓	✓
Unlimited Access to OpenGov Resource Center	✓	✓
Unlimited Online access to the Support Request Portal	✓	✓
Access to Live Chat 8:00 AM to 5:00 PM US Local Time	-	✓
Access to Phone/Text Support	-	✓
Designated Technical Account Manager	-	✓
Post Deployment Services for Configuration, Training, and Consultations	\$185/hour	36 Hours Annually
Monthly Welcome Virtual Training for New Hires	\$185/hour	✓
Designated Contacts	3	15
Increased Response Times	-	✓
RESPONSE TIMES BY SEVERITY LEVEL**	INITIAL RESPONSE TIME***	
Urgent	One (1) Calendar Hour	One (1) Calendar Hour
High	Four (4) Business Hours	One (1) Business Hour
Normal	One (1) Business Day	Two (2) Business Hours
Low	Two (2) Business Day	One (1) Business Day

* *Support Cases are defined as issues related to the OpenGov products. These calls are included at no charge for up to 30 minutes per issue. Any time over the included 30 minutes will be deducted from Premium Services hours, or charged our then-current rates for support services.*

** *The Issue Severity Levels are defined in Section II-A-1 below.*

**** OpenGov will use commercially reasonable efforts to respond (via OpenGov's Normal Support Channels) to each support issue reported by the Customer within the applicable response time described in the table above, depending on the applicable severity level. "Business Days" are Monday-Friday, excluding holidays. "Business Hours" are 8:00 AM - 5:00 PM Local Time during Business Days.*

1. Issue Severity Level Definitions

Severity Level Urgent: Customer experiences complete loss of use of the Software Services, meeting the definition of "Unavailable" in Section II-B-1 below and no procedural workaround exists, thereby blocking a Customer's business operations.

Severity Level High: Customer experiences a severe defect or configuration issue with the use of the Software Services and no procedural workaround exists, thereby causing a high impact to Customer's business operations (excluding Software Service failures that qualify as Severity Level Urgent).

Severity Level Normal: Customer experiences a problem where the use of the Software Services are partially reduced, thereby causing a low-to-medium impact to Customer's business operations. A procedural workaround exists (excluding Software Service issues that qualify as Severity Level 1 or High).

Severity Level Low: Routine Software Service support requests relating to issues where the use of the Software Service is negligibly reduced thereby causing a no-to-low impact to a Customer's business operations (excluding Software Service issues that qualify as Severity Level Urgent, High or Normal).

2. Assignment of Severity Levels: OpenGov will determine the Severity Level assigned to each support issue in its reasonable discretion, but taking into consideration the Severity Level input by Customer.

B. SERVICE LEVELS

1. Uptime Commitment

The Quarterly Uptime Percentage for the Software Service (excluding the Permitting, Licensing and Code Enforcement / Citizen Services Software Services) will be ninety-nine and nine-tenths percent (99.9%) (the "Uptime Commitment"). Subject to the exclusions described in Subsection II-B-2 below, "Quarterly Uptime Percentage" is calculated by subtracting from 100% the percentage of 1-minute periods during any quarterly billing cycle (i.e., 3 calendar months) in which the Software Services (are) Unavailable out of the total number of minutes in that quarterly billing cycle. "Unavailable" and "Unavailability" mean that, in any 1-minute period, all connection requests received by the Software Services failed to process (each a "Failed Connection"); provided, however, that no Failed Connection will be counted as a part of more than one such 1-minute period (e.g. a Failed Connection will not be counted for the period 12:00:00-12:00:59 and the period 12:00:30-12:01:29). The Quarterly Uptime Percentage will be measured based on the industry standard monitoring tools OpenGov uses.

2. Exclusions from Quarterly Uptime Percentage

Notwithstanding anything to the contrary in this exhibit, any Software Service Unavailability issues resulting from any of the following will be excluded from calculation of Quarterly Uptime Percentage:

2.1 Regularly scheduled maintenance of the Software Service that is communicated by OpenGov at least twenty-four (24) hours in advance via the Support Portal. (OpenGov typically schedules such regularly scheduled maintenance twice per month);

2.2 any issues with a third-party service to which Customer subscribes (e.g. Budget Book by Workiva);

2.3 any problems not caused by OpenGov that result from (a) computing or networking hardware, (b) other equipment or software under Customer's control, (c) the Internet, or (d) other issues with electronic communications;

2.4 OpenGov's suspension or termination of the Software Service in accordance with the Agreement and/or its associated Order Form;

2.5 the Software Service is experiencing an unforeseeable amount of user requests from Customer;

2.6 software that has been subject to unauthorized modification by Customer;

2.7 negligent or intentional misuse of the Software Service by Customer; or

2.8 "Beta" or "limited availability" products, features and functions identified as such by OpenGov.

Customer may elect to use certain billable OpenGov Professional Software Services to resolve issues associated with the excluded areas listed in this Subsection II-B-2. Such Professional Software Services may require Customer to complete a network assessment, and/or give OpenGov access to Customer's network, in order to diagnose the issue.

3. Process

Customer shall notify OpenGov of any Unavailability via the Support Portal. Customer shall provide such notification within thirty (30) days of the Unavailability event.

II. DESIGNATED SUPPORT CONTACTS, & OPENGOV COMMUNITY:

A. "**Designated Contacts**" are Customer identified users acting as primary liaisons between the Customer and OpenGov for technical support for the Software Services. Customer shall identify and appoint no more than the number of Designated Contacts as described in the subscribed Support Plan. Customer may be charged an additional fee for Designated Contacts in excess of the subscribed number. Customer shall notify OpenGov whenever Designated Contact responsibilities are transferred to another individual. Tickets submitted by someone other than a Designated Contact will be automatically closed and will not be acted upon.

Customer's Designated Contacts shall be responsible for:

- submitting support tickets on behalf of the Customer
- serving as the primary points of contact for communications with OpenGov
- overseeing Customer's support case activity
- developing and deploying troubleshooting processes within Customer's organization
- resolving password reset, username and lockout issues for Customer
- providing technical staff to assist with non-Software Services issues such as network issues

B. Customer must opt-into OpenGov's support portal ("**Support Portal**") (i) to receive certain important information about updates and other changes to the Software Services and (ii) to take other required actions relating to support and use of the Software Services.

C. The commitments under this Support Exhibit do not apply to customizations, enhancements or other non-standard modifications to the Software Services requested or made by Customer.

III. PREMIUM SUPPORT

A. Customers who subscribe to Premium Support will be assigned a designated "**Technical Account Managers**" (TAM). A TAM is a designated product subject matter expert who provides consulting, training, and configuration services. In addition, TAMs will provide quarterly reviews with the Customer to review outstanding support items, upcoming projects, and technical needs.

B. "**Premium Support**" is defined as services in addition to the standard "support" provided with the annual OpenGov Software Services. Premium Support includes 36 Premium Services hours annually, which expire at the end of the contract year. These hours are limited for use in the following categories:

- a. **OpenGov Consultation and Training**. This service provides assistance, step by step instruction, and problem solving by a Technical Account Manager to Customer for users of OpenGov Software Services. OpenGov will provide web based, one-on-one remote training to any user during normal business hours (Monday- Friday 8 AM to 5PM Local Time). This does not include training for newly purchased Software Services that are in deployment. Training is only included for Software Services purchased. Customer users must have a working knowledge of their job function, and of the OpenGov Software Services.

- b. **OpenGov Software Services Configuration:** This service provides configuration of the Software Services, with direction by the Customer. These configuration services are covered by Premium Support. If requested by a Customer with Standard Support, these services shall be provided at OpenGov's discretion and will be billed on a time and materials basis at the rates specified above. These configuration services are limited to the following for the following Software Services:
1. OpenGov Financials
 - a. Bank reconciliations, reconciling out of balance reports, balancing segments of the system, etc.
 - b. Building Reports
 - c. Fixing User Errors/Restores
 - d. Chart of Accounts Updates and Changes
 - e. Electronic Signatures
 - f. E-Forms (Address Changes, Logo Changes, etc)
 - g. Responding to problems caused users uploading bad data
 - h. Responding to problems caused by user error.
 2. OpenGov Budgeting & Planning
 - a. Budgeting Year 2+ Support (Consultations, Rebuilds, Staff Augmentation)
 - b. Create Additional OpenGov Reports
 - c. Chart of Accounts Updates (Rebuilds, Re-Categorizations)
 - d. Creating/Updating Data Upload Templates
 - e. Manual Data Uploads
 - f. Stories Configurations/Stories Template Creations
 - g. Dashboard Configurations
 - h. Open Town Hall Survey Configurations
 - i. Responding to problems caused users uploading bad data
 - j. Responding to problems caused by user error.
 3. Permitting, Licensing, and Code Enforcement
 - a. Workflow Optimization
 - b. Form Re-Design
 - c. Fee Updates
 - d. Online Content Updates
- c. **Additional Services:** The services listed below are NOT included in the OpenGov Premium Support Agreement. If requested by Customer, these services shall be provided at OpenGov's discretion and will be billed on a time and materials basis at the rates specified above.
- i. Responding to problems caused by software that is not the Software Services or Financials Software Services reporting tools.
 - ii. Responding to problems resulting from misuse, accidents, Customer neglect, fire, or any other cause not within OpenGov's reasonable control.
- d. **Non-Supported Services:** The services listed below are NOT included with Premium Support or Standard Support. These services are not supported by OpenGov:
- i. Problems caused by hardware or software that is not the Software Service
 - ii. Responding to problems resulting from misuse, accidents, neglect or bad data
 - iii. Configuration changes for third party software
 - iv. Support for issues related to the operation of the software on local personal computers and related printing issues; problems with the browser and loading the required add-on programs; support for using Vision and Intellicus reporting tools
 - v. Firewall support
 - vi. Responding to problems caused by hardware.
 - vii. On-site support
 - viii. Issues with ViewPoint ViewPermit Software



STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Christopher Diaz, City Attorney
 VIA: Brian Dossey, City Manager
 MEETING DATE: April 28, 2021
 SUBJECT: Electronic Service of Government Claims and Notices

RECOMMENDATION

Staff recommends that the City Council introduce and waive a further of the following:

ORDINANCE AMENDING COLMA MUNICIPAL CODE SUBCHAPTER 1.14 TO PROVIDE FOR
 FILING OF ELECTRONIC CLAIMS

EXECUTIVE SUMMARY

Senate Bill 1473 (Stats. 2020, ch. 371) amended the Government Tort Claims Act to authorize a person to present a claim by electronically submitting it to a public entity, if expressly authorized to do so by an ordinance or resolution of the public entity. This ordinance will make the Town Municipal Code explicitly clear that the Town can accept claims filed electronically consistent with this update in state law.

It should be noted that the Town has been accepting claims electronically even prior to this change in the law. However, with this ordinance update, the Town will now be in compliance with the new state law requirement to have this process detailed in an ordinance.

FISCAL IMPACT

There are no fiscal impacts anticipated at this time.

