



**AGENDA  
REGULAR MEETING  
CITY COUNCIL OF THE TOWN OF COLMA  
Wednesday, July 27, 2022  
7:00 PM**

*The City Council meeting will be conducted virtually pursuant to the provisions of Assembly Bill 361 amending the Ralph M. Brown Act and Government Code Section 54953(e) (and without compliance with section 54953(b)(3)) related to conducting public meetings during the COVID-19 pandemic based on the current State of Emergency and the existing State recommendations on social distancing. The Council Chambers will not be open to the public for this City Council meeting.*

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

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*Members of the public may provide written comments by email to the City Clerk at [ccorley@colma.ca.gov](mailto:ccorley@colma.ca.gov) before 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. Verbal comments will also be accepted during the meeting.*

## PLEDGE OF ALLEGIANCE AND ROLL CALL

## ADOPTION OF AGENDA

## PRESENTATIONS

- Recognition of North Peninsula Food Pantry and Dining Center of Daly City Executive Director Denise Kelly and Board of Directors
- Introduction of New Assistant Planner Claire Smith
- Introduction of New Accounting Technician Nicole Nguyen

## 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 July 13, 2022 Regular Meeting.
2. Motion to Adopt an Ordinance Repealing Colma Municipal Code Subchapter 4.13 and Adopting a New Subchapter 4.13 Regulating the Use of Disposable Food Service Ware by Food Facilities Pursuant to CEQA Guideline 15061(B)(3) and 15308 to Align with New State Mandates (second reading).
3. Motion to Designate Council Member John Goodwin as the Voting Delegate and City Manager Brian Dossey as the Alternate Voting Delegate for the Annual League of California Cities Conference in September 2022.
4. Motion to Adopt a Resolution Calling on Sutter Health to Reopen the Mack E. Mickelson Arthritis and Rehabilitation Center Therapy Pool for Community Use at the Mills Health Center in San Mateo, With the Same Open Access Hours That Were in Place Prior to January 2020.
5. Motion to Adopt a Resolution Approving and Authorizing the City Manager to Execute a Three-Year Financial Projection and GASB Reporting Service Contract with GovInvest for a Total Contract Value of \$104,000.

## NEW BUSINESS

### 6. SALE OF 1365 MISSION ROAD

*Consider:* Motion Finding That the Town Owned Property at 1365 Mission Road is Exempt Surplus Property and Directing the City Manager to Prepare, List and Sell the Town Owned Property at 1365 Mission Road for Sale.

## 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](http://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 650-997-8300 or email a request to [citymanager@colma.ca.gov](mailto:citymanager@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](mailto: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, July 13, 2022**

**Closed Session – 6:30 PM**

**Regular Session - 7:00 PM**

**CLOSED SESSION – 6:30PM**

1. **In Closed Session under Government Code § 54957 – PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: City Manager

**PLEDGE OF ALLEGIANCE AND ROLL CAL – 7:00 PM**

Mayor Fiscaro called the meeting to order at 7:08 p.m.

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

Staff Present – City Manager Brian Dossey, City Attorney Christopher Diaz, Administrative Services Director Pak Lin, Chief of Police John Munsey, Director of Public Works Brad Donohue, City Planner Farhad Mortazavi, Recreation Services Manager Angelika Abellana and City Clerk Caitlin Corley were in attendance.

The Mayor announced, “As always, we are accepting public comments through email or the zoom chat function—you can email our City Clerk at ccorley@colma.ca.gov or use the chat function to let her know which item you would like to speak on. Please keep your comments to 3 minutes or less. Thank you.”

**REPORT FROM CLOSED SESSION**

The Mayor stated, “Direction was given to staff at the end of closed session.”

**ADOPTION OF THE AGENDA**

Mayor Fiscaro 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 Colvin and carried by the following vote:

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

## PRESENTATIONS

- The Mayor explained that a recognition of North Peninsula Food Pantry and Dining Center of Daly City Executive Director Denise Kelly and Board of Directors was on the agenda for the evening, however, "Unfortunately, Executive Director Denise Kelly was not able to join us this evening, so we'll be postponing this presentation until our next Regular Meeting on July 27, 2022."
- City Planner Farhad Mortazavi introduced new Principal Planner Lorraine Weiss
- Recreation Services Manager Angelika Abellana introduced new Recreation Staff:
  - Melissa Granados, Recreation Leader
  - Ashley Rostran, Recreation Leader
  - Miranda Rodriguez, Recreation Leader
  - Daniel Gotelli, Recreation Leader

## PUBLIC COMMENTS

Mayor Fiscaro opened the public comment period at 7:16 p.m. The Mayor made a comment in her capacity as a resident to express concerns about illegal fireworks being used in the Sterling Park neighborhood. The Mayor closed the public comment period at 7:18 p.m.

## CONSENT CALENDAR

2. Motion to Accept the Minutes from the June 22, 2022 Special Meeting.
3. Motion to Accept the Minutes from the June 22, 2022 Regular Meeting.
4. Motion to Approve Report of Checks Paid for June 2022.
5. Motion to Reconfirm the Findings and Determinations Made in Resolution No. 2021-33 and Under Assembly Bill 361 for the Continuation of Virtual Meetings, with acknowledgment that the California Department of Public Health has updated the definition of "close contact" in Regulation 3205 from being within 6 feet of another person to sharing the same indoor space with another person for 15 minutes or more, which further supports the findings.
6. Motion to Accept Informational Report on Recreation Department Programs, Activities, Events, and Trips for the Second Quarter of 2021.
7. Motion to Opt-Out and Authorize the City Manager to Execute an Opt-Out Letter in the Pending Class Action Case of City of Long Beach, et al. V. Monsanto Company, et al.,

United States District Court, Central District of California, Case No.: 2:16-CV-03493-FMO-AS.

**Action:** Vice Mayor Gonzalez moved to approve the consent calendar items #2 through 7; 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	
Helen Fiscaro, Mayor	✓				
Raquel Gonzalez	✓				
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
Diana Colvin	✓				
	5	0			

**PUBLIC HEARING**

**8. ENGINEER REPORT OF SANITARY SEWER CHARGES FOR FY 2022-23**

Director of Public Works Brad Donohue presented the staff report. Mayor Fiscaro opened the public hearing at 7:27 p.m. and seeing no one request to speak, she closed the public hearing. The City Clerk indicated that no protests had been submitted. Council discussion followed.

**Action:** Council Member Goodwin moved to Adopt a Resolution Overruling Protests to and Adopting Engineer’s Report on Sewer Service Charges for Fiscal Year 2022-23, Directing the City Engineer to File a Copy of the Engineer’s Report with the San Mateo County Tax Collector, and Authorizing the County Tax Collector to Place the Charges on the Property Tax Roll; the motion was seconded by Council Member Colvin and carried by the following vote:

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

**9. SUSTAINABLE FOOD SERVICE WARE ORDINANCE**

Sustainability Program Manager Kathleen Gallagher presented the staff report. Mayor Fiscaro opened the public hearing at 7:43 p.m. Residents Liz Taylor and Ken Gonzalez made comments. The Mayor closed the public hearing at 7:50 p.m. Council discussion followed.

**Action:** Council Member Goodwin moved to Introduce an Ordinance Repealing Colma Municipal Code Subchapter 4.13 and Adopting a New Subchapter 4.13 Regulating the Use of Disposable Food Service Ware by Food Facilities Pursuant to CEQA Guideline 15061(B)(3) and 15308 to Align with New State Mandates, and Waive Further Reading of the Ordinance; the motion was seconded by Vice Mayor Gonzalez and carried by the following vote:

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

## STUDY SESSION

### 10. FULL TIME DISPATCH SERVICES/CONTRACT DISPATCH SERVICES

Chief of Police John Munsey presented the staff report. Mayor Fiscaro opened the public comment period at 8:06 p.m. The following people spoke: resident Thom Taylor, Police Dispatcher Monique Kendrick, Police Commander Sherwin Lum, resident Ken Gonzalez, Police Dispatch/Records Supervisor Amanda Velasquez, and Police Dispatcher Thelma Coffey. The Mayor closed the public comment period at 8:26 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, July 27, 2022 at 7:00 p.m.

## REPORTS

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

- There will be Closed Session on Wednesday, July 27th at 6:00 p.m.
- The Regular Meeting on August 10, 2022 will be cancelled.

## ADJOURNMENT AND CLOSE IN MEMORY

The Mayor stated, "Before we close the meeting tonight, I'd like to recognize a few very special birthdays. Vice Mayor Raquel Gonzalez celebrated her birthday this past Friday on July 8<sup>th</sup>. And Council Member Joanne del Rosario celebrated hers this past Sunday, July 10<sup>th</sup>. And on behalf of the Council and staff, I'd like to thank Vice Mayor Gonzalez for providing these wonderful treats in celebration. Best wishes to both of you!"

