

Attachment 4

REIMBURSEMENT AGREEMENT BETWEEN THE TOWN OF CORTE MADERA AND MARIN MUNICIPAL WATER DISTRICT FOR CONTRACTING AND CONSTRUCTION MANAGEMENT OF THE PAVEMENT RESURFACING FOR THE JOINT PROJECT

THIS AGREEMENT is made and entered into this ____ day of _____ 2024, by and between the TOWN OF CORTE MADERA, hereinafter referred to as “TOWN”, and the MARIN MUNICIPAL WATER DISTRICT, hereinafter referred to as “MMWD”, both located in the State of California, collectively the “PARTIES”;

For good and valuable consideration, the PARTIES agree as follows:

SECTION 1: RECITALS.

- A. MMWD plans to conduct a water system improvements project, hereinafter the “PIPELINE PROJECT” along sections of Estrada Lane, Paloma Drive, Granda Drive, El Camino Drive, Sonora Way, Endeavor Drive, and Vista Court all within the TOWN.
- B. TOWN plans to conduct pavement resurfacing along Estrada Lane, Paloma Drive, Granda Drive, El Camino Drive, Endeavor Drive, Sonora Way, and Vista Court hereinafter the “ROADWAY PROJECT” (see attachment 1).
- C. For their mutual benefit, the PARTIES agree to combine the ROADWAY PROJECT and the PIPELINE PROJECT resulting in a “JOINT PROJECT”. This Agreement is subject to termination as described below.
- D. As part of the JOINT PROJECT, TOWN agrees to reimburse MMWD 50% of the “full width” road resurfacing costs for the ROADWAY PROJECT where open trenching will occur on the PIPELINE PROJECT. For all other areas that do not involve the PIPELINE PROJECT and are included in the ROADWAY PROJECT, the TOWN will reimburse MMWD 100% of the cost for road resurfacing. The TOWN has identified various locations of asphalt digouts that will be included in PIPELINE PROJECT and will be fully reimbursed by the TOWN to MMWD. If any new digouts are required as a result of damaged roadways caused by the PIPELINE PROJECT, MMWD shall repair those damaged sections of roadway with hot mix asphalt digouts of similar depth at no cost to TOWN
 - 1) The TOWN has identified various locations of asphalt digouts that will be included in JOINT PROJECT and will be fully reimbursed by the TOWN to MMWD. If any new digouts are required as a result of damaged roadways caused by the PIPELINE PROJECT, MMWD shall repair those damaged sections of roadway with hot mix asphalt digouts of similar depth at no cost to TOWN.
 - 2) TOWN shall fully reimburse MMWD for all thermoplastic striping, pavement markings, and non-MMWD utility adjustments in the road.
 - 3) Reimbursable costs will be determined based on the actual contract bid item amounts.

- E.** The TOWN shall provide MMWD with the engineered stamped design plans, specifications, and estimate for the ROADWAY PROJECT which shall be included as part of the PIPELINE PROJECT invitation for bids.
- 1) TOWN and MMWD wish to enter into this AGREEMENT to clarify the duties of each party and costs associated with the TOWN’s reimbursement of the JOINT PROJECT costs as provided herein.
 - 2) MMWD will be responsible for the bidding and the award of the JOINT PROJECT contracted to the lowest responsive and responsible bidder, hereinafter referred to as the “CONTRACTOR” in accordance with all applicable State and Local laws. MMWD shall give TOWN a notice of intent to award a contract for the JOINT PROJECT prior to any award. TOWN reserves the right to terminate this AGREEMENT without cost or penalty within 14 calendar days of such notice for any reason or for no reason. If TOWN exercises its right to terminate in writing before award of a contract, MMWD will not proceed with the JOINT PROJECT but may proceed with its PIPELINE PROJECT and TOWN may proceed with its ROADWAY PROJECT.
 - 3) If the JOINT PROJECT is not awarded for any reason, MMWD and TOWN will cooperate to coordinate their separate projects in a manner that optimizes the ability of each party to perform repaving after completion of any trenching required for the PIPELINE PROJECT.
 - 4) If the JOINT PROJECT proceeds, TOWN shall fully reimburse MMWD for all thermoplastic striping, pavement markings, and non-MMWD utility adjustments in the road.