BACKGROUND/ANALYSIS

Effective January 1, 2021, Senate Bill 1473 (Stats. 2020, ch. 371) amended the Government Tort Claims Act to authorize a person to present a claim by electronically submitting it to a public entity, if expressly authorized to do so by an ordinance or resolution of the public entity (Cal. Government Code § 915(a)(3)). Like many public agencies throughout the state, the Town of Colma already provides for filing claims electronically on the Town's website. Therefore, the City Attorney's office has prepared this ordinance to amend the Colma Municipal Code to formally

authorize, and provide procedures for, electronic filing of claims to conform to current practice, and to ensure compliance with state law.

In particular, the ordinance amends Colma Municipal Code Subchapter 1.14 to:

- require an individual who is submitting the claim electronically to use the online claim form available on the City Manager/City Clerk's Office webpage consistent with current practice.
- Allow the City Manager the option of adopting additional instructions if needed consistent with the Government Code provisions in state law.
- Indicate that proof of electronic service may be made and signed consistent with Government Code Section 915.2 which requires that proof of service include the date of electronic service, the name and electronic service address of the person, a statement that the document was served electronically, and an electronic signature by signing the actual printed form and submitting it electronically, or signing using the computer or other technology.
- Acknowledge that anyone who has submitted an electronic claim has consented to accept service of notices, etc. electronically.

Alternatives

The City Council can choose to reject the ordinance and direct staff to require claims against the Town to be filed by personal delivery or by mail only. This would be a modification from the Town's current practice of accepting claims submitted electronically.

Council Adopted Values

The City Council will be taking a *responsible* approach by updating the Municipal Code to conform to current practice and to comply with recent state law changes.

CONCLUSION

The City Council should introduce the ordinance.

ATTACHMENTS

- A. Ordinance No. __

ORDINANCE NO. ____
OF THE CITY COUNCIL OF THE TOWN OF COLMA

ORDINANCE AMENDING COLMA MUNICIPAL CODE SUBCHAPTER 1.14
TO PROVIDE FOR FILING OF ELECTRONIC CLAIMS

The City Council of the Town of Colma does ordain as follows:

ARTICLE 1. FINDINGS, PURPOSE AND AUTHORITY.

The City Council of the Town of Colma finds:

(a) Subchapter 1.14 of the Colma Municipal Code provides procedures for the filing of claims against the Town of Colma for money or damages.

(b) Senate Bill 1473 (Stats. 2020, ch. 371) amended the Government Claims Act to authorize a person to present a claim by electronically submitting it to a public entity, if expressly authorized to do so by an ordinance or resolution of the public entity (Cal. Government Code § 915(a)(3)).

(c) As the Town of Colma already accepts claims filed electronically, the Town wishes to amend the Municipal Code to formally authorize, and provide procedures for, electronic filing of claims to conform to current practice.

ARTICLE 2. CMC SECTION 1.14.020 AMENDED.

Section 1.14.020 of the Colma Municipal Code is hereby amended and restated to read as follows:

"1.14.020 Form of Claim.

All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless verified by every member of that class as required by this section. In addition, all claims shall contain the information required by California Government Code Section 910.

Pursuant to California Government Code Section 915, a claim, any amendment thereto, or an application for leave to present a late claim may be submitted electronically to the Town of Colma by using the online claim form available on the City Manager/City Clerk's Office webpage in accordance with all publicly posted instructions. The City Manager is authorized to provide uniform instructions for the filing of claims electronically that are not in conflict with Division 3.6 of Title 1 of the Government Code or this Section.

Proof of electronic service may be made and signed in the manner prescribed by California Government Code Section 915.2, as it may be amended from time to time. If the claim or application is submitted electronically, the person or party shall be deemed to have provided consent to accept service electronically of the notices specified in Government

Code Section 915.4, as may be amended from time to time, and other correspondence from the Town of Colma or its representatives.”

ARTICLE 3. SEVERABILITY.

Each of the provisions of this Ordinance is severable from all other provisions. If any article, section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

ARTICLE 4. CEQA DETERMINATION - NOT A CEQA PROJECT.

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

ARTICLE 5. POSTING; EFFECTIVE DATE.

This ordinance, or a summary thereof prepared by the City Attorney, shall be posted on the three (3) official bulletin boards of the Town of Colma within 15 days of its passage and is to take force and effect thirty (30) days after its passage.

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Certificate of Adoption

I certify that the foregoing Ordinance No. ____ was duly introduced at a regular meeting of the City Council of the Town of Colma held on April 28, 2021 and duly adopted at a Regular Meeting of said City Council held on _____, 2021 by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor					
Helen Fisicaro					
Raquel Gonzalez					
Joanne F. del Rosario					
John Irish Goodwin					
<i>Voting Tally</i>					

Dated _____

Diana Colvin, Mayor

Attest: _____
Caitlin Corley, City Clerk





STAFF REPORT

TO: Mayor and Members of the City Council

FROM: Christopher J. Diaz, City Attorney
Brad Donohue, Director of Public Works

VIA: Brian Dossey, City Manager

MEETING DATE: April 28, 2021

SUBJECT: Future New or Increased Rates for Sewer Service Fees by Resolution

RECOMMENDATION

Staff recommends that the City Council introduce and waive a further reading of the following:

ORDINANCE AMENDING SECTIONS 3.04.160 AND 3.04.170 OF SUBCHAPTER 3.04 OF THE COLMA MUNICIPAL CODE AUTHORIZING THE TOWN TO ADOPT FUTURE NEW OR INCREASED RATES FOR SEWER SERVICE FEES BY RESOLUTION

EXECUTIVE SUMMARY

The Town provides sewer service, and charges rates for provision of such service. Those fees and charges are adopted pursuant to the procedural and substantive requirements of Proposition 218, as well as Health and Safety Code section 5471 *et seq.*. The Health and Safety Code provisions provide authority to public agencies to adopt fees and charges for water and sewer service, and to collect such fees and charges (or delinquencies) on the tax roll. Previously, these provisions required that the Town adopt fees and charges by ordinance. However, effective January 1, 2017, the statutes were amended to also allow adoption of fees and charges by resolution. In compliance with these provisions, the Town previously adopted fees for sewer service by ordinance. The attached Ordinance authorizes the Town to adopt future sewer service fees by resolution or ordinance, in recognition of amendments to Health and Safety Code section 5471 *et seq.* in 2017.

FISCAL IMPACT

None. In the future, the Town may have reduced administrative expenses associated with adopting resolutions instead of ordinances for the adoption of new or increased sewer fees.

ANALYSIS

Revisions to the State Health and Safety Code provide the Town with more flexibility in adopting fees as the state statute now allows an agency to adopt fees and charges by resolution or ordinance. Fees adopted by resolution are not subject to the standard ordinance procedural requirements that include two readings, and a 30-day waiting period prior to the ordinance becoming effective. The proposed ordinance would revise the Town's Municipal Code to allow the Town to adopt fees and charges for sewer service by resolution without having to bring forth an ordinance to adopt those fees and charges.

Because the Town previously adopted fees and charges by ordinance, in order to comply with Health and Safety Code section 5471, the attached ordinance is necessary to authorize the Town to adopt future fees by resolution. This is because an ordinance can only be amended or repealed by another ordinance.

ENVIRONMENTAL ISSUES

Adoption of the resolution is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is administrative and does not directly impact the environment.

CONCLUSION

The City Council should introduce the ordinance.

ATTACHMENTS

- A. Ordinance

ORDINANCE NO. _____
OF THE CITY COUNCIL OF THE TOWN OF COLMA
ORDINANCE AMENDING SECTIONS 3.04.160 AND
3.04.170 OF SUBCHAPTER 3.04 OF THE COLMA
MUNICIPAL CODE AUTHORIZING THE TOWN TO ADOPT
FUTURE NEW OR INCREASED RATES FOR SEWER SERVICE
FEES BY RESOLUTION

The City Council of the Town of Colma does ordain as follows:

ARTICLE 1. FINDINGS, PURPOSE AND AUTHORITY.

(a) Town of Colma ("Town") provides services relating to sewer to properties within the Town's jurisdiction, and charges service fees and charges for providing such services to properties pursuant to the authority set forth under California Health and Safety Code section 5471 ("Section 5471"); and

(b) In order to use the authority of Section 5471 to adopt service fees and charges, public agencies previously were required to adopt such fees by ordinance; and

(c) Effective January 1, 2017, Section 5471 and the statutes following it were amended to allow for the adoption of new or increased service fees by resolution as well as by ordinance; and

(d) The Town previously adopted fees and charges for sewer service by ordinance in order to comply with Section 5471 prior to amendment, and now wishes to authorize future new or increased sewer service fees and charges to be adopted by resolution; and

(e) The Town further wishes to amend sections of the Colma Municipal Code, to be consistent with the changes proposed herein.

ARTICLE 2. ORDER.

The Town hereby authorizes any future new or increased fees or charges for sewer service to be adopted by resolution. Any new or increased fee or charge adopted by resolution pursuant to the authority granted by this Ordinance shall have the same force and effect as if such new or increased fee or charge had been adopted by ordinance, and to the extent authorized in such resolution, shall repeal or replace any conflicting fee or charge previously adopted by the City Council, whether such conflicting fee or charge had been adopted by resolution or ordinance.

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ARTICLE 3. CMC 3.04.160 AND 3.04.170 AMENDED.

Section 3.04.160 is hereby amended in its entirety and replaced as follows:

"3.04.160 Fees for Sewer Service Provided Through City of South San Francisco Sewer System.

(a) *Definitions.* As used in this section, the following terms shall have the respective meanings shown:

(1) "Charge" means the amount of the payment required for sewer service provided to a parcel or facility; the charge is determined by multiplying the rate times the number of units of service that are specified in this ordinance.

(2) "Institutional" class of users means schools, colleges, rest homes, hospitals, clubs, lodges and similar uses.

(3) "Light commercial" class of users means bars (without dining facilities), car washes, department and retail stores, hotels, motels (without dining facilities), laundromats, professional and business offices, banks, savings and loan associations, warehouses, auto rentals (without repair shops), newspapers, commercial printing shops, freight and drayage services, barbershops, shoe repair shops, camera shops, plating shops, wood and furniture fabricators, heating and appliance stores, drug stores, auto supply stores, general contractors' offices, public administration offices, health services, legal services, dry cleaners, metal fabricators, lumber companies, laundry services, sheet metal shops, and similar uses with wastewater strengths less than or approximately equivalent to residential strength.

(4) "Moderate commercial" class of users means auto/gas service stations, auto steam cleaners, auto rentals (with repair shops), bakeries, beauty and hair salons, commercial laundries, mortuaries, lodges (with dining facilities), radiator repair shops, markets (with garbage disposals), ice cream parlors, candy manufacturers, food preparation and caterers, sandwich shops, drive-in theaters, creameries, roofers, chemical preparations, machine shops, photo/film processors, rug, carpet, upholstery cleaners, foundries, ceramics studios, oil services, transmission services, sanitation services, furriers, drum and barrel cleaners, and similar classes of uses with wastewater strengths significantly greater than residential strength. A user in this class will be reclassified to the light commercial use classification if it adequately demonstrates to the city engineer it is discharging only segregated or wastewater equivalent in strength to residential wastewater.

(5) "Monitored and industrial" class of users means manufacturers, processors, producers, laundries, photo finishers, painting services, packagers and similar uses whose wastewater are monitored by the city.

(6) "Rate" means the cost per unit of sewer service.