Mayor Fiscaro adjourned the meeting at 8:53 p.m. in memory of Camilo Rodriguez, resident at Creekside Villas; Former Japanese Prime Minister Shinzo Abe, who was assassinated while

delivering a campaign speech last Friday; and the victims of the tragic shooting in Highland Park, Illinois on the 4<sup>th</sup> of July.

Respectfully submitted,

Caitlin Corley  
City Clerk





**ORDINANCE NO. \_\_\_\_\_  
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**AN ORDINANCE REPEALING COLMA MUNICIPAL CODE SUBCHAPTER 4.13 AND  
ADOPTING A NEW SUBCHAPTER 4.13 REGULATING THE USE OF DISPOSABLE FOOD  
SERVICE WARE BY FOOD FACILITIES PURSUANT TO CEQA GUIDELINE 15061(b)(3)  
AND 15308 TO ALIGN WITH NEW STATE MANDATES**

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

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**ARTICLE 1. SUBCHAPTER 4.13 REPEALED AND REPLACED.**

Subchapter 4.13 is hereby repealed in its entirety and replaced as follows (additions are shown in underline, deletions are shown in ~~strikethrough~~):

**Subchapter 4.13: Sustainable Food Service Ware Ordinance**

**4.13.010 Findings and Purpose.**

- (a) The use of single-use plastic disposable food service ware has been determined to have significant impacts on the environment, including environmental contamination, litter on streets, and plastic pollution in waterways and oceans; and
- (b) Polystyrene, also known as Styrofoam, has also become a problematic environmental pollutant given its non-compostable and nearly non-reusable nature; and
- (c) Many new compostable plastic alternatives contain fluorinated chemicals that have been linked to serious health issues including some cancers and thyroid disruption. These compostable plastics do not fully degrade in a marine environment and break down into microplastics, which are consumed by microorganisms and end up in the fish that we eat; and
- (d) On February 11, 2020 the San Mateo County Board of Supervisors introduced an ordinance regulating all disposable food service ware from food vendors within the un-incorporated County and has encouraged all the Cities and Towns within the County to adopt the County ordinance by reference; and
- (e) On February 23, 2021 the County ordinance was updated with a new timeline to extend the enforcement date to March 25, 2022 due to the impacts of COVID-19; and
- (f) On October 5, 2021, AB 1276 was signed into law by Governor Gavin Newsom. AB 1276 restricts the distribution of single-use foodware accessories (e.g., utensils, straws, stirrers, condiment packets, etc.) by restaurants and other food facilities.
- (g) On October 5, 2021, AB 1200 was also signed into law by the Governor. AB 1200 mandates that no person shall distribute, sell, or offer for sale in the state any food packaging (including single-use foodware) that contains regulated perfluoroalkyl and polyfluoroalkyl substances (PFAS).

(h) The City Council of the Town of Colma does find and declare that it should regulate the use of disposable food service ware by food vendors, in compliance with the State of California's requirements.

#### **4.13.020 Definitions.**

For purposes of this Subchapter, the following definitions apply.

(a) "Aluminum Foil-based" means any Disposable Food Service Ware composed entirely of aluminum, including but not limited to aluminum tray liners, aluminum foil, and aluminum foil baskets.

(b) "Compostable" means that an item or material (1) will break down, or otherwise become part of usable compost in a safe and timely manner and (2) is Natural Fiber-based or made from other materials approved by an independent third party by the County Manager or designee in collaboration with local waste processors and haulers. Compostable items may also include those that are made entirely of Natural Fiber or Natural Fiber-based items that are coated or lined with biologically based polymer, such as corn or other plant sources (e.g., compostable plastics), if certified by BPI or another independent third party approved by the County Manager or designee.

Compostable does not include items made entirely or primarily of biologically based polymer (e.g. PLA, PHA, or other compostable plastic), even if labeled or certified as compostable.

(c) "County" means the County of San Mateo.

(d) "Disposable" means designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple reuse.

(e) "Food Service Ware" means food contact products used for serving, distributing, holding, packaging, and/or transporting Prepared Food including, but not limited to plates, cups, bowls, trays, clamshell containers, boxes, utensils, straws, lids, and food contact paper (e.g., wraps, bags, tray liners, etc.). The term "Food Service Ware" includes Food Service Ware Accessories as defined below. The term "Food Service Ware" does not include bulk dispensers for condiments.

(f) "Food Service Ware Accessories" include Food Service Wares such as straws, stirrers, cup spill plugs, cup sleeves, condiment packets, utensils (including chopsticks), cocktail sticks/picks, toothpicks, napkins, and other similar accessory or accompanying Food Service Ware used as part of food or beverage service or packaging. Detachable lids for beverage cups and food containers are not considered a Food Service Ware Accessory.

(g) "Food Facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food to the public for human consumption, as defined by the California Health and Safety Code Section 113789 or successor. It includes both permanent and temporary food facilities. Public schools are exempt from the provisions of this Subchapter.

(h) "Food Scrap Composting Method" means: (1) self-hauling of food scraps to a permitted composting facility or a transfer station that accepts food scraps that will be transferred to a

permitted composting facility for on-site compost processing, (2) food scrap compost collection service provided by a curbside hauler, or (3) on-site food scrap composting.

(i) "Healthcare Facilities" mean places that provide healthcare to the public. Healthcare Facilities includes, but is not limited to hospitals, clinics, outpatient care centers, nursing homes, psychiatric care centers, medical offices, hospice homes, mental health and addiction treatment centers, orthopedic and other rehabilitation centers, urgent care, birth centers, etc.

(j) "Natural Fiber/Natural Fiber-based" means a plant or animal-based, non-synthetic fiber, including but not limited to products made from paper, sugarcane, bamboo, wheat stems/stalk, hay, wood, etc.

(k) "Non-Compostable" means not meeting the definition of Compostable set forth in this Subchapter.

(l) "Perfluoroalkyl and Polyfluoroalkyl substances (PFAS)" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(m) "Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Restrictions" mean either of the following:

(1) PFAS has not been intentionally added to a product or product component.

(2) The presence of PFAS in a product or product component is below 100 parts per million, as measured in total organic fluorine.

(n) "Polystyrene-based" means and includes expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene [EPS]) and clear or solid polystyrene known as oriented polystyrene.

(o) "Prepackaged Food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer and prepared at an approved source.

(p) "Prepared Food" means food or beverages that undergo a cooking or food preparation technique on the Food Facility's premises for consumption by the public. Cooking or food preparation technique includes, but is not limited to the following:

(1) Cooking methods, utilizing the application of heat, such as steaming, microwaving, simmering, boiling, broiling, grilling, frying, or roasting.

(2) Beverage preparation, such as blending, brewing, steeping, juicing, diluting, or pouring.

(3) Food preparation techniques, such as defrosting, rinsing, washing, diluting, cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing, decorating, or icing.

Prepared Food does not include raw eggs or raw, butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance.

(q) “Standard Condiment” means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, and includes different types such as ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, and sugar/sugar substitutes.

(r) “Takeout Food” means Prepared Food requiring no further preparation, which is purchased to be consumed off a Prepared Food Facility’s premises. Takeout Food includes Prepared Food delivered by a Food Facility or by a third-party Takeout Food Delivery Service.

(s) “Takeout Food Delivery Service” is a service for online food ordering and delivery that delivers Prepared Food from a Food Facility to a customer. This service can be provided directly by the Food Facility or by a third-party.

(t) “Utensils” include different types of instruments used to assist the consumption of food, specifically, forks, knives, spoons, sporks, chopsticks, and tongs.

#### **4.13.030 Distribution of Disposable Food Service Ware Accessories.**

(a) Except as provided in Subsection (b), Food Facilities, for on-premise dining and off-premise dining (e.g., Takeout Food Delivery Service, catering off-site, etc.), shall not provide any Disposable Food Service Ware Accessories or Standard Condiment in Disposable packaging to a consumer unless the specific type of Disposable Food Service Ware Accessory (including different types of Utensils) or specific type of Standard Condiment is requested by the consumer.

~~No Food Facility shall provide any Disposable Food Service Ware Accessories except: (1) upon request by the consumer, (2) upon acceptance by the consumer after being offered by the Food Facility, or (3) at a self-serve area and/or a dispenser.~~

(b) Food Facilities may ask a drive-through consumer if the consumer wants a specific type of Disposable Food Service Ware Accessory (including different types of Utensils), if the item is necessary for the consumer to consume Prepared Food or to prevent spills of or safely transport Prepared Food.

