

**AGREEMENT**

**Agreement for the Reimbursement to the County of San Mateo in Conjunction  
with F-Street Sidewalk and Streetscape Improvement Project within the Town of Colma  
San Mateo County**

---

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008, by and between the **COUNTY OF SAN MATEO**, a political  
subdivision of the State of California, hereinafter called "County", and Trestle Glen Associates, a  
California limited partnership, hereinafter called "TGA".

**W I T N E S S E T H:**

**WHEREAS**, the County was informed that it is eligible to apply for and obtain the  
Metropolitan Transportation Commission (MTC) 3rd Cycle Congestion Mitigation and Air  
Quality Improvement (CMAQ) Program Funding; and

**WHEREAS**, the County and TGA wish to construct F-Street Sidewalk and Streetscape  
Improvement Project (the "Project) in the Town of Colma; and

**WHEREAS**, the Project is located on F-Street between El Camino Real and Town of  
Colma limits and the Project consists of removing and replacing the existing 4' wide concrete  
sidewalk with new 8' wide concrete sidewalk, installing decorative brick banding and driveways,  
adding decorative streetlights, restriping existing crosswalks, and installing new signage  
directing pedestrians to adjacent transit services and amenities.

**WHEREAS**, the County has submitted an application to MTC for MTC 3rd Cycle  
CMAQ Program Funding, which includes \$231,000 federal funding for the Project.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. TGA will prepare Plans and Specifications for the Project and will provide  
to the County complete Plans and Specifications in a timely manner so that the County can  
submit the necessary Project information to Caltrans Local Assistance office by no later than

October 1, 2008 for Caltrans' review and approval in order to obtain E-76 (authorization to proceed with construction).

2. County will include in its contract for the above-described work, contract items for the Project that are eligible for federal funding. The work shall be completed by the County's Contractor.

3. County will follow its established contract procedures, and will award the contract to the lowest responsible bidder for the completion of the Project. County will ensure that TGA is properly notified in writing of all timelines and bid protocols such that it or its assignees are offered fair opportunity to participate in any bid.

4. TGA will reimburse the County the actual Project cost that County incurs in performing the Project, except that TGA will not reimburse the County for federal funds to be received by County for the Project. The County is expecting to receive 88.53 percent (88.53%) of the actual Project cost in federal funds or \$231,000, whichever is less. Except as provided in Section 5, below, TGA's reimbursement to the County will be 11.47 percent (11.47%) of the actual Project cost or \$32,500, whichever is less, including any Contract Change Orders and any other incidental and overhead expenses incurred by County for work on the Project.

5. If the bid submitted by the lowest responsible bidder received by the County, or if after the award of the contract, the actual Project cost, would cause TGA's reimbursement to the County to exceed \$32,500, the County is to request prior approval in writing from TGA for TGA's increase in contribution. Within 5 business days from the date of County's request, TGA shall notify the County in writing as to its decision to accept or reject the request. If the request is accepted, County shall send a notice to TGA specifying the new not-to-exceed figure to which TGA has committed. Should TGA reject or disapprove the request, or fail to provide approval for the increase in the TGA contribution within said 5-business day period, the County shall reduce the scope of the work of the Project in order to limit TGA's reimbursement obligation to the County to not more than \$32,500. Consequently, TGA shall complete the remaining portion of the Project that has not been completed by the County's Contractor with TGA's own funds.

6. At anytime up to 5 days after County's notification to TGA of the lowest bid, TGA may elect to terminate the County's participation in the Project by sending a notification to the County in writing. In the event that the federal funding becomes de-obligated, TGA shall complete the improvement anticipated by the Project with TGA's own funds, without any contribution from the County.