(7) "Residential" class of users means the classification of discharger and the parcel of real property or portion thereof on which the discharger is situated, including single-family dwelling, multifamily dwelling (duplex, flat, apartment and similar types of uses), trailer courts and similar types of uses.

(8) "Septage Waste Haulers" means commercial businesses, which haul to and dispose of septage waste at the City of South San Francisco's Water Quality Control Plant.

(b) *Sewer Service Charges.* Sewer service charges shall be paid to Town of Colma for any connection to and use of the sewerage works of the City of South San Francisco in an amount ~~determined as set forth in this section~~ set by resolution. The rates used to determine the charge each year shall be the maximum amounts established ~~in this section, unless~~ by the City Council, by resolution, ~~establishes sewer service rates for the upcoming fiscal year at a lesser amount than shown in this section.~~

(c) *Rates for all Properties.* From and after the effective date of this subsection and until this Subchapter is repealed or amended to provide otherwise, all users in each class connected to the sewerage works of the City of South San Francisco shall pay annual sewer service charges set by resolution to the Town of Colma ~~calculated in the manner set forth in paragraph (e) of this section, using the rates set forth in the schedule on file with the City Clerk.~~

(d) *Pass-through Rates for all Properties.* Until this Subchapter is repealed or amended to provide otherwise, all users in each class connected to the sewerage works of the City of South San Francisco shall pay annual sewer service charges set by resolution to the Town of Colma ~~calculated in the manner set forth in paragraph (e) of this section, using the rates hereafter adopted by the City of South San Francisco, provided, however, that the Town shall give written notice of any applicable rate increase to each property on whom the increased rate is to be imposed not less than thirty days prior to the effective date of such rate increase. In no event shall the rates for sewer service imposed by the Town of Colma pursuant to this section exceed the rates in effect for the prior fiscal year by more than 10%."~~

~~(e) — Calculation of Sewer Service Charges for all User Classes:~~

~~(1) — Sewer service charges imposed on users within the residential class are calculated by multiplying the number of dwelling units on the assessor's parcel by the annual rate per dwelling unit. The dwelling unit rate for single residential assumes an average annual effluent flow of 84 CCF. The multiple residential and trailer unit rate assumes an average annual effluent flow of 75 CCF.~~

~~(2) — The annual rate set forth in the schedule on file with the City Clerk shall be applied to institutional, commercial and non-monitored industrial classes unless the volume charge exceeds the minimum charge, in which event the volume charge shall be applied. The minimum charge shall be applied to monitored industrial classes unless the volume charge or surcharge for suspended solids or surcharge for chemical oxygen demand, or any combination thereof, exceeds the minimum charge, in which event the applicable charge shall be computed by adding the volume charge, surcharge for suspended solids and surcharge for chemical oxygen demand.~~

~~(3) Sewer service charges imposed on users within the institutional, light commercial, and moderate commercial classes are calculated by: (a) measuring the annual water use at the parcel and multiplying this number by the flow rate shown in the schedule on file with the City Clerk or (b) measuring the annual sewer flow from the parcel and multiplying this number by the effluent rate shown in the schedule on file with the City Clerk for restaurant, institutional, or commercial users.~~

~~(4) Sewer services charges imposed on users within the industrial and monitored classes are calculated by measuring the annual amount of wastewater flow, chemical oxygen demand and solids discharged from the parcel and multiplying these numbers by the respective rates shown in the schedule on file with the City Clerk. Separate sewer rates are calculated for each components and then added for the total sewer service charge for the parcel.~~

~~(5) Sewer services charges imposed on septage waste haulers are calculated by multiplying the gallons of flow discharged by the septage waste hauler by the rate shown in the schedule on file with the City Clerk."~~

Section 3.04.170 is hereby amended in its entirety and replaced as follows:

"3.04.170 Fees for Sewer Service Provided Through NSMCSD Sewer System.

(a) *Definitions.* As used in this section, the following terms shall have the respective meanings shown:

(1) "Charge" means the amount of the payment required for sewer service provided to a parcel or facility; the charge is determined by multiplying the rate times the number of units of service that are specified in this ordinance.

(2) "NSMCSD" means the North San Mateo County Sanitation District.

(3) "Rate" means the cost per unit of sewer service.

(b) *Sewer Service Charges.* Sewer service charges shall be paid to Town of Colma for any connection to and use of the sewerage works of the North San Mateo County Sanitation District in an amount ~~determined as set forth in this section~~ by resolution. The rate used to determine the charge each year shall be the maximum amount established ~~in this section, unless~~ by the City Council, by resolution, establishes sewer service rates for the upcoming fiscal year at a lesser amount than shown in this section."

(c) *Rates for all Properties for Fiscal Year 2016-2017, 2017-2018, 2018-2019.* ~~From and after the effective date of this Ordinance, all~~ All users in each class, connected to the sewerage works of North San Mateo County Sanitation District shall pay annual sewer service charges to the Town of Colma at the rate set forth ~~in Table 3.04.170 per hundred (100) cubic feet of water consumption, or HCF, calculated on the basis of two months' average winter water consumption annualized, with a minimum annual sewer service charge per year as set forth in Table 3.04.170~~ by resolution.

(d) *Pass-Through Rate Increases for all Properties For Fiscal Years 2019-2020 and 2020-2021.* The Town shall pass-through all sewer rate increases adopted by the North San Mateo

County Sanitation District. ~~For those years, all~~ All users in each class other than residential connected to the sewerage works of the North San Mateo County Sanitation District shall pay annual sewer service charges to the Town of Colma calculated in accordance with the rates imposed on the Town by the North San Mateo County Sanitation District for that fiscal year, provided, however, that the Town shall give written notice of any applicable rate increase to each property on whom the increased rate is to be imposed at least thirty days prior to the effective date of any such increase. In no event shall the rates charged by the Town of Colma for sewer service pursuant to this section exceed the rates in effect for the prior fiscal year by more than 10%.

~~Table 3.04.170: Sewer Service Rates for Sewer Service Provided By NSMSD by Fiscal Year (FY)~~

Effective Date	\$/HCF Metered Water Usage	Minimum Annual Charge
July 1, 2016 (FY 2016-2017)	\$6.76	\$74.96
July 1, 2017 (FY 2017-2018)	\$7.30	\$80.96
July 1, 2018 (FY 2018-2019)	\$7.88	\$87.44

ARTICLE 4. SEVERABILITY.

Each of the provisions of this Ordinance is severable from all other provisions. If any article, section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

ARTICLE 5. CEQA DETERMINATION - NOT A CEQA PROJECT.

Adoption of the resolution is not an activity defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3) and 15378(b)(4) either because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and/or because the action is administrative and does not directly impact the environment.

ARTICLE 6. POSTING; EFFECTIVE DATE.

This ordinance, or a summary thereof prepared by the City Attorney, shall be posted on the three (3) official bulletin boards of the Town of Colma within 15 days of its passage and is to take force and effect thirty (30) days after its passage.

Certification of Adoption

I certify that the foregoing Ordinance No. ____ was duly introduced at a regular meeting of the City Council of the Town of Colma held on April 28, 2021, and adopted at a regular meeting of the City Council of the Town of Colma held on _____, 2021, by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor					
Helen Fisicaro					
Raquel Gonzalez					
Joanne F. del Rosario					
John Irish Goodwin					
<i>Voting Tally</i>					

Dated: _____

Diana Colvin, Mayor

Attest: _____
Caitlin Corley, City Clerk



STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Brian Dossey, City Manager
 Christopher J. Diaz, City Attorney
 MEETING DATE: April 28, 2021
 SUBJECT: Donation of Land to the Town of Colma

RECOMMENDATION

None. This item is a study session. Staff will receive comments, questions, and feedback during the presentation.

EXECUTIVE SUMMARY

The Archdiocese of San Francisco has offered to donate a strip of land that fronts the Holy Cross Catholic Cemetery property along Mission Road from their north gate entrance to their south gate entrance (attachment A). The area of land that is to be considered as a donation, to the Town as a result of Mission Road Bicycle and Pedestrian Improvement Project (Project) is a portion of land between the existing historical rock wall and the Town's Right of Way boundary. (see attachment B)

As part of the Project, the Town abandoned the original sidewalk area and part of the street fronting the Holy Cross property from the north gate to the main gate when the new sidewalk, curb and gutter was constructed, narrowing the roadway. This created an unsafe gap between the new sidewalk and old sidewalk/Holy Cross stone wall that fronted the Holy Cross property. (See attachment C)

The improved area from the main gate to the south gate was scheduled for sidewalk, curb and gutter which is on Town property. However, the unfinished area from the new sidewalk to the Holy Cross stone wall is roughly eighty percent Town owned property. (See attachment D)

Staff is seeking City Council input, feedback and comments on whether the Town should accept the land donation offered by the Archdiocese of San Francisco. If the City Council directs staff to prepare for the acceptance of the land donation by the Archdiocese of San Francisco, the Town will bring back this item for City Council approval.

Also, if the City Council directs staff to prepare documents for the acceptance of the land donation, which may need a CEQA review, staff will also introduce a Capital Improvement Project with design concepts and estimated constructions costs and annual maintenance obligations for City Council consideration.

FISCAL IMPACT

There may be some minimal costs for an environmental assessment and closing costs. However, a Capital Improvement Project will be brought to the City Council for consideration in the future. The project will include beautification and safety features.

BACKGROUND

The Mission Road residential and business neighborhood was identified with safety and accessibility deficiencies through the Town's ADA (Americans with Disability Act) Transition Plan. One of the primary goals of the Mission Road Improvement project was to identify those areas where accessibility improvements were needed to be constructed and or improved. One of the areas of improvement is the frontage of the Holy Cross Cemetery from their North gate to their South gate. Much of this frontage is either a non-compliant sidewalk and pedestrian ramps or no sidewalk at all, (Attachment B).

To fund the Mission Road project and the various improvements, outside funding (a combination of Federal, State and local Grants) was applied for and awarded to the Town for the specific improvements. One of the main concerns that was identified in the Federal grant program and the National Environmental Protection Agency (NEPA) documents, was there going to be additional land needed to complete these improvements? Staff stated that there was not any additional ROW that was required to construct the various essential improvements and all the improvements would be constructed within the existing ROW. If additional ROW were required to construct the essential parts of the project the Town would have had to go through a lengthy process obtaining ROW certification and approval from CalTrans and the Federal Highway Administration (FHA).

Being that the area between the Town's right of way boundary and Holy Cross's rock wall was going to be dedicated to Landscaping only, staff did not want to sacrifice time and more money being spent on outside consultants to work through the ROW certification process with CalTrans and the FHA. Staff also believed that we could negotiate with the Cemetery on an equitable deal for both sides at a time when the project was near completion. It is also important to note any work or compensation on this land transaction will not be party to the Mission Road Improvement Project, it would be a standalone project.

ANALYSIS

The unimproved area left by the Town's Project created an unintended consequence for the Archdiocese of San Francisco and the Holy Cross Cemetery. At present time the area area appears unfinished, unattractive and in some areas creates some safety issues.

Upon looking closer and having staff re-survey the area and identify clearly what property is the Town's and what property is Holy Crosses', it appears that the Town would be accepting a very

small strip of land when considering the whole unimproved area. A majority of the land in question appears to be the Town's property.