(c) Disposable Food Service Ware Accessories and Standard Condiment in Disposable packaging provided by Food Facilities for use by consumers shall not be bundled or packaged in a manner that prohibits a consumer from taking only the type of Disposable Food Service Ware Accessory (including different types of Utensils) or type of Standard Condiment desired without also having to take a different type of Disposable Food Service Ware Accessory or type of Standard Condiment. Food Facilities cannot distribute Disposable Utensils that are bundled or packaged together. Each type of Utensil (e.g., fork, spoon, knife, etc.) must be specifically requested by the consumer in order for a Food Facility to provide the item(s).

(d) Nothing in this Subchapter shall prohibit a Food Facility from making unwrapped Disposable Food Service Ware Accessories available to a consumer using refillable self-service dispensers that dispense different types of Disposable Food Service Ware Accessories one item at a time to allow for Disposable Food Service Ware Accessories to be obtained.

(e) Nothing in this Subchapter shall prohibit a Food Facility from making Standard Condiments available to a consumer using refillable self-service dispensers to allow for Standard Condiments to be obtained. Food Facilities that offer Standard Condiments are encouraged to use bulk dispensers for the condiments rather than condiments packaged for single-use.

(f) Takeout Food Delivery Services shall provide consumers with the option to proactively request the different types of available Disposable Food Service Ware Accessories (including different types of Utensils) and the different types of Standard Condiment from a Food Facility serving Prepared Food. The default option on the digital ordering/point-of-sale platforms of Takeout Food Delivery Services shall be that no Disposable Food Service Ware Accessories or Standard Condiment are requested.

(g) Takeout Food Delivery Services shall provide Food Facilities the ability to tailor the digital ordering/point-of-sale platforms so that Food Facilities can customize and itemize the different types of available Disposable Food Service Ware Accessories (including different types of Utensils) and the different types of available Standard Condiments for consumers to proactively select.

(h) If a Food Facility uses any Takeout Food Delivery Service, the Food Facility shall customize its menu with an itemized list and/or provide options of the different types of available Disposable Food Service Ware Accessories (including different types of Utensils) and the different types of available Standard Condiments for consumers to proactively select. Only those specific types of Disposable Food Service Ware Accessories (including different types of Utensils) or specific types of Standard Condiment proactively requested by the consumer shall be provided by the Food Facility. If a consumer does not request any Disposable Food Service Ware Accessories or Standard Condiment, no Disposable Food Service Ware Accessories or Standard Condiment shall be provided by the Food Facility for delivery of Prepared Food. Pursuant to Subsection (d), each type of Utensil (e.g., fork, spoon, knife, etc.) offered by the Food Facility shall also be listed individually, unbundled on the menu and provided by the Food Facility for delivery along with the Prepared Food only if requested by the consumer.

~~(h) — Takeout Food Delivery Services that utilize digital ordering/point of sale platforms, including but not limited to the internet and smart phone, shall only offer Disposable Food Service Ware Accessories by providing clear options for customers to affirmatively request these items separate from orders for food and beverages. The default option on the digital ordering/point of sale platforms shall be that no Disposable Food Service Ware Accessories are requested. Each individual Disposable Food Service Ware Accessory (e.g., each fork, knife, condiment packet, napkin, etc.) provided with Prepared Food must be specifically requested by the customer in order for a Food Facility to provide it.~~

#### **4.13.040 Standards and Required Use of Disposable Food Service Ware.**

(a) No Food Facility shall use Polystyrene-based Disposable Food Service Ware when providing Prepared Food.

(b) Food Facilities shall only provide Disposable straws, stirrers, utensils, and cocktail/toothpicks (and the packaging that these individual items are wrapped in, if any) that are Compostable.

(c) Nothing in this Subchapter shall conflict or be construed to conflict with the Americans with Disabilities Act or any other applicable law concerning the rights of individuals with disabilities. In particular, nothing in this Subchapter shall restrict, or be construed to restrict, the provision by Food Facilities of Disposable Non-Compostable straws to individuals who may request the use of Disposable Non-Compostable straws to accommodate medical needs or disabilities. Healthcare Facilities may distribute Disposable Non-Compostable straws with or without request by a patient at the discretion of the Healthcare Facility staff based on the physical or medical needs of the patient.

(d) Food Facilities shall use Compostable items for the below Disposable Food Service Ware when providing Prepared Food:

(1) Plates

(2) Bowls (of all sizes including, but not limited to soup and salad bowls)

(3) Cups (of all sizes including, but not limited to beverage cups) and accessory cups for Standardized Condiments

(4) Food trays and food boats

(5) Hinged or lidded containers (e.g., clamshells), deli containers, and other containers used for the sale and/or distribution of Prepared Food

~~(5) Clamshells, boxes, deli containers, and other containers used for the sale and/or distribution of Prepared Food (e.g., Takeout Food, leftover "doggie containers", etc.)~~

(e) Commencing on the effective date of this Chapter up until December 31, 2022, for the Compostable Disposable Food Service Ware listed in Subsection (d), Food Facilities shall use items that meet Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Restrictions. To verify the PFAS Restrictions, Food Facilities shall use items that are certified/approved by independent third parties approved by the Office of Sustainability or designee, in collaboration with local waste processors and haulers, as needed.

(f) For all other Disposable Food Service Ware not listed in Subsections (b) and (d), Food Facilities shall use only Disposable Food Service Ware that can be composted by the Food Scrap Composting method utilized by the Food Facility and/or accepted for recycling by the Food Facility's recycling collection service unless a feasible alternative does not exist.

(g) The Town through the County shall maintain a list of approved Disposable Food Service Ware sources and/or references to organizations that maintain regularly updated lists of products that meet the requirements detailed in Subsections (a), (b), (d), and (e) of this Section. This information shall be made available on the County Office of Sustainability website, in person in the County Office of Sustainability, and from the Town upon request. If a product is not included on the approved lists, the Food Facility wishing to use a product as Disposable

Food Service Ware shall establish to the County Manager or designee's satisfaction that the product complies with the requirements detailed in Subsections (a), (b), (d), and (e).

#### **4.13.050 Recordkeeping and Inspection.**

(a) Food Facilities shall keep complete and accurate record or documents of the purchase of acceptable Disposable Food Service Ware evidencing compliance with this Subchapter for a minimum period of three years from the date of purchase.

(b) The record shall be made available for inspection at no cost to the Town through the County during regular business hours by Town or County employees or Town or County-designated staff authorized to enforce this Subchapter. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be made available at the Food Facility address.

(c) The provision of false or incomplete information, records, or documents shall be a violation of this Subchapter.

#### **4.13.060 Automatic Exemptions.**

(a) Prepackaged Food is exempt from the provisions of this Subchapter.

(b) Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this Subchapter.

(c) Disposable Food Service Ware that is entirely Aluminum Foil-based or recyclable glass is exempt from the provisions of this Subchapter.

(d) If the Town through the County determines that a reasonably feasible Disposable Food Service Ware that complies with Section 4.13.040 (a), (b), (d), and (e) of this Subchapter does not exist, these items will be exempt from all or select requirements of the abovementioned provisions of this Subchapter until the County determines that a reasonably feasible alternative is available on the market for purchase. The County will have a current list of these exempted Disposable Food Service Ware made public by the Office of Sustainability.

~~(e) Certain Disposable Food Service Ware Accessories for beverage orders, specifically, straws and cup sleeves, shall be exempt from Section 4.13.030 (a) and may be distributed for safety reasons without the need for a request by the consumer or an offer by the Food Facility, specifically at drive-through areas of Food Facilities. Detachable lids are not considered a Disposable Food Service Ware Accessory, so Section 4.13.030 (a) does not apply to detachable lids.~~

(e) Temporary exemptions due to an emergency are automatic without the submission of a request for an exemption. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to natural disasters, emergencies due to the release of hazardous materials, emergencies associated with loss of power and/or water, or emergency medical response.

#### **4.13.070 Case-by-Case Consideration of Requests for Hardship Exemption.**

(a) **Grounds for an exemption.** An exemption from any of the provisions of this Subchapter may be granted by the Office of Sustainability or designee upon demonstration by a Food Facility to the satisfaction of the County that strict application of the requirements would cause undue hardship. An "undue hardship" includes, but is not limited to the following:

(1) A situation unique to the Food Facility where a suitable alternative that conforms with the requirements detailed in Section 4.13.040 (a), (b), (d), and (e) does not exist for a specific application.

(2) Imposing the provisions of this Subchapter would cause significant economic hardship. "Significant economic hardship" may be based on, but not limited to, demonstrating that suitable Disposable Food Service Ware is not available at a commercially reasonable price and the additional cost associated with providing the Disposable Food Service Ware is particularly burdensome to the Food Facility based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the Food Facility, and other factors. Reasonable added cost for a suitable item as compared to a similar item that the Food Facility can no longer use shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the County Manager or designee shall consider the following information: ability of the Food Facility to recover the additional expense by increasing its prices; the availability of tax credits and deductions; outside funding; and other options.