SECTION 2: PROJECT COORDINATION

- A.** All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties named in this Section. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service.

To: MMWD
 Alex Anaya
 Marin Municipal Water District
 220 Nellen Avenue
 Corte Madera, CA 94925

To: TOWN
 R.J. Suokko
 Town of Corte Madera
 240 Tamal Vista Blvd, Suite 110
 Corte Madera, CA 94925

- B.** MMWD. The General Manager shall be the representative of MMWD for all purposes under this AGREEMENT. Alex Anaya is hereby designated as the Project Director for MMWD. MMWD’s Project Director shall be responsible for all aspects of the progress and execution of this AGREEMENT on behalf of MMWD.

TOWN. The Director of Public Works shall be the representative of TOWN for all purposes under this AGREEMENT. R.J. Suokko, the Director of Public Works, is hereby designated as the Project Director for the TOWN. The TOWN's Project Director shall be responsible for all aspects of the progress and execution of this AGREEMENT on behalf of the TOWN.

- C. The MMWD General Manager is hereby declared to be the authorized MMWD representative in administering this AGREEMENT. The Public Works Director is hereby declared to be the authorized TOWN representative in administering this AGREEMENT. Either Party may change its designated representative by providing written notice of the same to the other Party.

SECTION 3: SCOPE OF AGREEMENT

- A. The PARTIES acknowledge and agree that the sole purpose of this AGREEMENT is to set forth the PARTIES responsibilities regarding the construction of the JOINT PROJECT and to set forth the amount that the TOWN will reimburse MMWD for costs associated with the construction of the JOINT PROJECT
- B. The PARTIES agree that the services to be provided by MMWD for the construction and contracting of the JOINT PROJECT include the tasks set forth below:
1. Public Bidding and Contract Award
 2. Construction management services for the JOINT PROJECT;
 3. CONTRACTOR payment for the JOINT PROJECT;
 4. Material testing services for the JOINT PROJECT, including, but not limited to, trench subgrade, asphalt plug, and backfill compaction and plug asphalt testing.
- C. The PARTIES agree that the services to be provided by TOWN for the construction and contracting of the JOINT PROJECT include the tasks set forth below:
1. Submittal review for hot mix asphalt bid items, thermoplastic striping, and adjusting utilities;
 2. Construction inspection for asphalt digouts and resurfacing;
 3. Material testing for asphalt digouts and resurfacing.

SECTION 4: Duties of MMWD

- A. MMWD shall administer a public bid to construct the JOINT PROJECT.
- B. MMWD shall provide construction management for the JOINT PROJECT. MMWD shall require CONTRACTOR to provide MMWD with Payment, Performance and Maintenance bonds for the JOINT PROJECT, all in accordance with the terms and conditions of MMWD contract, which shall be mutually agreed upon by the Parties prior to any Award.
- C. MMWD shall pay CONTRACTOR for the JOINT PROJECT in accordance with the unit bid prices and specifications approved by MMWD. No extra work on the ROADWAY PROJECT portion of the work will be authorized by MMWD or CONTRACTOR without prior written approval by the TOWN, which shall not be unreasonably withheld or delayed. MMWD will pay CONTRACTOR for TOWN's approved extra work at the unit bid prices

and in accordance with the specifications contained in the bid submitted by CONTRACTOR; insofar as such prices are applicable. Where existing contract bid items cannot be extended for payment for the TOWN's approved extra work, a change order will be executed between MMWD and CONTRACTOR only if such work and payment is authorized in advance by the TOWN in writing. The request for approved extra work shall be sent to MMWD's Project Manager.