Therefore, since the issue was created by the Town's Project and the Town owns most of the unimproved area in question, it may make sense for the City Council to accept the land donation by the Archdiocese of San Francisco.

Next steps

If the City Council is inclined to accept the donation, the City Attorney's office has prepared the attached draft donation agreement to memorialize the donation and the legal obligations of each party. The City Attorney's office will work to finalize the agreement if Council directs staff to prepare documents for formal consideration and acceptance.

As detailed in the attached donation agreement, Section 2 generally notes the obligations of the donor (Holy Cross) and includes the following:

- That the donor shall transfer a fee interest in the property to the Town free and clear of all liens, encumbrances, easements, leases, bonds, assessments, and taxes with some exceptions.
- The donor must confirm that the property is:
 - free of any hazardous substances
 - in compliance with the law including all environmental laws
 - free of all leases, licenses, or other agreements allowing third party use of the property
 - not the subject of any litigation or government investigations
 - not the subject of any bankruptcy or other insolvency proceedings

Further, the donor will also need to confirm that all required disclosures have been made and must indemnify the Town for any liability associated with any breach of any of the above warranties and any intentional acts or willful misconduct of the donor that leads to a third-party claim prior to the date the property is transferred to the Town.

Finally, the donation agreement contemplates a feasibility period of 60 days where the Town would have the ability to inspect the property, conduct environmental assessments, and have the ability to terminate the agreement if any unfavorable information is learned about the property.

If City Council agrees, staff will prepare documents to accept the land donation, and also will bring back a Capital Improvement Project with design concepts and estimated costs for Council consideration.

Environmental

If City Council directs staff to take the next needed steps in accepting the land donation a CEQA review will need to be completed prior to City Council accepting the donated property.

Council Adopted Values

The City Council is acting *responsibly* by reviewing and considering the offer of a land donation of land from the Archdiocese of San Francisco.

CONCLUSION

Staff is seeking comments and feedback as to whether the Town will accept the land donation offered by the Archdiocese of San Francisco pertaining to the small strip of land fronting the Holy Cross property from the north gate to the south gate.

ATTACHMENTS

- A. Letter of Land Donation from the Archdiocese of San Francisco
- B. Pictures and Map of Land for consideration
- C. Detailed Pictures and Map of north gate to main gate
- D. Detailed Pictures and Map of main gate to south gate
- E. Sample Land Donation Agreement



THE ARCHDIOCESE OF SAN FRANCISCO

LEGAL OFFICE

ONE PETER YORKE WAY, SAN FRANCISCO, CA 94109-6602 (415) 614-5623 FAX (415) 614-5624

February 23, 2021

Mr. Brian Dossey
Colma City Manager
1198 El Camino Real
Colma, CA 94014

RE: Donation of Land to Town of Colma

Dear Mr. Dossey:

As is well-documented by now, the Town of Colma is currently constructing a beautification and enhanced safety project titled the "Mission Road Bicycle & Pedestrian Improvements Project" (hereafter the "Project") on Old Mission Road, adjacent to Holy Cross Cemetery, a ministry of the Archdiocese of San Francisco. While the Project has achieved the dual goals of pedestrian/bicyclist safety, it has also resulted in an unintended consequence: a significant grading differential between the elevated sidewalks and the unimproved sidewalk area which abuts the fence line of the Cemetery property fronting Old Mission Road. This has created its own safety risks which did not exist prior to the Project. As we understand, the improvements performed by the Town of Colma's contractor, using federal funds, stopped at the property line of the Cemetery.

Prior to the Project, the collective understanding of the Town of Colma and the Cemetery was that the Cemetery's stone fence marked the property line. A surveyor engaged by the contractor during the beginning of the Project has shown otherwise. For purposes of this discussion, the Cemetery and the Archdiocese accept the surveyor's findings.

As a result of the Project, the Cemetery is forced to consider a series of Hobson's choices: Spend the resources necessary to have the Cemetery land match the new construction, convert the strip to a planting area and maintain the landscaping, deconstruct the existing stone wall and construct a new wall which abuts the new pedestrian walkway, or consider a donation of the affected land to the Town of Colma.

The Cemetery Board has considered these options, and the expense associated therewith, and proposes to the Town of Colma that it accept the affected strip as a gift. With this proposed gift, the Town of Colma could convert the affected land to a landscaping buffer and maintain the landscaping, in furtherance of the dual purpose of the original Project: beautification and public safety.

MAR 1 21 04:11:11

We ask that you place this proposal on the agenda for the Council's meeting. We hope this proposed gift will receive favorable consideration, so that we may, collectively, move forward and remedy the unintended consequences and associated risks resulting from an otherwise laudable project.

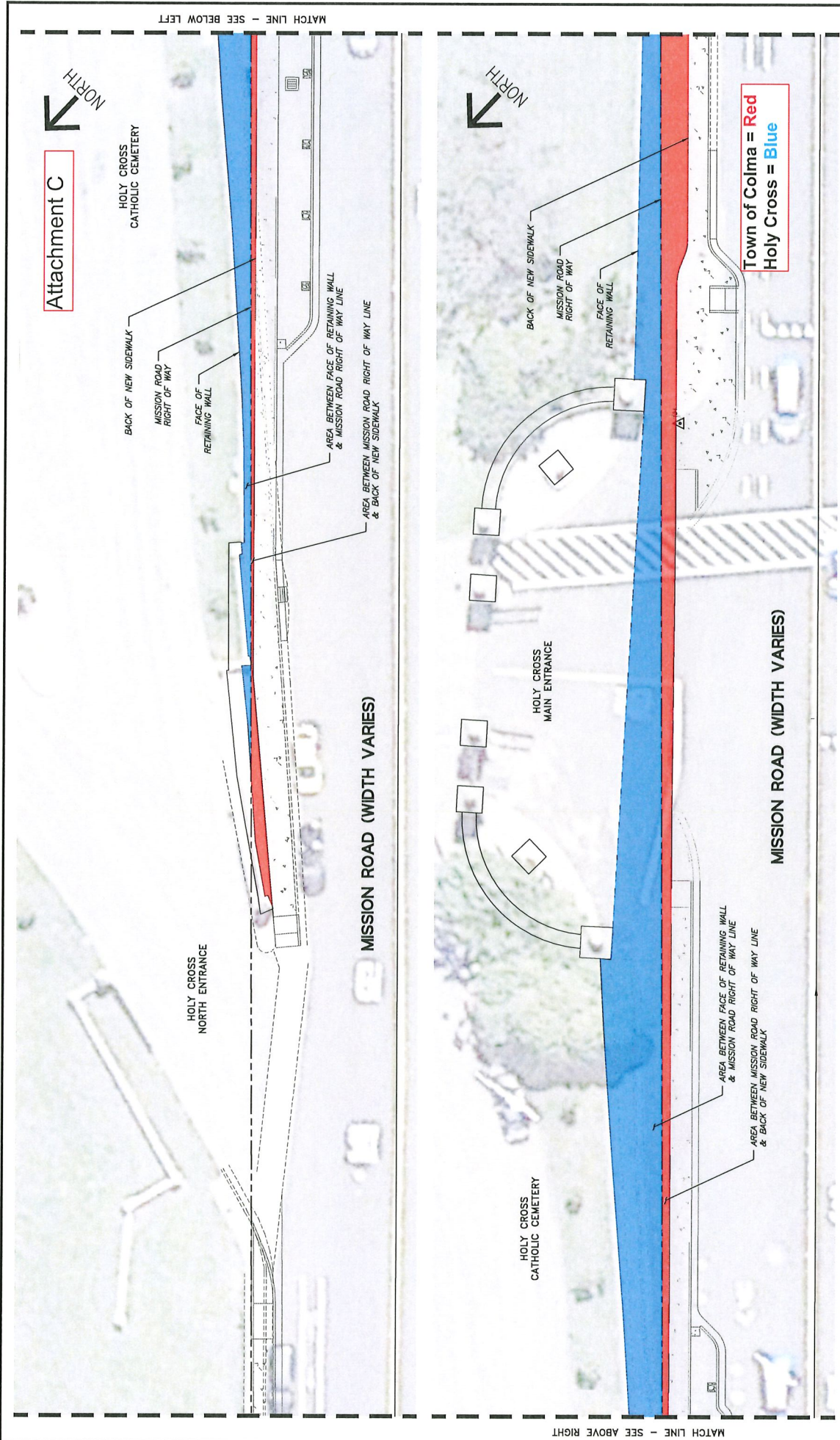
Very Truly Yours,

A handwritten signature in black ink that reads "Paula F. Carney". The signature is written in a cursive, flowing style.

Paula F. Carney
General Counsel
Archdiocese of San Francisco

cc: Rev. Patrick Summerhays, Vicar for Administration
Mr. John Bermudez, Holy Cross Cemetery
Mr. John Christian, Real Property Support Corporation