(b) **Request for an exemption.** A request for an exemption from the requirements of this Subchapter shall include all information deemed necessary by the County to render a decision, including but not limited to documentation showing the factual support for the requested exemption. A request for an exemption may be approved by the County Manager or designee, in whole or in part, with or without conditions. The duration of the exemption, if granted, shall also be determined by the County Manager or designee. Information about the application process for requesting an exemption will be available on the Office of Sustainability's website and in the Office.

#### **4.13.080 Enforcement.**

(a) The County Manager or designee may enforce this Subchapter on the Town's behalf.

(b) A violation of this Subchapter is an infraction and is also punishable by County administrative fines as set forth in San Mateo County Municipal Code Chapter 1.40.

(c) Compliance plan.

~~The County of San Mateo, its officers, employees and agents are hereby authorized to enforce, on behalf of the Town of Colma, this Subchapter of the Colma Municipal Code, and any amendments thereto, within the jurisdictional boundaries of the Town of Colma. Such enforcement authority includes, without limitation, the authority to hold hearings, issue citations, or assess administrative fines for violations of this Subchapter within the geographical limits of the Town of Colma.~~



(1) If requested by the County Manager or designee, a Food Facility that is in violation of any of the provisions detailed in this Subchapter shall create and submit to the Office of Sustainability or designee a compliance plan, which will include information on corrective action(s) that the Food Facility shall undertake to come into compliance. Other requested information may include, and are not limited to proposed timeline for corrective action(s), and identification of individuals responsible for ensuring compliance.

(2) The Food Facility shall create and submit its completed compliance plan within fourteen calendar days (14) from the time of request by the County Manager or designee.

(d) This Section shall not be interpreted to limit any otherwise available civil or administrative remedies under law.

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## **ARTICLE 2. SEVERABILITY**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

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## **ARTICLE 3. CEQA COMPLIANCE**

The City Council finds that the changes made to the Codes are exempt from environmental review requirements pursuant to Section 15061(b)(3) of the California Environmental Quality Act ("CEQA") on the grounds that it can be seen with certainty that there is no possibility that the provisions contained within the ordinance may have a significant effect on the environment. Further, the changes made to the Codes are also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308, as an action taken by regulatory agencies to assure the maintenance, restoration, enhancement of natural resources, or protection of the environment.

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## **ARTICLE 4. EFFECTIVE DATE**

This ordinance shall take effect thirty (30) days following its adoption by the City Council. However, the mandatory provisions of this Ordinance, except for Section 4.13.050(a)(1) of this Ordinance, shall only become operative and subject to enforcement on ~~March 25, 2022~~ October 1, 2022.

### **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 July 13, 2022 and adopted at a regular meeting of the City Council of the Town of Colma held on July 13, 2022 by the following vote:

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

Dated: \_\_\_\_\_

\_\_\_\_\_   
 Helen Fiscaro, Mayor

Attest: \_\_\_\_\_

Caitlin Corley, City Clerk



# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Caitlin Corley, City Clerk  
 VIA: Brian Dossey, City Manager  
 MEETING DATE: July 27, 2022  
 SUBJECT: League of California Cities Conference Voting Delegate

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## RECOMMENDATION

Staff recommends that the City Council adopt:

MOTION TO DESIGNATE COUNCIL MEMBER JOHN GOODWIN AS THE VOTING DELEGATE AND CITY MANAGER BRIAN DOSSEY AS THE ALTERNATE VOTING DELEGATE FOR THE ANNUAL LEAGUE OF CALIFORNIA CITIES CONFERENCE IN SEPTEMBER 2022.

## EXECUTIVE SUMMARY

This year's League of California Cities Annual Conference will be held September 7 - September 9, 2022 in Long Beach, CA. The final day of the conference includes the annual business meeting, where League membership considers and takes action on resolutions that establish League policy. The Council should designate a voting delegate to take part in the business meeting.

## FISCAL IMPACT

There is no direct fiscal impact associated with this action. Attendance at various conferences is budgeted annually.

## BACKGROUND

The Town of Colma is a longstanding member of the League of California Cities. In order to participate in voting at the Annual Business Meeting on Friday, September 9, 2022, the Town must officially designate a voting delegate. This delegate can be a member of City Council or a Town official, such as the City Manager. Designating a voting delegate will ensure Colma's interests are represented on key policy-related issues that may be considered at the Annual Business Meeting.

Council Member John Goodwin will be participating in the conference this year. Council may choose to designate him as the Voting Delegate so that the Town is represented and able to participate in the Annual Business Meeting.

City Manager Brian Dossey will also be participating in the conference. Council may choose to designate him as the Alternate Voting Delegate so he may vote in the event that Council Member Goodwin is unable to attend.

Once Council has designated a delegate and alternate by motion, the City Clerk will complete and submit the Voting Delegate Form (Attachment A).

### **Council Adopted Values**

Participating in the Annual Business meeting furthers the Council's adopted values of *Responsibility* and *Vision* because providing input on important local, regional and state policy issues protects the Town's long-term financial stability and other interests.

### **Alternatives**

The Council could opt to designate someone other than Council Member Goodwin as the Voting Delegate and City Manager Brian Dossey as the Alternate Voting Delegate. The Council could opt to not designate a voting delegate for the business meeting, however doing so would preclude the Town from having a voice in setting the League's policy initiatives for the upcoming year.

### **CONCLUSION**

Staff recommends Council designate Council Member John Goodwin Voting Delegate and City Manager Brian Dossey Alternate Voting Delegate for the League Conference.

### **ATTACHMENTS**

- A. Voting Delegate Form



<b>CITY:</b> _____
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**2022 ANNUAL CONFERENCE  
VOTING DELEGATE/ALTERNATE FORM**

**Please complete this form and return it to Cal Cities office by Friday, September 2, 2022. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.**

To vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

**Please note:** Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

**1. VOTING DELEGATE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**2. VOTING DELEGATE - ALTERNATE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**3. VOTING DELEGATE - ALTERNATE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES OR**

**ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).**

Name: \_\_\_\_\_ Email \_\_\_\_\_

Mayor or City Clerk \_\_\_\_\_ Date \_\_\_\_\_ Phone \_\_\_\_\_  
(circle one) (signature)

**Please complete and return by Friday, September 2, 2022 to:**

Darla Yacub, Assistant to the Administrative Services Director

E-mail: [dyacub@calcities.org](mailto:dyacub@calcities.org); Phone: (916) 658-8254



## **Annual Conference Voting Procedures**

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to Cal Cities policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the Cal Cities Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in their possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Caitlin Corley, City Clerk  
 VIA: Brian Dossey, City Manager  
 MEETING DATE: July 27, 2022  
 SUBJECT: Resolution in Support for Mickelson Therapy Pool

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## RECOMMENDATION

Staff recommends that the City Council adopt:

RESOLUTION CALLING ON SUTTER HEALTH TO REOPEN THE MACK E. MICKELSON ARTHRITIS AND REHABILITATION CENTER THERAPY POOL FOR COMMUNITY USE AT THE MILLS HEALTH CENTER IN SAN MATEO, WITH THE SAME OPEN ACCESS HOURS THAT WERE IN PLACE PRIOR TO JANUARY 2020

## EXECUTIVE SUMMARY

Staff recommends that the City Council consider adopting a resolution calling on Sutter Health to reopen the Mack E. Mickelson Therapy Pool and to maintain the same open access hours that were in place prior to January 2020.

## FISCAL IMPACT

None.

## BACKGROUND

The Mack E. Mickelson Arthritis and Rehabilitation Center Therapy Pool is an Americans with Disabilities Act-accessible warm water therapy pool operated by Sutter Health and located at the Mills Health Center in San Mateo, California. The Mickelson Therapy Pool was constructed over 25 years ago using charitable contributions from residents of San Mateo County to serve as a centerpiece of an arthritis center created by Mills Peninsula. The pool has been used for over 25 years by thousands of residents of San Mateo County who suffer from a broad range of health issues, including permanent disabilities, debilitating injuries, autoimmune disorders, and mobility impairments, to rehabilitate those health issues and mitigate physical decline.

Despite the critical need for the facility, in June 2021, Sutter Health announced that it would permanently close the Mickelson Therapy Pool to independent use by patrons. Closing

Mickelson removes a valuable healthcare resource for people to assist them in daily activities. Over 4,300 patients, caregivers, and community members have signed a petition to reopen the Mickelson Therapy Pool in order to increase the health, independence, and dignity of residents who rely upon it.

Members of the community have requested that the Council adopt a resolution of support for reopening the pool to public access.

### **Council Adopted Values**

Adoption of the proposed resolution detailing the Town's concerns regarding Mickelson Therapy Pool closure is the *responsible* action as it is ensuring that the community's voice is heard.