- D.** MMWD or its representative shall be responsible for communicating the TOWN's decisions regarding the ROADWAY PROJECT portion of the JOINT PROJECT to the CONTRACTOR and coordinating the execution and implementation of the TOWN's decisions with CONTRACTOR on the ROADWAY PROJECT.
- E.** MMWD shall require CONTRACTOR to name the TOWN, as an additional insured on all insurance required to be obtained including but not limited to CONTRACTOR general liability and automobile policies and shall require that CONTRACTOR indemnify and defend the TOWN to the same extent as MMWD under the JOINT PROJECT contract.
- F.** MMWD shall be responsible for the Project Administration and Construction Management of the JOINT PROJECT. These services shall include general inspection, progress payment preparation, change order preparation, schedule review, claims negotiation, meeting attendance, project reports, labor and wage compliance, utility coordination, project documentation, as-built plans and overall project administration.
- G.** In order to bear all costs associated with striping, pavement markings, and utility adjustments in the road for the JOINT PROJECT, the TOWN shall reimburse MMWD all of the costs associated with striping, pavement markings, and non-MMWD utility adjustments. MMWD shall prepare and submit monthly invoices for the progression of work through that month for TOWN'S portion of the JOINT PROJECT, which shall be paid within 21 calendar days of receipt by the TOWN.

SECTION 5: Duties of the TOWN

- A.** The TOWN shall reimburse MMWD for the ROADWAY construction costs specified herein in accordance with the unit bid prices and specifications authorized in writing by MMWD. The TOWN shall also reimburse MMWD for any extra or changed work authorized by advanced written notice from the TOWN's Project Manager for the ROADWAY PROJECT. The TOWN shall review MMWD's progress payments and provide MMWD written notice approving or disapproving each progress payment estimate related to the ROADWAY PROJECT within 14 calendar days of the TOWN receiving each progress payment estimate from MMWD. The TOWN will remit payment to MMWD within 21 calendar days following its approval of ROADWAY PROJECT progress payment.
- B.** The TOWN shall review CONTRACTOR change orders for extra work and provide MMWD a written notice of approval or disapproval of extra work within three (3) days of receiving each request. The TOWN shall be responsible for the CONTRACTOR claims arising from the TOWN's failure to timely approve or disapprove CONTRACTOR change orders for extra work.

The TOWN shall be responsible for delays to the JOINT PROJECT, which are a direct result of unforeseen delays in the ROADWAY PROEJCT. Unavoidable delays in the work prosecution or completion are all delays resulting from causes beyond the CONTRACTOR'S control, which CONTRACTOR could not reasonably have anticipated and mitigated or avoided by the exercise of care, prudence, foresight, and diligence and which actually and necessarily cause a delay in the completion of the whole work. Any delay which results from the TOWN changes in the amount of work to be done, the quantity of material to be furnished, the manner in which the work is prosecuted or the schedule of other forces working concurrently shall be the sole responsibility of the TOWN and shall be considered right-of-way delays. Right-of-way delays shall be paid for as outlined below. Right-of-way delays shall be considered unavoidable to the extent that they actually and necessarily delay the CONTRACTOR'S completion of the whole work. Unavoidable delays do not include delays caused directly or indirectly by the default, delay, or other breach of the CONTRACTORS. Delays due to adverse weather conditions will be regarded as unavoidable only to the extent that they actually and necessarily cause a delay in completion of the whole work and to the extent that such condition could not reasonably have been anticipated and mitigated or avoided by the exercise of care, prudence, foresight, and diligence.

Right-of-Way delays will be defined and paid for in accordance with CALTRANS Section 8-1.07 "Delays", as modified in Article 42, Force Account Work.