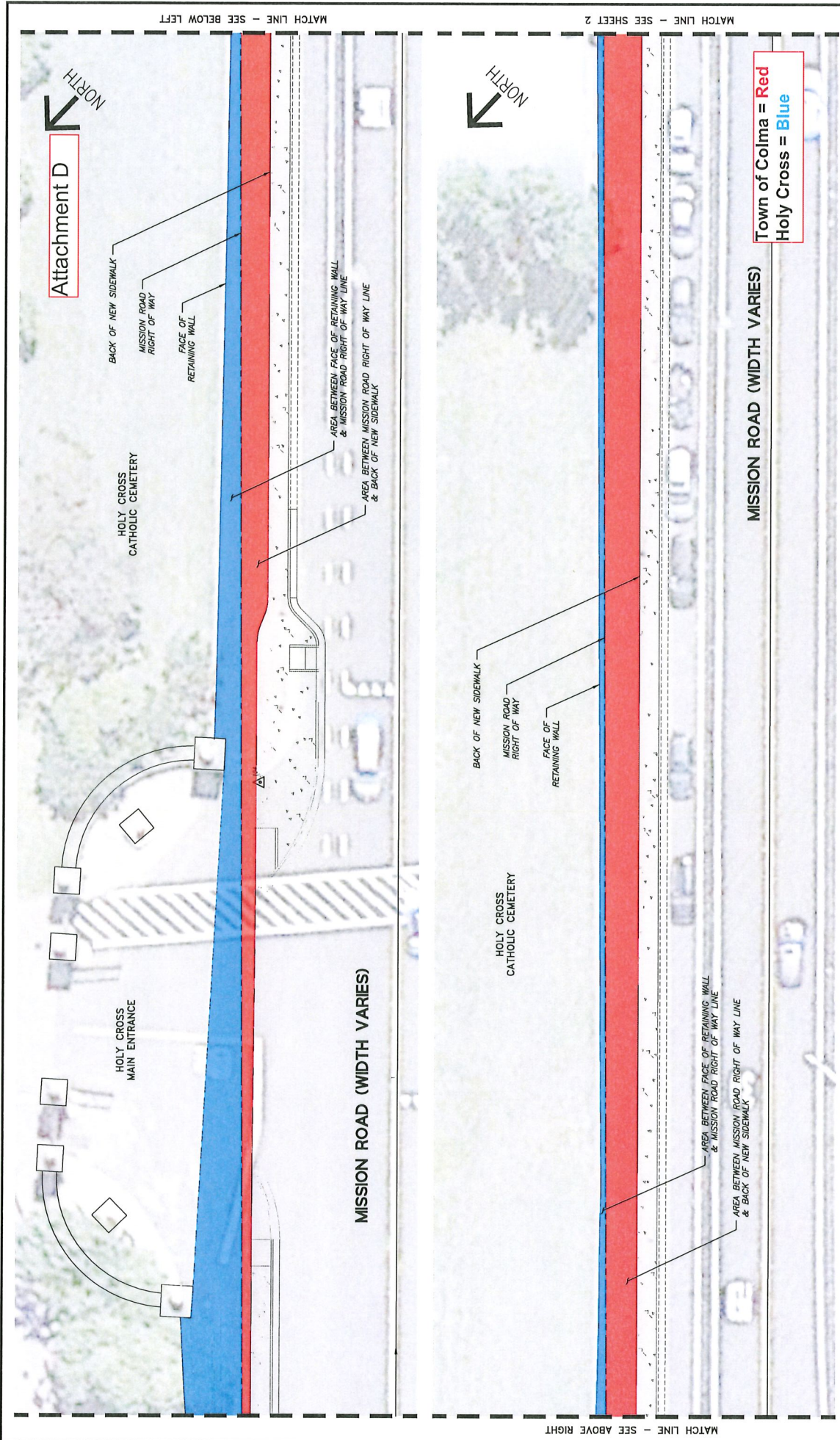




<p>TOPOGRAPHIC SURVEY PERFORMED BY:</p> <p>TOWILL  Surveying, Mapping and GIS Services 2300 Cleyton Road, Suite 1200 Concord, CA 94520-2176 (925) 662-6976 - www.towill.com</p>	<p>PROJECT TITLE:</p> <p>MISSION ROAD - HOLY CROSS NORTH ENTRANCE TO MAIN ENTRANCE MISSION ROAD BICYCLE AND PEDESTRIAN IMPROVEMENTS</p>	<p>PREPARED FOR:</p> <p>TOWN OF COLIMA 1198 EL CAMINO REAL COLIMA, CA. 94014</p>	<p>GRAPHIC SCALE</p>  <p>(IN FEET) 1 inch = 10 ft.</p>	<p>SHEET 1 of 1</p> <p>DATE: 4/16/21</p> <p>JOB#: 18.353</p>
<p>PREPARED BY:</p> <p>CSG Consultants, Inc. 550 Piferon Drive Foster City, CA 94404 Phone (650) 522-2500 Fax (650) 522-2599</p>	<p>CSG CONSULTANTS  EMPLOYEES - OWNED</p> <p>Project no. 041421 © 2020-05-04</p>			<p>MATCH LINE - SEE ABOVE RIGHT</p>

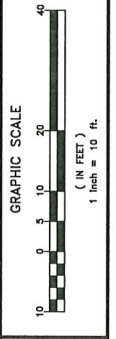
C:\Users\cm\p\proj\20-0218\18-353-Town of Mission Road Bike & Ped Improvements\Proj_Cross Entrance - R/W in Existing Wall Enhancements - Holy Cross Entrance - R/W in Existing Wall Enhancements - 2021.04.13.dwg © 12:00:45 PM





Town of Colma = Red
Holy Cross = Blue

SHEET 1 of 2
DATE: 4/16/21
JOB#: 18-353



PREPARED FOR:
TOWN OF COLMA
1198 EL CAMINO REAL
COLMA, CA. 94014

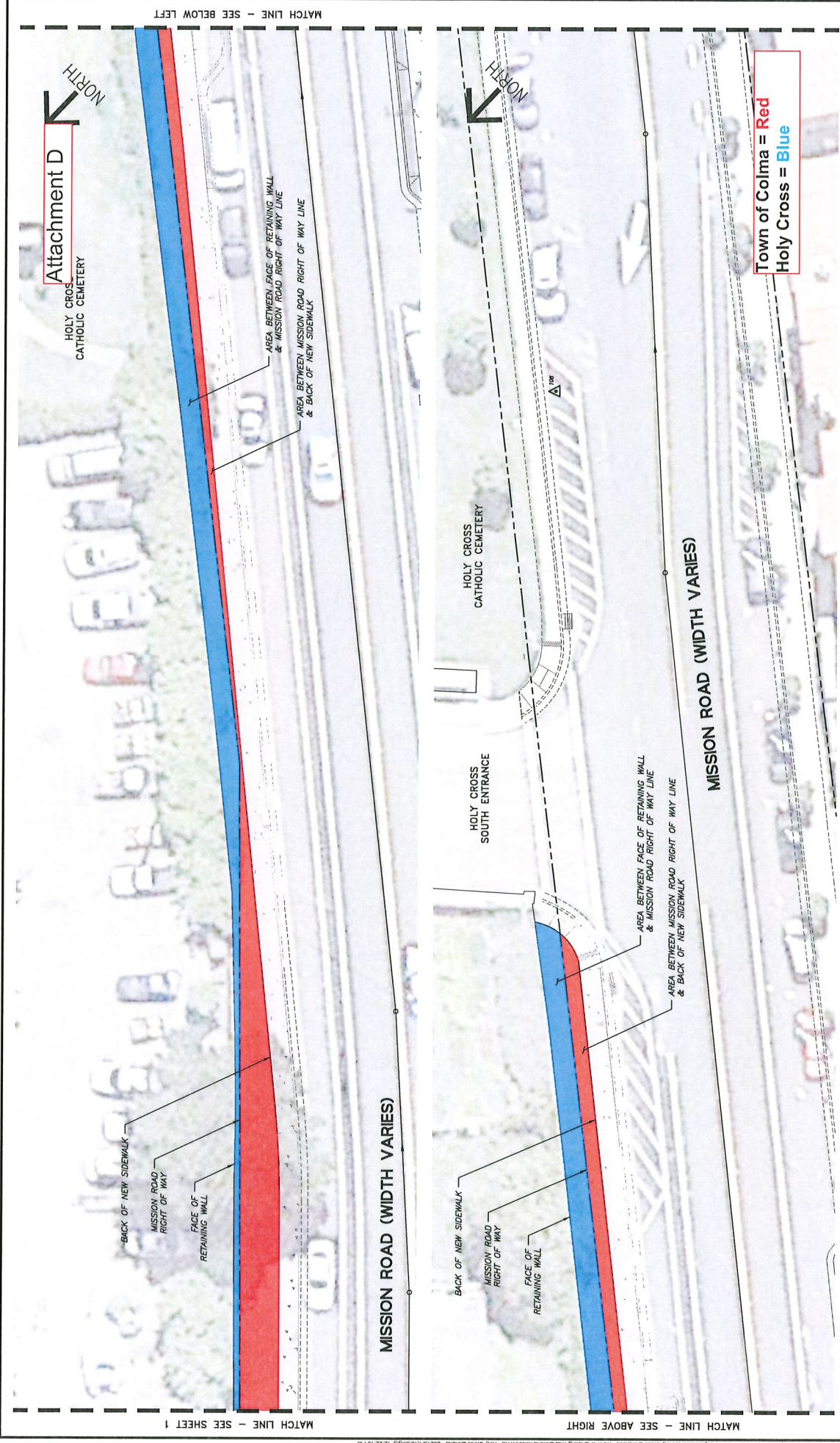
PROJECT TITLE:
MISSION ROAD - HOLY CROSS
MAIN ENTRANCE TO SOUTH ENTRANCE
MISSION ROAD
BICYCLE AND PEDESTRIAN IMPROVEMENTS

TOPOGRAPHIC SURVEY PERFORMED BY:
TOWILL Surveying, Mapping
and GIS Services
2300 Clayton Road, Suite 1200
Concord, CA 94520-2176
(925) 662-8976 - www.towill.com

PREPARED BY:
CSG Consultants, Inc.
550 Pflieger Drive
Foster City, CA 94404
Phone (650) 522-2500
Fax (650) 522-2599



PROJECT NO. 18-353 (04/16/21)



Town of Colma = Red
 Holy Cross = Blue

Attachment D

<p>PREPARED BY: CSG CONSULTANTS, Inc. 550 Pilgrim Drive Foster City, CA 94404 Phone (650) 522-2500 Fax (650) 522-2589</p>	<p>TOPOGRAPHIC SURVEY PERFORMED BY: TOWILL Surveying, Mapping and GIS Services 2300 Cleyton Road, Suite 1200 Concord, CA 94520-2176 (925) 602-8976 - www.towill.com</p>	<p>PROJECT TITLE: MISSION ROAD - HOLY CROSS MAIN ENTRANCE TO SOUTH ENTRANCE MISSION ROAD BICYCLE AND PEDESTRIAN IMPROVEMENTS</p>	<p>PREPARED FOR: TOWN OF COLMA 1198 EL CAMINO REAL COLMA, CA. 94014</p>	<p>GRAPHIC SCALE 0 5 10 20 40 (IN FEET) 1 inch = 10 ft.</p>	<p>SHEET 2 of 2 DATE: 4/16/21 JOB#: 18.393</p>
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MATCH LINE - SEE SHEET 1

MATCH LINE - SEE ABOVE RIGHT

MATCH LINE - SEE BELOW LEFT

NORTH

NORTH

MISSION ROAD (WIDTH VARIES)

MISSION ROAD (WIDTH VARIES)



APN: _____

DONATION AGREEMENT

THIS AGREEMENT (“Agreement”) is made this ____ day of _____, 2017 by and between the _____, herein called “RECIPIENT,” and _____, herein called “Donor.” The RECIPIENT and Donor are sometimes individually referred to as “Party” and collectively as “Parties.”

WHEREAS, Donor is the owner of certain real property located in _____ County, and as more particularly described on Exhibit A attached hereto (the “Property”);

WHEREAS, RECIPIENT desires to acquire the Property for purposes of **wildlife and plant life conservation**; and

NOW, THEREFORE, RECIPIENT and Donor agree as follows:

1. Donation of Property. Donor shall grant the Property to RECIPIENT and, in consideration of the donation to RECIPIENT, RECIPIENT shall accept the grant of the Property, or interest therein, upon the terms and conditions set forth in this Agreement. While no money shall change hands between the parties, Donor shall receive the benefits of a donation to RECIPIENT, as well as **[transferring the obligations associated with the Property]** to RECIPIENT, and RECIPIENT **[is willing to accept such obligations]** in exchange for the Property.

2. Obligations of Donor.

2.1 Fee Interest. Upon acceptance by RECIPIENT, Donor shall convey, assign and transfer its fee interest in the Property to RECIPIENT, free and clear of all liens, encumbrances, easements, leases (recorded or unrecorded), bonds, assessments, and taxes except for (i) liens for non-delinquent property taxes and assessments, and (ii) those liens and encumbrances and easements which, in the sole discretion of RECIPIENT, are acceptable pursuant to Section 6.