7. It is understood that the total sum to be reimbursed to the County is to be determined from actual cost of the Project.

a) For purposes of this Agreement, “actual Project cost” will include the total amount paid to the County’s Contractor as shown on the final progress payment and overhead expenses, including contract administration incurred by County for work on the Project.

b) TGA shall deposit funds in the amount of its portion of the construction costs, based on the bid amount received from the lowest responsible bidder awarded the contract by the County to perform the work and including contingency funds as determined by the County. Said funds shall be deposited with the County not later than thirty (30) calendar days after the Award of Contract by the County. Failure by TGA to deposit said construction funds within the stipulated time frame shall be cause for the County to suspend work and terminate its obligations under this agreement. In that event, TGA shall be responsible for any cost associated with the delay or any costs incurred by County.

c) County shall submit a final invoice to TGA for the final actual Project cost incurred by the County, excluding the federal fund portion, as specified above in Section 4, after the final progress payment to the Contractor has been processed.

d) If the final costs as stated in subsection (c) above are determined to exceed the amount deposited by TGA pursuant to Section 4(b) of this agreement, TGA shall then provide the County with the balance within thirty (30) calendar days up to the maximum amount to be funded by TGA as set forth in this Agreement. Likewise, if it is determined by the County that the final costs as stated in subsection (c) above are less than the amount deposited by TGA pursuant to subsection (b) above under this Agreement, County shall reimburse TGA the difference between the amount deposited and the final costs, without interest, within thirty (30) calendar days. In no event, shall TGA’s obligation exceed \$32,500 without the prior approval of TGA as specified in Section 5 above.

8. County shall furnish primary construction inspection services for all phases of the Project work. The County Director of Public Works or the Director’s designee shall be solely responsible for all phases of construction and inspection functions and liaison with the Project Contractor. In this regard, all communications and directions of TGA to the County’s Contractor shall be directed through the County Director’s designee. County shall provide TGA a copy of the monthly progress payment made to the County’s Contractor. Any individual change order of and increase in cost of \$10,000 or aggregate change orders increasing

the cost \$25,000 or more, shall require approval in writing by TGA, which approval shall not be unreasonably withheld or delayed upon the written request of County. Such request will be deemed for all purposes to be approved if written denial of such a request is not provided to County within five business days after the request is delivered to TGA. Approval of a change order by TGA shall not be deemed approval of an increase in the amount of TGA's funding obligation pursuant to this Agreement unless the request for approval specifically indicates that the requested approval is also requesting approval for an increase in TGA funding obligation.

**9.** TGA shall defend, indemnify and hold harmless the County, its officers, agents and employees from all claims, damages, suits, or actions of every name, kind, and description, arising out of or relating to the matters covered by this Agreement to the extent that such claims, damages, suits or actions are due to the negligence or willful misconduct of TGA or TGA's failure to perform obligations required of TGA under this Agreement.

Likewise, County shall defend, indemnify and hold harmless TGA from all claims, suits or actions of every name, kind, and description, arising out of or relating to the matters covered by this Agreement to the extent such claims, suits or actions are due to the negligence or willful misconduct of the County or the County's failure to perform obligations required of the County under this Agreement.

The duty to defend, indemnify and hold harmless includes the obligations as set forth in California Civil Code 2778. The County shall require the Contractor to name TGA and the County, their officers, agents, and employees as additional insureds on all insurance documents, which Contractor is required to provide for this streetscape project and to include all work performed in the bonds, warranties and guaranties to be furnished by Contractor according to the specifications. The County shall also require the Contractor to name TGA as co-obligee under any performance and payments bonds securing the work obtained by the contractor. The benefits arising under this Section 9 shall apply to the respective directors, officers, employees and agents of the parties thereto.

**10.** This Agreement shall be binding upon the respective successors and assigns of the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives,  
have affixed their hands on the day and year first above written.

**"County"**

**COUNTY OF SAN MATEO**  
A Political Subdivision of the  
State of California

**BY**

\_\_\_\_\_  
**Adrienne J. Tissier, President**  
**Board of Supervisors**  
**County of San Mateo**

**"TGA"**

**Trestle Glen Associates, LP**  
**By: BRIDGE NorCal, LLC its general partner**  
**By: MCB Family Housing, its sole member**

**BY**

  
\_\_\_\_\_  
**Lydia Tan**  
**Vice President**

F:\users\admin\ESD\F' Street Sidewalk and Streetscape Improvements Proj\2008\Bridge Sidewalk Reimb agreement 2.DOC  
F:\users\design\wencygroup\2008 HIP Projects\F St\Bridge Sidewalk Reimb agreement 2.DOC  
L:\CLIENT\P\_DEPTS\PUBWORKS\2008\Bridge Sidewalk Reimb K.DOC