### **Alternatives**

The City Council could choose not to adopt the proposed resolution.

### **CONCLUSION**

Staff recommends that the City Council adopt the attached resolution detailing the Town's concerns regarding the closure of the Mickelson Therapy Pool and calling on Sutter Health to reopen the pool for community use with the same open access hours that it had prior to January of 2020.

### **ATTACHMENTS**

- A. Resolution



**RESOLUTION NO. 2022-\_\_**  
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION CALLING ON SUTTER HEALTH TO REOPEN THE MACK  
E. MICKELSON ARTHRITIS AND REHABILITATION CENTER  
THERAPY POOL FOR COMMUNITY USE AT THE MILLS HEALTH  
CENTER IN SAN MATEO, WITH THE SAME OPEN ACCESS HOURS  
THAT WERE IN PLACE PRIOR TO JANUARY 2020**

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

**1. Background**

(a) The Mack E. Mickelson Arthritis and Rehabilitation Center Therapy Pool is an Americans With Disabilities Act-accessible warm water therapy pool operated by Sutter Health and located at the Mills Health Center, in San Mateo, California; and

(b) the Mickelson Therapy Pool was constructed over 25 years ago using charitable contributions from residents of San Mateo County to serve as a centerpiece of an arthritis center created by Mills Peninsula; and

(c) the Mickelson Therapy Pool has been used for over 25 years by thousands of residents of San Mateo County who suffer from a broad range of health issues, including permanent disabilities, debilitating injuries, autoimmune disorders, and mobility impairments, to rehabilitate those health issues and mitigate physical decline; and

(d) Mickelson Therapy Pool has historically provided both preventative and interventionist therapies to residents of San Mateo County suffering from health issues; and

(e) there is also an apparent and growing need for the services provided by the Mickelson Therapy Pool, due to San Mateo County's rapidly increasing number of elderly residents who are highly likely to suffer from health issues requiring a warm water therapy pool; and

(f) Mickelson Therapy Pool is the only pool of its kind in San Mateo County, and there are no comparable warm water therapy pools that can adequately accommodate the residents of San Mateo County who previously relied upon Mickelson Therapy Pool and who are now suffering from acute and chronic physical pain and mental anguish without it; and

(g) in spite of the critical need for the facility, in June 2021, Sutter Health announced that it would permanently close the Mickelson Therapy Pool to independent use by patrons and closing Mickelson removes a valuable healthcare resource for people to assist them in daily activities; and

(h) 4,300 patients, caregivers, and community members have signed a petition to reopen the Mickelson Therapy Pool in order to increase the health, independence, and dignity of residents who rely upon it; and

(i) Sutter Health, its subsidiaries and affiliated entities receive significant financial benefits from their operations in San Mateo County and warm water therapy pools in the

region are able to operate profitably and safely, including under COVID-19 protocols; and

**2. Order**

(a) In light of the foregoing, the City Council believes that Sutter Health should be called upon to reopen the Mickelson Therapy Pool and to maintain the same open access hours that were in place prior to January 2020.

(b) The City Council does hereby resolve that promptly reopening the Mack E. Mickelson Arthritis and Rehabilitation Center Therapy Pool for community use with the same open access hours that it had prior to January of 2020 would preserve and improve the health of residents in San Mateo County who have historically relied upon it or who could benefit from warm water therapy to maintain their health, independence, and dignity.

**Certification of Adoption**

I certify that the foregoing Resolution No. 2022-\_\_ was duly adopted at a regular meeting of said City Council held on July 27, 2022 by the following vote:

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

Dated \_\_\_\_\_

\_\_\_\_\_  
Helen Fisicaro, Mayor

Attest: \_\_\_\_\_  
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: July 27, 2022  
 SUBJECT: GovInvest Contract Renewal

## RECOMMENDATION

Staff recommends that the City Council adopt:

RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A  
 THREE-YEAR FINANCIAL PROJECTION AND GASB REPORTING SERVICE CONTRACT  
 WITH GOVINVEST FOR A TOTAL CONTRACT VALUE OF \$104,000.

## EXECUTIVE SUMMARY

The Town has utilized GovInvest for our required GASB reporting, pension and OPEB projection, and consulting services since 2016. Over the years, the Town added the labor projection module and plans to add the financial projection module in the coming fiscal year. The Town plans to utilize GovInvest's consultants to prepare a presentation on pension liabilities in the coming months to discuss and assess the impact of the recent market fluctuation. To continue the services into FY 2022-23, the total contract value with GovInvest will exceed the City Manager's signing authority. To date, the Town spent a total of \$62,300 in total annual subscription fees.

The attached renewal is for three additional years and totals \$104,000. Staff plans to utilize GovInvest for the 2022-23 pension liabilities assessment and funding strategy.

## FISCAL IMPACT

The Finance annual budget includes the yearly renewal fee for GovInvest. The total contract value is \$104,000 with the annual payment as follows:

GovInvest Services	2022-23	2023-24	2024-25
Pension Module	8,500.00	8,500.00	8,500.00
OPEB Module	8,500.00	8,500.00	8,500.00
Labor Module	7,000.00	7,000.00	7,000.00
GASB 68	1,500.00	1,500.00	1,500.00
GASB 75	7,000.00	3,500.00	7,000.00
Financial Model		5,000.00	5,000.00
Total - annual	32,500.00	34,000.00	37,500.00
Total Contract Value			104,000.00

## BACKGROUND AND ANALYSIS

The Governmental Accounting Standard Board (GASB) is the governing authority on financial reporting requirement. With the issuance of GASB 64 in 2012 and GASB 75 in 2015, the Town was required to engage with an actuary to complete the annual GASB 64 and GASB 75 valuation reports. These reports summarize pension and OPEB liabilities, respectively.

Since 2016, the Town has engaged GovInvest to complete the annual GASB 64 and GASB 75 reports. Their cost was the most competitive and their services included online projection models and consulting services. The online projection model for pension and OPEB were used in the development of the 2018 and 2021 Unfunded Liabilities Funding Strategies. On March 10, 2021, Dan Matusiewicz, pension expert from GovInvest, presented to the City Council and the public on the current health of the Town's pension liabilities and potential funding strategies to stabilize future obligations. Additionally, for the 2021 labor negotiations and the 2022-23 budget development, staff utilized GovInvest's labor projection module and reduced staff time by 2 weeks.

Since the Town has partnered with GovInvest for many years, the total contract value will exceed the City Manager's signing authority with this upcoming renewal. The proposed renewal fee for GovInvest reporting, modeling, and consulting services totals \$104,000, with an annual commitment of \$32,500 to \$37,500 as shown above. The attached includes pension, OPEB, and labor modules, the required GASB valuation reports, and two years of the financial modeling module. The financial modeling module is a new system and will further reduce staff time needed during budget development.

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

## Reasons for the Recommended Action/Findings

GovInvest modeling, reporting, and consulting services help the Town meet its annual financial reporting requirements and increase efficiency.

## **Council Adopted Values**

The Town's partnership with OpenGov showcases the Town's commitment to 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 terms in the agreement or remove the Financial Modeling Module or Labor Module.

## **CONCLUSION**

The City Council should adopt the resolution approving and authorizing the City Manager to execute a three-year GASB reporting, projection modeling, and consulting services with GovInvest for a total contract value of \$104,000.

## **ATTACHMENTS**

- A. Resolution
- B. Contract



**RESOLUTION NO. 2022-\_\_\_\_**  
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A  
THREE-YEAR FINANCIAL PROJECTION AND GASB REPORTING SERVICES CONTRACT  
WITH GOVINVEST FOR A TOTAL CONTRACT VALUE OF \$104,000**

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

**1. Background**

- (a) The Town has utilized GovInvest's GASB reporting, projection, and consulting services since 2016; and
- (b) The Town utilizes the GASB reports for the annual audited financial statements, the projection modules for labor and pension and OPEB projections, and consulting services for pension analysis; and
- (c) The Town has paid \$62,300 in total subscription cost to GovInvest since 2016; and
- (d) The total contract value with GovInvest will exceed the City Manager's signing authority with this renewal; and
- (e) Based on the above, staff is recommending the Town enter into a three year contract with OpenGov to continue the existing relationship so that the Town can continue to utilize their tools and resources.

**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 GovInvest 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 GovInvest, 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 2022-XX was duly adopted at a regular meeting of said City Council held on July 27, 2022 by the following vote:

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

Dated \_\_\_\_\_

\_\_\_\_\_   
 Helen Fisicaro, Mayor

Attest: \_\_\_\_\_   
 Caitlin Corley, City Clerk



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# SaaS Licensing Agreement



Attention: Town of Colma, CA

Prepared by: Jonathon Davis

Date: 6/1/2022

## MASTER SERVICE AGREEMENT

This Master SaaS Services Agreement (“Agreement”) is entered into on this 30 day of June, 2022 (the “Effective Date”) between GovInvest, Inc. (“Company”), and the Customer listed above (“Customer”). This Agreement includes and incorporates each Summary of Services and Implementation, the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different or additional terms of any purchase order, confirmation or similar form, even if contained in a writing signed by the parties before or after the date hereof.