2.2 Representations and Warranties of Donor. Donor represents and warrants to RECIPIENT that as of the date of this Agreement and as of the Recordation Date as defined in Section 8.4 below:

2.2.1 Hazardous Substances. The Property is: (i) free from Hazardous Substances; (ii) contains no buried or partially buried storage tanks located on the Property; (iii) has not been used for the generation, storage or disposal of any Hazardous Substance and no Hazardous Substance has been spilled, disposed of, or stored on, under, or at the Property; and (iv) has never been used as a dump or landfill;

2.2.2 Compliance with Law. The Property is in material compliance with all applicable Laws and Environmental Laws;

2.2.3 Leases. No leases, licenses, or other agreements allowing any third party rights to use the Property are or will be in force as of the Closing;

2.2.4 Litigation and Investigations. There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property, and Donor has received no notice, warning, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have been in violation of any Laws or Environmental Laws, or informing Donor that the Property is subject to investigation or inquiry regarding the violation of any Laws or Environmental Laws.

2.2.5 Condition of Property. There are no natural or artificial conditions upon the Property or any part of the Property that could result in a material and adverse change in the condition of the Property;

2.2.6 Access to the Property. There is vehicular access to the Property either directly through a public right of way or through a recorded easement; and

2.2.7 No Insolvency Proceedings. Donor has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets; (iv) suffered the attachment or other judicial seizure of substantially all of its assets; or (v) admitted in writing its inability to pay its debts as they come due.

2.2.8 No Other Agreements, Undertakings or Tenancies. Donor will not enter into any agreements or undertake any new obligations prior to Recordation Date which will in any way burden, encumber or otherwise affect the Property without the prior written consent of the RECIPIENT.

2.2.9 Disclosure. Donor has disclosed to RECIPIENT all information, records, and studies in Donor's possession in connection with the Property, including any reports or studies concerning Hazardous Substances. All information that Donor has delivered to RECIPIENT, either directly or through Donor's agents, is accurate and Donor has disclosed all material facts concerning the operation, development, or condition of the Property.

Donor shall promptly notify RECIPIENT of any facts that would cause any of the representations contained in this Agreement to be untrue as of the Recordation Date. If RECIPIENT reasonably concludes that a fact materially and adversely affects the Property, RECIPIENT shall have the option to terminate this Agreement by delivering written notice to Donor and Title Officer.

2.3 Indemnity. Donor agrees to indemnify RECIPIENT and agrees to defend and hold RECIPIENT harmless from all loss, cost, liability, expense, damage, or other injury, including without limitation, attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by reason of, or in any manner resulting from (i) the breach of any warranties and representations in Section 2.2, and (ii) all third-party claims for Donor's intentional acts or willful misconduct related to the Property occurring prior to the Recordation Date.

2.4 Definitions.

2.4.1 “Environmental Laws” means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as defined subsequently in this Agreement), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property), occupational or environmental conditions on, under, or about the Property, as now in effect, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C.A. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) and the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 U.S.C.A. §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 U.S.C.A. §§ 1801 et seq.]; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [7 U.S.C.A. §§ 136 et seq.]; the Clean Air Act (CAA) [42 U.S.C.A. §§ 7401 et seq.]; the Safe Drinking Water Act (SDWA) [42 U.S.C.A. §§ 300f et seq.]; the Surface Mining Control and Reclamation Act of 1977 (SMCRA) [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or EPCRTKA) [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act of 1970 (OSHA) [29 U.S.C.A. §§ 655, 657]; the California laws regarding the underground storage of hazardous substances [H & S C §§ 25280 et seq.]; the Hazardous Substance Account Act [H & S C §§ 25300 et seq.]; the California laws regarding hazardous waste control [H & S C §§ 25100 et seq.]; the Safe Drinking Water and Toxic Enforcement Act of 1986 [H & S C §§ 25249.5 et seq.]; the Porter-Cologne Water Quality Control Act [Wat C §§ 13000 et seq.], and any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

2.4.2 “Hazardous Substances” includes without limitation:

(i) Those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” or “pollutant or contaminant” in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law;

(ii) Those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302];

(iii) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(iv) Any material, waste, or substance that is: a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 U.S.C.A. § 1321 or listed pursuant to 33 U.S.C.A. § 1317, a flammable explosive, or a radioactive material.

3. Escrow. INTENTIONALLY DELETED

4. Feasibility Period.

4.1 During the period commencing on the date of this Agreement and terminating on a date which is sixty (60) days from the date of this Agreement (“Feasibility Period”), RECIPIENT may undertake at RECIPIENT’s expense an inspection of the Property. Said inspection may include: (i) a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Substances, if any, and archeological information relating to the Property; and (ii) a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Property. Within ten (10) days following the full execution of this Agreement by both parties, Donor shall deliver to RECIPIENT copies of all architectural plans, surveys, specifications, and other documents pertaining to the physical, geological, or environmental condition of the Property that are owned by or in the possession of Donor.

4.2 If RECIPIENT’s environmental consultant requires additional time to determine the existence and extent of any Hazardous Substances on the Property, RECIPIENT shall have the right, exercisable by delivering written notice to Donor prior to the expiration of the Feasibility Period, to extend the Feasibility Period for up to an additional sixty (60) days to complete the testing.

4.3 If RECIPIENT disapproves of the results of the inspection and review or the results of any Phase I Environmental Report, RECIPIENT may elect, prior to the last day of the Feasibility Period (or any extension thereof), to terminate this Agreement by giving Donor written notification prior to the last day of the Feasibility Period (or any extension thereof). If RECIPIENT fails to properly notify Donor of the intent to terminate this Agreement, RECIPIENT shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

5. Access.

5.1 Access to the Property during the Feasibility Period shall be given to RECIPIENT, its agents, employees, or contractors during normal business hours upon at least one (1) business day’s notice to Donor, at RECIPIENT’s own cost and risk, for any purposes, including, but not limited to, inspecting the Property, taking samples of the soil, and conducting an environmental audit (including an investigation of past and current uses of the Property). RECIPIENT shall indemnify and defend Donor against and hold Donor harmless from all losses, costs, damages, liabilities, and expenses, including, without limitation, reasonable attorney fees arising out of RECIPIENT’s entry onto the Property or any activity thereon by RECIPIENT or its agents, employees, or contractors prior to the Recordation Date except to the extent any such losses, costs, damages, liabilities, and expenses arise out of the gross negligence or willful acts of

Donor. Any entry onto the Property by RECIPIENT or its agents, employees, or contractors shall be at reasonable times. The provisions of this Section shall survive the Recordation Date. Notwithstanding anything herein to the contrary, RECIPIENT and Donor agree that RECIPIENT shall not incur any liability hereunder merely by the discovery of an “Existing Adverse Condition” (as defined below) regardless of whether such Existing Adverse Condition, once revealed, negatively impacts the value of the Property or otherwise causes Donor to incur liabilities, costs or expenses. The term “Existing Adverse Condition” shall mean an adverse condition existing on or with respect to the Property that is discovered or revealed by RECIPIENT in the course of its Property inspection hereunder.

5.2 In addition to the provisions of Section 4.1, RECIPIENT and its agents, employees, or contractors shall have the right, from the date of this Agreement until the Recordation Date, to contact any federal, state, or local governmental authority or agency to investigate any matters relating to the Property. Donor agrees to cooperate reasonably with RECIPIENT and its agents, employees, or contractors in the inspection of the Property and agrees to deliver to RECIPIENT all information in Donor’s possession or control pertaining to the condition of the Property, including engineering and environmental reports, studies, tests, monitoring results, and related documentation.

6. Title.

6.1 Immediately following the execution of this Agreement by both Parties, RECIPIENT shall cause Title Officer to issue to RECIPIENT (with a copy to Donor) a preliminary report for an ALTA Standard Policy of Title Insurance, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters affecting Donor’s title to the Property (“Preliminary Report”), together with copies of all documents relating to title exceptions referred to in the Preliminary Report.

6.2 Following the full execution of this Agreement by both Parties, RECIPIENT may cause a survey and/or an ALTA Survey of the Property to be prepared by a registered surveyor or professional engineer (“Survey”). Donor agrees to deliver to RECIPIENT, promptly following the full execution and delivery of this Agreement, copies of any survey of the Property in the possession of Donor.

6.3 RECIPIENT shall approve or disapprove, in writing to Donor with a copy to Title Officer, each exception shown on the Preliminary Report and each encroachment, overlap, or boundary line dispute, or any other matter that materially and adversely affects title to the Property or that violates any law, rule, or regulation reflected on the Survey (each an “Exception”) within twenty (20) business days following the receipt of the Preliminary Report or the Survey, whichever is later. RECIPIENT’s failure to object within the twenty (20) day period shall be deemed to be a disapproval of the Exceptions. The Exceptions approved by RECIPIENT hereunder shall be referred to as the “Approved Exceptions.”

6.4 If any Exception is disapproved or deemed disapproved (each a “Disapproved Exception”), Donor shall have the right, but not the obligation, within thirty (30) days following expiration of the twenty (20) day period provided under Section 6.3 above, to cause each Disapproved Exception to be discharged, satisfied, released, or terminated, as the case may

be, of record, and in a form that is reasonably satisfactory to RECIPIENT and Title Officer, all at Donor's sole cost and expense.

7. [INTENTIONALLY DELETED]

8. Closing and Recordation Date.

8.1 Title. Simultaneously with the Recordation Date, Title Officer shall issue an ALTA Standard Policy of Title Insurance (formerly referred to as a CLTA Title Policy) ("Title Policy") in the amount of \$_____, subject only to (i) liens for real property taxes, bonds, and assessments not then due, and (ii) the Approved Exceptions.

8.2 Donor's Deposits. Donor shall deposit with Title Officer on or prior to the Recordation Date a grant deed in the form attached hereto as Exhibit "B" executed and acknowledged by Donor, conveying to RECIPIENT good and marketable fee simple title to the Property, subject only to the Approved Exceptions ("Deed").

8.3 RECIPIENT's Deposits. An executed Certificate of Acceptance for the Deed.

8.4 Recordation Date. The conveyance of the Property to RECIPIENT and the closing of this transaction ("Closing") shall take place within one hundred twenty (120) days ("Recordation Date") following the execution of this Agreement.

8.5 Closing Statements. Intentionally Deleted.

8.6 Closing Instructions. On the Recordation Date (or any extension thereof), Title Officer shall do the following:

(i) record the Deed (marked for return to RECIPIENT) with the _____ County Recorder;

(ii) issue the Title Policy;

(iii) If Title Officer is unable to simultaneously perform all of the instructions set forth above, Title Officer shall notify RECIPIENT and Donor and retain all funds and documents pending receipt of further instructions jointly issued by RECIPIENT and Donor.

8.7 Closing Costs and Prorations. RECIPIENT shall pay the following closing costs and prorations through the Recordation Date:

(i) All governmental conveyancing fees and taxes due upon transfer of the Property, except that no documentary transfer tax will be payable with respect to this transaction, pursuant to Revenue and Taxation Code Section 11922;

(ii) The recording charges in connection with recordation of the Deed;

(iii) All charges in connection with issuance of the Title Policy in the amount of \$_____;

(iv) All costs associated by environmental reports, including the Phase I Environmental Site Assessment Report, and any further testing and reports which may be reasonably necessary as a result of such report;

(v) All charges related to any survey undertaken in connection with an ALTA Extended Policy of Title Insurance;

(vi) All charges in connection with the *[add any special terms here that need settlement as a part of the donation]*; and

(vii) All charges in connection with removing any Disapproved Exceptions pursuant to Section 6.4 and to cure any defect in vesting in order to satisfy the condition set forth in Section 9(v).