SECTION 7: Miscellaneous Terms

- A. Term of AGREEMENT: This AGREEMENT shall terminate upon MMWD acceptance of the completed JOINT PROJECT, provided that TOWN reimbursement and TOWN and MMWD indemnification duties shall continue following the end of such term.
- B. Termination: This AGREEMENT may be terminated, without cause, by either Party, upon thirty (30) calendar days advance written notice to the other Party or following TOWN notice of termination prior to award as provided herein, and may be terminated, with cause, by either Party, upon thirty (30) calendar days advance written notice to the other Party following the notified Party's failure to cure or correct the cause of termination notice, within thirty (30) calendar days receipt of that notice. Payment obligations following such termination for work performed up to the date of termination shall be the responsibility of each PARTY in accordance with the terms of this AGREEMENT. Payment for any damages to CONTRACTOR for termination after award shall be borne by the party terminating this AGREEMENT.
- C. Amendment and Merger: This AGREEMENT contains all the terms and conditions made between the parties to this AGREEMENT and may only be modified by written AGREEMENT signed by all the parties to this AGREEMENT or their respective successors in interest. This writing is intended both as a final expression of the AGREEMENT between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of this AGREEMENT. No modification

of this AGREEMENT shall be effective unless and until such modification is evidenced by a writing signed by both parties.

- D. Agreement Binding:** The terms and provisions of this AGREEMENT shall extend to and be binding upon and inure to the benefit of the heirs, executors, and administrators or to any approved successor, as well as to any assignee or legal successor to any PARTIES to this AGREEMENT.
- E. Cooperation:** The PARTIES pledge cooperation during the term of this AGREEMENT.
- F. No Third-Party Beneficiaries:** Nothing contained in this AGREEMENT shall be construed to create and the PARTIES do not intend to create any rights in third parties.
- G. Severability:** If any term, covenant or condition of this AGREEMENT or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remainder of this AGREEMENT or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this AGREEMENT shall be valid and be enforced to the fullest extent permitted by law.
- H. No Waiver:** The waiver by either of the PARTIES of any default under this AGREEMENT shall not operate as a waiver of any subsequent breach of the same or any other provision of this AGREEMENT.
- I. Time is of the Essence:** Time is of the essence with respect to the performance of every provision of this AGREEMENT for which time or performance is a factor. PARTIES agree to adhere to all deadlines stated in the approved project specifications.
- J. Mediation:** Any dispute or claim in law or equity between the TOWN and MMWD arising out of this AGREEMENT, if not resolved by informal negotiation between the PARTIES, shall be mediated. The mediation process shall continue until the case is resolved or until such time as the mediator makes a finding that there is no possibility of resolution. If mediation is unsuccessful, the PARTIES may avail themselves of any other remedies.
- K. Applicable Law:** This AGREEMENT shall be construed and enforced in accordance with the laws of the State of California. Venue shall be in Superior Court, County of Marin.
- L. No Presumption Regarding Drafter:** The PARTIES acknowledge and agree that the terms and provisions of this AGREEMENT have been negotiated and discussed between the PARTIES and their attorneys, and this AGREEMENT reflects their mutual AGREEMENT regarding the same. Because of the nature of the negotiations, and discussions it would be inappropriate to deem any Party to be the drafter of this AGREEMENT. Therefore, no presumption for or against validity, or as to any interpretation hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this AGREEMENT.

M. Assistance of Counsel: Each Party to this AGREEMENT warrants as follows:

- a. That each Party had the assistance of counsel in the negotiation for, and the execution of, this AGREEMENT and all related documents; and
- b. That each Party has lawfully authorized the execution of this AGREEMENT.

N. Section Headings: The section headings contained in this AGREEMENT are for convenience and identification only and shall not be deemed to limit or define the contents of the sections to which they relate.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT by their duly authorized officers as of the day and year first above written.

TOWN OF CORTE MADERA

MARIN MUNICIPAL WATER DISTRICT

Director of Public Works

Board President

ATTEST:

ATTEST:

By: _____
Town Clerk

By: _____
Board Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
TOWN Attorney

By: _____
General Counsel

Attachments:

- 1. Exhibit of Roads Included in Joint Project