### GovInvest Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### Town of Colma, CA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### TERMS AND CONDITIONS

#### 1. SAAS SERVICES AND SUPPORT

- 1.1 Company shall provide the services identified in the Services section of each Summary of Services and Implementation (as defined below) attached to this Agreement (the “Services”)
- 1.2 Customer and Company shall mutually agree upon the Services to be performed by Company under this Agreement in a written summary of services and implementation (each, a “Summary of Services and Implementation”), in the form attached hereto as Exhibit A. Each Summary of Services and Implementation shall be attached to this Agreement as a sequentially numbered exhibit, and shall expressly be deemed incorporated into this Agreement and subject to all the terms and conditions set forth herein, except as otherwise set forth in the applicable Summary of Services and Implementation. In the event of any conflict between this Agreement and a Services and Implementation, such Services and Implementation shall govern.
- 1.3 The initial Summary of Services and Implementation is attached hereto as Schedule 1.
- 1.4 Subject to the terms of this Agreement, Company will provide Customer the Services in accordance with the Service Level Terms attached hereto as Exhibit B. As part of the registration process, Customer will identify an administrative username and password for Customer’s account. Company reserves the right to refuse registration or cancel passwords it deems inappropriate.
- 1.5 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the terms set forth in Exhibit C.
- 1.6 Should Company use any third-party contractors, consultants or subconsultants or vendors (collectively “third-party contractors”) in providing services to Customer, Company shall ensure compliance with the terms of this Agreement, and shall be jointly and severally liable for any breach of this Agreement by such third-party contractors. Company shall provide Customer with reasonable advanced notice if and when Company intends to provide any third-party contractor with access to Customer’s data so that Customer may confirm compliance of said third-party with the terms of this Agreement.

## 2. RESTRICTIONS AND RESPONSIBILITIES

- 2.1 Customer will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to or used to provide the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted in writing by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.
- 2.2 Further, Customer shall not export or re-export, either directly or indirectly, the Software or any copies thereof in such manner as to violate the export laws and regulations of the United States or any other applicable jurisdiction in effect from time to time (including, without limitation, when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval). Without limiting the foregoing, Customer shall not permit any third parties to access or use the Services in violation of any United States export embargo, prohibition, or restriction.
- 2.3 We utilize Microsoft Power BI to provide you certain aspects of the Services. Customer is responsible for its compliance with the Microsoft Online Services Terms that apply to the Power BI product, available at <https://www.microsoft.com/en-us/licensing/product-licensing/products>.
- 2.4 Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorney’s fees) in connection with any claim or action that arises from Customer’s failure to comply with the terms of this Agreement or otherwise from Customer’s sole negligence or sole willful misconduct relating to use of Services. Although Company has no obligation to monitor Customer’s use of the Services, Company may do so. Company reserves the right, in its sole discretion, to prohibit or suspend Customer’s use of the Services at any time Company believes such use to be in violation of this Agreement or otherwise harmful to the Service; provided Company immediately notifies Customer of the alleged breach and provides a reasonable opportunity to cure such alleged breach.
- 2.5 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). Customer shall also be responsible for maintaining the security of the Equipment and Customer passwords (including but not limited to administrative and user passwords).
- 2.6 Company shall maintain and implement industry-standard disaster recovery and avoidance procedures to ensure that the Services are not interrupted during any natural or manmade disaster.
- 2.7 Company shall perform regular backups of Customer Data. Company shall either deliver periodic copies of all Customer Data (as defined by Section 3.1 hereto) to the Customer, or provide Customer with ongoing access to such backups.
- 2.8 Company shall procure and maintain for the duration of the Agreement such insurance as described in Exhibit E, attached hereto and incorporated herein by reference.

## 3. CONFIDENTIALITY; PROPRIETARY RIGHTS

- 3.1 One party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. For purposes of this Agreement, all data, content

and information provided by Customer to Company to enable the provision of the Services, including but not limited to personnel and pension data (collectively, “Customer Data”) shall be deemed “Proprietary Information” and Company hereby agrees to keep such Customer Data confidential, and to not disclose Customer Data to any person or entity other than to such of its employees, officers, directors, contractors, agents and professional advisors, as applicable, and in such event, only to the extent necessary for the delivery of the Services pursuant to this Agreement. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third party any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information any information that the Receiving Party can document (a) is generally available to the public, without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law. The Receiving Party acknowledges that in the event of a breach of Section 3.1 by the Receiving Party, substantial injury could result to the Disclosing Party and money damages will not be a sufficient remedy for such breach. Therefore, in the event that the Receiving Party engages in, or threatens to engage in, any act which violates Section 3.1, the Disclosing Party will be entitled, in addition to all other remedies which may be available to it under law, to seek injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions) and specific enforcement of the terms of Section 3.1. The Disclosing Party will not be required to post a bond or other security in connection with the granting of any such relief.

- 3.2 Notwithstanding Section 3.1, Company understands and acknowledges that Customer is a California public agency subject to the California Public Records Act (California Government Code Section 6250 et seq.) (the “PRA”). Customer agrees not to disclose the Proprietary Information of Company but only insofar that such protection does not violate the PRA. In the event of a request for Company’s Proprietary Information is received by Customer, Customer’s sole obligation shall be to notify Company of the request and Company may, at Company’s sole expense, seek a court order protecting such information from disclosure.
- 3.3 Company shall own and retain all rights, title and interest in and to: (i) the Services and Software, together with all improvements, enhancements, modifications, changes, translations, compilation, and derivative works thereto, (ii) any software, applications, inventions or other technology developed in connection with Implementation Services or support, (iii) any analytics generated through Customer’s use of the Services, including but not limited to, any data, materials, information, and reports (“Analytics”) and (iv) all intellectual property rights related to any of the foregoing. Company hereby grants Customer a non-exclusive, non-transferable and non-sublicensable license to access and use the Analytics. Customer retains all rights, ownership and interest in all Customer Data and any other content and information provided to Company by Customer pursuant to this Agreement.
- 3.4 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to: (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. Under no circumstance shall Company disclose, share, license or resell any Customer Data or Analytics or any other content or information provided by

- Company by Customer pursuant to this Agreement with any third party. No rights or licenses are granted except as expressly set forth herein.
- 3.5 Company will maintain safety and security procedures with respect to its access and maintenance of all Customer Data to provide reasonably appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure of or access to Customer Data. All Customer Data must be stored in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse and destruction, and which is located within the United States. If a breach of security or confidentiality occurs, and it requires notification to the Customer's employees or any other individual under any privacy law, then the Customer shall have sole control over the timing, content and method of such notification. If Company is responsible for the breach, then notwithstanding the limitations of liability set forth in Section 8 of this Agreement, Company shall reimburse the Customer for its reasonable costs in providing all necessary notification, including under the Information Practices Act of 1977, California Civil Code Section 1798, et seq. Company shall also comply with all applicable federal and California laws, including those laws pertaining to the protection of individuals' privacy interests.
4. **PAYMENT OF FEES**
- 4.1 Customer will pay Company the then applicable fees described in the applicable Summary of Services and Implementation in accordance with the terms therein (the "Fees"). Company reserves the right to institute new charges and Fees after the end of the Initial Term, upon forty five (45) days' prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.
- 4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.
- 4.3 Services may be provided outside the scope encompassed within the applicable "Summary of Services and Implementation" upon mutual agreement by the Parties Said services may be subject to additional fees, which are set at \$600/hour for executive-level work, \$425/hour for FSA-level work, \$300/hour for ASA-level work, \$200/hour for analyst work, and reasonable travel expenses. Said services that are subject to additional fees will not be performed without explicit advance consent from Customer.
- 4.4 After providing written notice to Customer, Company will charge additional fees, which are set at \$250/hour, if, after the Effective Date, Customer: (i) changes its actuarial assumptions provided to Company, (ii) changes actuaries, (iii) provides Company with data that differs from the initial data provided by Customer to the Company, (iv) changes benefit structures, (v) adds additional tiers to its benefits plan, or (vi) merges with another plan.
- 4.5 Company may incur business license fees that are mandated by Customer. Customer agrees to reimburse Company for said fees.
- 4.6 Company may incur costs for adding Customer as additional insured to Company's existing insurance policies in order to comply with Customer's insurance requirements. Customer agrees to reimburse Company for said costs.