(viii) All fees and charges levied by Title Officer.

8.8 Real Estate Taxes, Bonds, and Assessments. Donor shall pay real property taxes to the _____ County Tax Assessor's office prior to the Recordation Date based on the most current real property tax bill available, including any additional property taxes that may be assessed after the Recordation Date, regardless of when notice of those taxes is received or who receives the notice. Donor may seek reimbursement from the _____ County Tax Assessor's office for any property taxes that have been assessed for a period after the Recordation Date as RECIPIENT is a public agency exempt from payment of such taxes. RECIPIENT further agrees to cooperate with Donor to provide any necessary information to the Assessor's office in connection with such request for refund. All installments of any bond or assessment that constitutes a lien on the Property at the Recordation Date shall be paid by Donor.

8.9 Possession. Possession of the Property shall be delivered to RECIPIENT at the Recordation Date.

9. Acceptance. The acceptance of the Property by RECIPIENT and the Recordation Date (as defined in Section 8) are subject to the satisfaction of the following no later than the Recordation Date:

(i) RECIPIENT's approval of the condition of the Property as provided in Section 4 and title to the Property as provided in Section 6. In addition, Donor shall remove any debris or trash from the Property prior to the Recordation Date;

(ii) The representations and warranties of Donor set forth in Section 2.2 shall be true and accurate as of the Recordation Date;

(iii) Donor's performance of all obligations under this Agreement;

(iv) No adverse material change shall have occurred with respect to the condition of the Property from the end of the Feasibility Period through the Recordation Date; and

(v) Title Officer being prepared to issue the Title Policy on the Recordation Date, subject only to the Approved Exceptions.

10. [INTENTIONALLY DELETED]

11. The performance by the RECIPIENT of its obligations under this Agreement shall relieve the RECIPIENT of any and all further obligations or claims on account of the acceptance of the offer of dedication. The RECIPIENT agrees to use the Property for the purposes of **wildlife and plant habitat conservation pursuant to the MSHCP.**

12. This Agreement may be terminated by RECIPIENT upon three (3) days written notice to Donor and Title Officer if the conditions to closing set forth in Section 9 have not been fulfilled on or before the Recordation Date. Upon termination by RECIPIENT pursuant to this Section 12, Donor shall be responsible for all costs and expenses of Title Officer.

13. As used in this Agreement, notice includes but is not limited to, the communication of any notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. All notices must be in writing. Notice is given either (i) when delivered in person to the person or company intended named below, or (ii) when sent via reputable overnight courier (such as Federal Express), addressed by name and addressed to the party or persons intended, as follows:

To RECIPIENT:

To Donor:

until such time as a party gives notice of the change of address in accordance with the terms of this section.

14. This Agreement shall not be changed, modified or amended except upon the written consent of the Parties hereto.

15. This Agreement is the result of negotiations between the Parties and is intended by the Parties to be a final expression of their understanding with respect to the matters herein contained. This Agreement supersedes any and all other prior agreements and understandings,

oral or written, in connection therewith. No provision contained herein shall be construed against the RECIPIENT solely because it prepared this Agreement in its executed form.

16. Donor, their assigns and successors in interest, shall be bound by all the terms and conditions contained in this Agreement, and all the parties thereto shall be jointly and severally liable thereunder.

17. This Agreement is not binding until executed by the **Executive Director** of the RECIPIENT.

18. Notwithstanding any other provision of this Agreement or any other agreement between any of the Parties hereto, once the Property is conveyed to and accepted by the RECIPIENT, the RECIPIENT shall have no obligation to return the Property to the Donor under any circumstances, except in the sole and exclusive discretion of the RECIPIENT.

19. RECIPIENT agrees to cooperate with Donor to acknowledge receipt of the donation of the Property by signing **Internal Revenue Form 8283 (Non-Cash Charitable Contributions)** before the Recordation Date and any other tax-related forms or documents reasonably requested by Donor and to return any such forms to Donor within thirty business (30) days after RECIPIENT's receipt of such forms from Donor. Notwithstanding the foregoing, RECIPIENT makes no representation or warranty to Donor regarding the tax attributes of this transaction, nor shall RECIPIENT endorse or otherwise acknowledge any valuation of the Property for tax purposes, it being understood that the Donor has obtained its own appraisals and tax advice for such purposes.

20. This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

[signature page follows]

SIGNATURE PAGE FOR THE DONATION AGREEMENT BETWEEN AND

IN THE WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly-authorized representatives on the date and year set forth below.

DONOR:

RECIPIENT:

Date: _____

Date: _____

By:

By: _____

By:

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

OF

EXHIBIT "B"

Grant Deed

Recorded at request of and return to:

|

(Space above this line reserved for Recorder's use)

GRANT DEED

APN:

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
_____, herein called "**Grantor**", hereby GRANTS to
_____ ("**Grantee**"), the real property in the
County of _____, State of California, described as:

See Exhibit "A" attached hereto and made a part hereof

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the ___th day of _____,
2017.

Signature of Donor

ATTACH NOTARY ACKNOWLEDGEMENT



STAFF REPORT

TO: Mayor and Members of the City Council
 FROM: Pak Lin, Administrative Services Director
 VIA: Brian Dossey, City Manager
 MEETING DATE: April 28, 2021
 SUBJECT: FY 2021-22 Budget Study Session

RECOMMENDATION

This item is a study session for informational purposes only. No City Council action is required; however, staff seeks City Council feedback and direction on:

- Programs included in the FY 2021-22 Budget
- Authorization to use unassigned general fund reserves to bridge the gap in FY 2021-22.

EXECUTIVE SUMMARY

At tonight's City Council Meeting, the Council will receive a report that reviews the initial projections of the Town's overall revenues and expenditure budgets, General Fund revenues and expenditures, preliminary estimates of Town-wide reserves, and major expenditure programs.

The City Council will be asked for their comments and review of the FY 2021-22 Budget. There will be three more presentations to the City Council on the FY2021-22 Budget. Those presentations are scheduled for, May 12 (Presentation of FY 2021-22 Thru FY 2025-26 Capital Program), May 26 (Presentation of 2021-22 Proposed Budget), and June 9 (Council Review and Adoption of 2021-22 Proposed Budget).

FISCAL IMPACT

City Council review and direction on the FY 2021-22 Budget and Financial Plan preliminary report will not impact the current FY 2020-21 Budget.

BACKGROUND

The Budget is an annual planning tool that communicates priorities and sets the Town's operating and spending policy for the year. The City Manager is responsible for presenting a budget to the City Council according to Colma Administrative Code Section 4.01 Division 2. The financial objective of the Budget is to ensure that there are sufficient funds to meet ongoing spending.

Special projects and Capital programs, where spending is generally one-time in nature, typically can utilize reserves.

The Budget Development Process begins in February of each year with the mid-year financial update and budget amendments review. Due to the COVID-19 pandemic, the Town's FY 2020-21 budget initially replicated the FY 2019-20 operating budget and the FY 2020-21 portion of the 2019-2024 Five-Year Capital Improvement Plan.

In May 2020, the City Council reviewed the impacts of the COVID-19 crisis on the Town's financial health. On May 27, 2020, the City Council approved the use of unassigned general fund reserves to bridge the operating deficit in FY 2019-20 and FY 2020-21, up to \$2.5 million in FY 2019-20 and up to \$2.2 million in FY 2020-21.

The FY 2020-21 Budget was amended on October 28, 2020 to reflect the Town's priorities during the COVID-19 pandemic. The Budget included expenditure reduction strategies in anticipation of the continued COVID-19 financial crisis. On March 10, 2021, the Town reviewed its financial health through December 31, 2020 and found that we are on track to meet our revenue projections and stay within our expenditure budget for the year.

More than a year after the first case of COVID-19 in the Bay Area, the Town is preparing its financial plan for FY 2021-22. The FY 2021-22 financial plan is being developed, assuming the Town will be in full operations by July 1, 2021, as more than 50% of the US population had at least their first COVID-19 vaccine shot by mid-April. However, we are also sensitive to the fact that there are still variables to consider, including the increased COVID-19 variants and the steady infection rate.

ANALYSIS

Due to the COVID-19 pandemic, the Town had significantly reduced services due to temporary closures. The Town also decreased pension and OPEB trust contributions by half in FY 2020-21 to offset the loss in operating revenues. Assuming the Town needs to return to full operations on July 1, 2021, the Town's total operating Budget will be as followed:

Table 1	General	Special	Capital	Vehicle	Enterprise	Total
Town-wide Financial	Funds	Revenues & Debt Funds	Funds	Replacement Fund	Funds	
Operating Activities						
Revenues	\$ 17,531,264	\$ 284,050	\$ 2,000	\$ 256,500	\$ 1,309,765	\$ 19,383,580
Expenditures	17,876,721	517,697	665,025	240,000	1,297,375	20,596,818
Operating Surplus / (Deficit)	(345,457)	(233,647)	(663,025)	16,500	12,390	(1,213,239)
Other Activities						
Capital Investment	(665,025)		665,025			-
Net Transfers	(535,756)	297,569	-	-	238,187	-
Change in Fund Balance	(1,546,238)	63,922	2,000	16,500	250,577	(1,213,239)

Total General Fund operating deficit plus net operating transfers is \$881,000 (\$345,457 plus \$535,756). The Town's General Fund is obligated to fund the debt payment and sewer operations. Assuming for capital investment transfers of \$665,000, the total General Fund reserves needed in FY 2021-22 is \$1.55 million. Table 2 below summarizes the projected reserve balances at June 30, 2022 for each fund category.

General Fund Revenues

Table 2 General Fund Financial	2020-21 Final Budget	2020-21 Act Thru Feb	[a] 2020-21 Estimated	[b] 2021-22 Preliminary	[b]-[a] Change in Budget \$	[b]/[a]-1 %
Revenues by Categories						
Sales tax	10,432,019	6,863,675	12,000,000	12,000,000	-	0%
Cardroom tax	1,109,236	692,438	1,775,869	3,512,000	1,736,131	98%
Property and other taxes	729,229	412,961	758,761	787,308	28,547	4%
Licenses and permits	156,357	171,488	207,176	281,176	74,000	36%
Fines and forfeitures	86,888	64,726	73,726	94,000	20,274	27%
Use of money and property	373,091	125,239	235,239	277,685	42,447	18%
Revenues from other agencies	146,168	71,083	87,583	328,020	240,437	275%
Charges for current services	153,935	29,889	104,247	196,362	92,115	88%
Allocations	-	-	-	-	-	n/a
Other revenues	21,451	28,999	38,713	54,713	16,000	41%
Total Revenues	13,208,374	8,460,499	15,281,314	17,531,264	2,249,950	15%

Per our discussions with HdL, the Town's tax consultant, the Town will receive close to \$12.0 million in sales tax revenues by June 30, 2021 and close to \$12.5 million by June 30, 2022. Due to uncertainties surrounding the COVID-19 pandemic with the increase in variants and the steady infection rate, staff wanted to remain conservative with the FY 2021-22 Budget and kept the sales tax revenue budget at the same level as FY 2020-21.

As for cardroom taxes, FY 2020-21 was extremely difficult for the Town's cardroom with San Mateo County in the Red or Purple COVID-19 tier for most of the year. However, with the recent move to Orange, the Town anticipates cardroom tax revenues to reach \$1.78 million by June 30, 2021 and likely \$3.5 million by June 30, 2022. The \$3.5 million is based on FY 2019-20 actual receipts. This is a conservative estimate and will depend on the COVID-19 case rate in San Mateo County.

In reviewing the sales and cardroom taxes, the Town may add \$0.8 million to \$1.0 million to general fund revenues in FY 2021-22 if the economy recovers faster than projected.

General Fund Expenditures

Table 3 General Fund Financial	2020-21 Final Budget	2020-21 Act Thru Feb	[a]	[b]	[b]-[a]	[b]/[a]-1
			2020-21 Estimated	2021-22 Preliminary	Change in Budget \$	%
Expenditures by Category						
Salaries, Wages, & Benefits	9,947,624	6,673,792	9,672,433	11,632,444	1,960,011	20%
Supplies & Services	2,183,537	1,519,197	2,153,469	2,851,998	698,529	32%
Professional & Contract Services	2,530,949	1,205,920	2,290,845	3,098,779	807,934	35%
Capital Outlay	5,542	1,474	2,250	293,500	291,250	12944%
Debt Proceeds	-	-	-	-	-	n/a
Total Expenditure by Category	14,667,652	9,400,383	14,118,997	17,876,721	3,757,725	27%
Operating Surplus/ (Deficit)	(1,459,278)	(939,885)	1,162,317	(345,457)	(1,507,774)	-130%
Other Activities						
Transfers In	-	48,027	48,027	-	(48,027)	-100%
Transfers (Out)	(698,670)	(135,206)	(723,381)	(535,756)	187,625	-26%
Net Transfers In/(Out)	(698,670)	(87,179)	(675,354)	(535,756)	139,598	-21%

Due to the COVID-19 pandemic, the Town was operating on a reduced level of service in FY 2020-21. The FY 2020-21 budget included freezing the Police Officer and Recreation Manager positions, reducing contributions to pension and OPEB trusts by half of the actuarially determined contribution (ADC), deferring all equipment and vehicle purchases, eliminating the vehicle replacement contribution for a year, and defunding capital projects to fund higher priority projects.

On April 6, 2021, Governor Newsom announced plans to reopen California's economy on June 15, 2021. The FY 2021-22 Preliminary Budget above assumes that the Town will be in full operation beginning July 1, 2021. The Budget includes the following:

- **Staffing Changes.** As part of the budget reduction strategies in FY 2020-21, the Town did not fill the vacant Police Officer, Sergeant Detective, and Recreation Manager positions. Additionally, the Town changed the vacant part-time HR Manager position to a full-time HR Analyst position. The FY 2021-22 budget assumes all vacant positions will be filled beginning July 1, 2021, increasing by \$550,000.
- **Unfunded Liabilities Strategies.** The FY 2021-22 Preliminary Budget implements the Unfunded Liabilities Strategies approved on April 14, 2021. The strategies included 100% funding to OPEB per the ADC, pension per 6% discount rate, the Accrued Leave Reserve allocation base on 2% of regular payroll. The budgetary impact is \$1.5 million in FY 2021-22, compared to FY 2020-21.
- **Town Operations (non-Personnel).** Due to the COVID-19 pandemic, Town services in recreation programs and planning/building/engineering activities were reduced. The main reason for the reduction is due to temporary closures. The FY 2021-22 Preliminary Budget assumes that the Governor's reopening plan is on track for full restoration by June 15, 2021, increasing by \$1.0 million. Part of the \$1.0 million increase includes the new landscape contract approved by the City Council on April 14, 2021.

- Facilities Repairs and Equipment Purchase. The FY 2020-21 budget reduction strategies included deferring all facilities repair and equipment purchases. These repairs and purchases are essential because they protect the Town from potential claims and reduce expensive replacement. The FY 2021-22 budget shows an increase of \$250,000 of facilities repair and equipment purchases when compared to FY 2020-21. Additionally, the Town did not make the annual contribution of \$250,000 to the vehicle replacement fund. The vehicle replacement schedule will be discussed at the May 12, 2021 City Council meeting as part of the Capital Improvement Plan study.
- Strategic Planning. The FY 2021-22 budget includes elements of the 2020-22 Strategic Plan.
 - *Resiliency*. The FY 2021-22 budget includes:
 - \$100,000 for a revenue strategy consultant and \$50,000 for a sewer consultant to help develop revenue strategies to meet rising cost,
 - \$30,000 for the California Cities Gaming JPA (CCGA) to preserve the Town's current revenue source, and
 - \$25,000 for the San Mateo County Flood and Sea Level Rise Agency to mitigate potential future disasters.
 - *Economic Development*. The FY 2021-22 budget includes:
 - \$50,000 for the economic development consultant for support to expand businesses in Colma and prepare for future commercial real estate and retail needs.

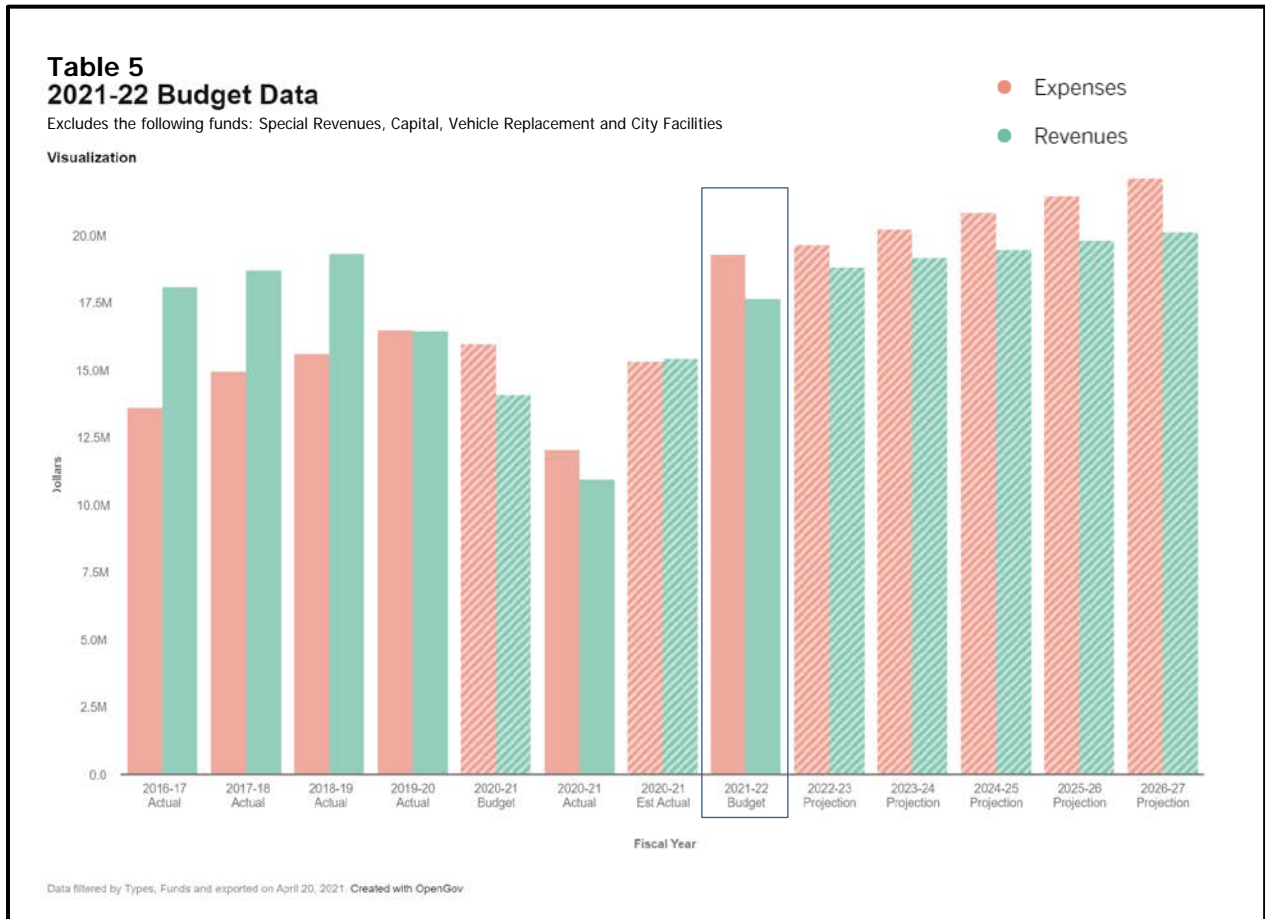
Town-Wide Reserves

Table 4 below shows the Town's projected reserve balances at June 30, 2022 based on the conservative projections above.

Table 4		Special		Vehicle			
Town-wide Financial	General Funds	Revenues & Debt Funds	Capital Funds	Replacement Fund	Enterprise Funds		Total
Fund Balance							
Committed Reserve							
Budget Stabilization	12,000,000						12,000,000
Debt Reduction	600,000						600,000
Accrued Leave Payout	836,698						836,698
Assigned Reserve							
Litigation	100,000						100,000
Insurance	100,000						100,000
Disaster Response & Recovery	750,000						750,000
Other Assigned Reserve		671,228	1,489,874	748,369	493,447		3,402,917
Unassigned Reserve	8,761,344						8,761,344
Projected Fund							
Balance @ 6/30/2022	\$ 23,148,042	\$ 671,228	\$ 1,489,874	\$ 748,369	\$ 493,447		\$ 13,114,261

Five-Year Operating Forecast

Looking at the next five years, Table 5 shows a gap between expenses and revenues which increases as we progress through FY 2022-23 through FY 2026-27. The chart includes funds that the general fund supports, including sewer and debt service. The projected operating deficit starts with \$843,000 in FY 2022-23 and continues to \$1.94 million by FY 2026-27. The growing structural deficit results from increased health care costs, unfunded pension and OPEB liabilities, and the slow growth in tax revenues. A serious look at new revenue sources, diversifying our revenue sources, and restructuring our operating services are keys to address the growing structural deficit.



Reasons For the Recommended Action/Findings

Providing for early public discussion of the Town's Financial Plan allows an opportunity for staff to evaluate and incorporate any comments from the City Council and new items that may not be included in the baseline budget.

Council Adopted Values

The Staff recommendation is consistent with the Council adopted values of:

- *Responsibility*: Making decisions after prudent consideration of their financial impact, considering the long-term financial needs of the agency, especially its financial stability.
- *Fairness*: Support the public's right to know and promote meaningful public involvement.

Alternatives

In addition to providing feedback on the items listed under Proposed Increases and Other Discussion Matters, the City Council may provide direction to staff on budgetary items to add or be removed.

CONCLUSION

Staff is requesting comments from the Council and the public on the Preliminary Budget Report during the April 28, 2021 Budget Study Session. A second Budget Study Session will be held on May 12, 2021 that will focus on the Capital Improvement Program, a third Budget Study Session will be held on May 26, 2021. A public hearing to adopt the FY 2020-21 Proposed Budget will be held on June 9, 2021. A more detailed budget document will be provided in advance of these meetings.

ATTACHMENTS

None