4.7 Company may incur costs for providing a waiver of subrogation in relation to Company's existing insurance policies in order to comply with Customer's insurance requirements. Customer agrees to reimburse Company for said costs.

## 5. TERM AND TERMINATION

5.1 Subject to Section 5.3, this Agreement shall commence on the Effective Date and continue for one 3 year ("Initial Term"), and thereafter shall renew for successive additional one (1) year renewal terms (each a "Renewal Term"), unless either party to this Agreement notifies the other in writing at least thirty (30) days prior to the end of the then-current Term that it does not wish to so renew. The Initial Term and any Renewal Terms are collectively referred to herein as the "Term."

5.2 Each Summary of Services and Implementation shall be effective upon the date set forth in such Summary of Services and Implementation and continue the end of the then-current Term, and thereafter shall renew for successive additional one (1) year renewal terms, unless either party to this Agreement notifies the other in writing at least thirty (30) days prior to the end of the then-current Term that it does not wish to so renew.

5.3 In addition to any other remedies it may have, either party may terminate this Agreement and/or any Summary of Services and Implementation upon thirty (30) days written notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement or such Summary of Services and Implementation. Customer will pay in full for the Services up to and including the last day on which the Services are provided but shall have no further liability, expense or obligation as it relates to fees for Services provided after the effective date of termination, and Company shall refund a prorated amount for any prepaid Service Fees to Customer.

5.4 All sections of this Agreement and the Summary of Services and Implementation which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability. Upon expiration or termination of this Agreement for any reason, Company shall deliver to Customer, at no cost to Customer, a current copy of all of the Customer Data and any other content and information provided to Company by Customer in the form mutually agreeable to both parties and completely destroy or erase all copies of Customer Data and any other content and information provided to Company or any third-party contractors with possession in any form, except de-identified aggregate data in accordance with section 3.4 above.

5.5 Non-Appropriation. Customer's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. Company acknowledges that the Customer is a municipal corporation and is precluded by the California Constitution and other laws from entering into obligations that financially bind future governing bodies. Nothing in this Agreement shall constitute an obligation of future governing bodies to appropriate funds for the purposes of this Agreement. The parties agree that this Agreement is contingent upon the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. Customer shall pay Company for any services performed in accordance with this Agreement up to the date of termination.

## 6. WARRANTY AND DISCLAIMER

Company warrants that it shall provide and maintain the Services consistent with prevailing industry standards in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner as expressed in Exhibit D. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use all reasonable

efforts to provide advance notice in writing or by e-mail of any scheduled service disruption and will ensure, to the greatest extent possible, that such maintenance or Service unavailability does not occur during Customer's normal business hours of 8:00 a.m. to 5:00 p.m. Company does not warrant that the 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 Services. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION AND SECTION 7, THE SERVICES, THE ANALYTICS, AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. **INDEMNITY**

To the fullest extent permitted by law, Company shall indemnify, defend and hold Customer harmless from any and all direct and third party claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, including claims for injury or death of any person, or damage to property, pertaining to, or incident to any alleged negligent acts, errors or omissions, recklessness or willful misconduct of Company, its official, officers, employees, consultants, suppliers or agents in connection with the performance of this Agreement or the Services. Without limiting the generality of the previous sentence, Company shall indemnify, defend and hold harmless the Customer against any and all claims, demands, causes of action, costs, expenses, liability losses and damages (including attorneys' fees ) arising out of any legal action alleging that the normal operation, possession or use of the Services by Customer infringes or misappropriates any United States patent or any copyright, trade secret, trademark, moral rights or other intellectual property rights of third parties (collectively, "Infringement Claims"), provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations regarding Infringement Claims do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) combined with other products, processes or materials where the alleged infringement relates to such combination, (iii) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (iv) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

8. **LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON AND DAMAGE TO TANGIBLE PROPERTY, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT

LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THREE TIMES THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY STATED IN THIS SECTION SHALL NOT APPLY TO (1) COMPANY'S OR ITS SUPPLIERS' BREACH OF PRIVACY, CONFIDENTIALITY AND DATA SERVICE PROVISIONS, INCLUDING BUT NOT LIMITED TO SECTION 3.5, (2) CLAIMS FOR WHICH COMPANY IS INSURED, AND (3) COMPANY'S THIRD-PARTY INDEMNITY OBLIGATIONS.

9. **MISCELLANEOUS**

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. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may not transfer or assign any of its rights and obligations under this Agreement without Customer's prior written consent. 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, and all waivers and modifications in this Agreement must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions, and venue shall be in San Mateo County. The parties shall work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Effective Date, and Customer may in Customer's sole discretion serve as a reference account upon request. Documents, books, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Company and made available at all reasonable times during the contract term and for four (4) years from the date of final payment under the contract for inspection by Customer. Customer shall give Company no less than five (5) business days' notice of a request to review records as set forth herein. Company shall comply with all applicable federal state and local laws, codes, ordinances and regulations.



**EXHIBIT A**  
**Summary of Services and Implementation #**

This Summary of Services and Implementation (this “SSI”) is entered into on this **30** day of **June**, 2022, between GovInvest, Inc. (“Company”), and the Customer listed below, pursuant to the terms of that certain Master Services Agreement, dated as of **30** day of **June**, **2022** (the “Agreement”), by and between Company and Customer.

**Customer:**

Pak Lin, Administrative Services Director

Town of Colma

1198 El Camino Real

Colma, CA 94014

**Term: 3 years – effective July 1<sup>st</sup>, 2022**

**Services:**

Service Capacity: Use of GovInvest Suite Software for the Pension, OPEB, Labor and Financial Forecasting Module of the Total Liability Calculator as well as ALL GASB reports for GASB 75 and GASB 68 (the “Service(s)”).

**Service Fees:**

- (3) Pension Module: \$ 8,500 per year
- (3) OPEB Module: \$ 8,500 per year
- (3) Labor Module: \$ 7,000 per year
- (2) Financial Modeling Module Beta: \$5,000 per year – (Effective Date 7/1/23)

**REPORTS:**

- (3) GASB 68 Accounting Valuation: \$1,500 per report
- (2) GASB 75 Full Valuation: \$7,000 per report
- (1) GASB 75 Roll-Forward Valuation: \$3,500 per report

**Total Contract Value: \$104,000**

## Scope of Work

### Annual Fee Includes:

- Unlimited User logins: Credentials to access individual cloud-based portals.
- Portal Setup: Development of dedicated web/cloud-based platform.
- Features & Reports: All features and reporting functions available within the cloud-based portal.
- Setup, Support & Training: Dedicated support staff to assist in initial setup and unlimited ongoing training of the product and features. Refer to Implementation Steps below under User Training
- Support Resources: Access to retirement plan experts, actuaries and experienced financial consultants, training tools, webinars and conferences hosted by GovInvest.
- Expert Sessions: Scheduled training hosted by in-house support team, finance and actuarial experts, budget experts, as well as peer government users with extensive experience using the product.
- Internal Presentation Support: In-house finance, negotiations and budget experts to support in developing and reviewing presentations based on product usage.
- Dedicated Customer Success Manager: Specialist assigned to the City to facilitate communication with all available resources.

BETA GROUP Financial Forecasting:

Benefits:

1. Collaborative engagement and thought leadership with fellow Beta Members
2. Access to tools and resources beyond GovInvest (Peer support network)
3. Education on alternative application benefits and support of the Financial Forecasting Module
4. Direct input and view into feature development + resources.
5. GovInvest support in line with existing products- Stay ahead of the game with GovInvest

## Implementation Steps

- Introductory 1-on-1 meeting between Customer's project sponsor(s) and GovInvest's onboarding lead
- Optional kick-off meeting with GovInvest's onboarding lead and all customer stakeholders and others that will be involved in the onboarding process
- User training: Digital one-on-one or group sessions focused on setting up projects and using software to support the City objectives.
- Plan setup and configuration: support the customer in outlining plan drill-down, new entrants plan set-up, bargaining unit or department level analysis, and 115 trust components (if applicable).

- Data Request: Support the customer in retrieving appropriate census file reports from retirement system/ actuary in most recent valuation.
- Validation: Actuaries and Developers to stress-test and validate results against actuarial standards of practice and acceptable level of deviation within results to liabilities and costs.
- Support: answer customer questions as they come up about modelling or validation

Onboarding and implementation for the pension module of the GovInvest Total Liability Calculator includes a detailed data request outlining specific reports the City needs to receive from the pension plan. The City will be asked to remove any and all sensitive information. Actuarial calculations need to run on standard assumptions for life expectancy by gender, mortality tables, and salaries. Other benefit formulas and calculations surrounding actuarial standards of practice and agreed upon for the pension plan benefits are the baseline for the software. Our team will request this data securely in a manner set by the City’s standard practice. The City will also match employees to either bargaining level and/or department level if analysis is desired to split out the impact of liabilities and costs further. The City will NOT upload data into the system, the GovInvest team will handle all data input and validation of results; if GovInvest has questions we will communicate in writing with the City lead point of contact. Once results have been validated with our actuaries and developers, logins will be provided to the City. Standard validation and delivery of logins for implementation after data has been successfully retrieved from the customer will take about 4-8 weeks depending on the complexity of the build, the size of the plan as well as timely delivery of Data requested from the City. These details will be communicated further, and timelines established.

Implementation Fee Includes	Annual Fee Includes
Initial Logins	Additional Logins
Initial Portal Setup	Ongoing Maintenance
Current Features & Reporting capability	Future Features & Reports
Initial Setup & Training	Future Support & Training
Current Support Resources	Future Support Services
Expert Training Session	Annual Expert Sessions
Internal Presentation Review (By Appointment)	Ongoing Presentation Support (By Appointment)
Dedicated Customer Success Manager	Dedicated Customer Success Manager

**General:**

The terms and conditions of this SSI are hereby incorporated into and made a part of the Agreement. All waivers and modifications in this SSI must be in a writing signed by both parties, except as otherwise provided in the Agreement.

IN WITNESS WHEREOF, this Summary of Services and Implementation has been executed and delivered by the parties hereto by their duly authorized officers as of the date first set forth above.

GOVINVEST INC.:

Town of Colma:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

## **Exhibit B** **Service Level Terms**

The Services shall be available 99% of the time, measured monthly, excluding holidays and weekends and scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third-party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation, although Company agrees to use all reasonable best efforts to abate or minimize such third-party interruptions. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than 12 hours, Company will credit Customer 1% of Service Fees for each period of 30 or more consecutive minutes of downtime (one "Credit" encompasses all periods of downtime in a given day); provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Company) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Company in writing within 3 business days from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement.

**EXHIBIT C**  
**Support Terms**

Company will provide Technical Support to Customer via both telephone and electronic mail on weekdays during the hours of 9:00 a.m. through 5:00 p.m. Pacific Standard Time, with the exclusion of Federal Holidays (“Support Hours”).

Customer may initiate a help desk ticket during Support Hours by calling 310-371-7106 or any time by emailing [support@govinvest.com](mailto:support@govinvest.com).

Company will use commercially reasonable efforts to respond to all help desk tickets within one (1) business day.

**EXHIBIT D**  
**Disclaimer of Software Analysis**

Company will use census data, plan provisions, and actuarial assumptions provided by Customer and/or Customer's actuary to develop the software for Customer. Company will rely on this information without audit. Company does not set actuarial assumptions.

Company will provide software with financially sound projections and analysis, but does not guarantee compliance with actuarial standards for funding and accounting purposes under Government Accounting Standards Board or Generally Accepted Accounting Principles.

The software will not be prepared in accordance with the actuarial standards of practice or actuarial compliance guidelines as promulgated by the American Academy of Actuaries nor will outputs constitute a Statement of Actuarial Opinion. Software results are not suitable for financial reporting purposes.

While the software is tested against actuarial valuation results, the software results will not match, nor are intended to match actuarial valuation results.

**EXHIBIT E**  
**Insurance Requirements**

Consultant shall not commence work for the Town until it has provided evidence satisfactory to the Town it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the Town.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Contractors Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give Town, its officials, officers, employees, agents and Town designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.



(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the Town, and provided that such deductibles shall not apply to the Town as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the Town.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give Town, its officials, officers, employees, agents and Town designated volunteers additional insured status.

(iv) Subject to written approval by the Town, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the Town as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the Town and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to

defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the Town evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the Town at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Town at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-

insurance or other coverage maintained by the Town or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the Town, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Town, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the Town and shall not preclude the Town from taking such other actions available to the Town under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the Town, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the Town, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Town has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Town will be promptly reimbursed by Consultant or Town will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Town may cancel this Agreement.

(iii) The Town may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the Town nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Town that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Town as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, Town may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.



# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brian Dossey, City Manager  
 MEETING DATE: July 27, 2022  
 SUBJECT: Sale of 1365 Mission Road

## RECOMMENDATION

Staff recommends that the City Council make the following motion:

MOTION FINDING THAT THE TOWN OWNED PROPERTY AT 1365 MISSION ROAD IS EXEMPT SURPLUS PROPERTY AND DIRECTING THE CITY MANAGER TO PREPARE, LIST AND SELL THE TOWN OWNED PROPERTY AT 1365 MISSION ROAD FOR SALE

## BACKGROUND AND ANALYSIS

As part of the 2020-2022 Strategic Plan, staff was directed to look for strategies that would help generate revenue for the Town of Colma. This strategy is also in alignment with the 2017-2019 Strategic Plan previous goal of Securing the Town's Long Term Financial Health. As part of both of these goals, and during Strategic Plan workshops over the past few years, staff had proposed the sale of the property at 1365 Mission Road as a one-time injection of revenue increasing the Town reserves for future projects or emergencies.

Staff is recommending that the City Council direct the City Manager to prepare the property for sale and then contract with a local real estate agent to list and sell the property. After conducting a walk through with the Department of Public Works and Hildebrand (Property Manager), staff directed Hildebrand to install new carpet, paint, replace small fixtures and make minor repairs.

## Surplus Land Act Compliance

As the City Council may be aware, any disposal or sale of public property is subject to the Surplus Land Act contained at Government Code Section 54220 et seq. (the "Act"). In general, the Act requires that prior to disposing of land, the local agency must determine if the land is considered "surplus land" or "exempt surplus land." Surplus land must be sold pursuant to the provisions of the Act. Exempt surplus land does not need to comply with the noticing and timing provisions of the Act.

If the land is deemed "surplus land" then prior to disposing of the land, the local agency would be required to send a "Notice of Availability" of surplus land to various housing and other government entities within whose jurisdiction the surplus land is located. Once the notice is received, any entity interested in the surplus land must notify the local agency in writing of its

interest in purchasing or leasing the land within 60 days. The local agency and the interested entity must then enter into good faith negotiations to determine a mutually satisfactory sales price and terms or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the land may be disposed of without further regard to surplus land procedures, with the exception of reporting to the State Department of Housing and Community Development, otherwise known as "HCD."

With regard to 1365 Mission Road, the Town believes the property is "exempt surplus land" as the square footage of the unit is 1,290 sq ft. Under Government Code Section 54221(f)(1)(B)(1) of the Act, surplus land less than 5,000 square feet in area is exempt surplus land. See also Govt C. § 54222.3 ("This article shall not apply to the disposal of exempt surplus land as defined in Section 54221 by an agency of the state or any local agency.").

As such, after the City Council declares the property to be "exempt surplus" property, the Town can dispose of the property without complying with the Act.

### **Town Purchasing Ordinance Compliance**

Staff plans to contract with Hildebrand Real Estate for the listing and sale of the property. As the selling agent Hildebrand would receive the industry standard commission of 2.5% of the sale price of the unit. For this 2.5% commission, Hildebrand will list the property, market and show the property, and oversee the sale of the property. Per recent comparables in the area, Hildebrand is recommending listing the property at \$999,999.00

Per the Town's Purchasing Ordinance, the City Manager is authorized to contract for services with any vendor without competitive bidding where the total payment by the Town is not more than \$75,000. See, Colma Municipal Code Section 1.06.060. Assuming the property sells between \$900,000 to \$1,100,000, the total commission at 2.5% would total \$22,500 – 27,500 which is well under the \$75,000 threshold to trigger competitive bidding under the Town's Purchasing Ordinance. As such, the City Manager can directly contract with Hildebrand for the sale of the property.

Once offers are received, staff will schedule a closed session with the City Council to discuss and negotiate any offer.

### **Alternatives**

The City Council could choose not to sell the property at 1365 Mission Road and direct staff to rent the unit. However, this is not the recommended action and not in alignment with the goals identified in the Strategic Plan. FISCAL IMPACT

The City Council's decision to sell the property at 1365 Mission Road will increase the Town's reserves by an estimated amount of \$900,000 - \$1,100,000. Staff recommends dedicating a portion of the revenues received to the General Fund (11) as well as the Capital Fund (31).

### **ENVIRONMENTAL**

The City Council's action to sell the property at 1365 Mission Road is not a project subject to the California Environmental Quality Act as it can be seen with certainty that the action will not have

a significant effect on the environment pursuant to CEQA Guideline 15061(b)(3). This is especially true as any sale would maintain the status quo and cause no change in the environment.

## **CONCLUSION**

Staff recommends that the City Council by motion, find that the Town owned property at 1365 Mission Road is “exempt surplus” property under the Act, and direct the City Manager to prepare, list and sell the Town owned property at 1365 Mission Road.

## **ATTACHMENTS**

