

**FUNDING AGREEMENT BETWEEN THE CITY/COUNTY ASSOCIATION OF  
GOVERNMENTS OF SAN MATEO COUNTY AND THE CITY OF DALY CITY AND  
THE TOWN OF COLMA FOR CONSTRUCTION PHASE OF THE SMART  
CORRIDOR EXTENSION PROJECT**

THIS FUNDING AGREEMENT FOR THE CONSTRUCTION PHASE OF THE SMART CORRIDOR EXTENSION PROJECT (“Agreement”) is entered into and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City/County Association of Governments of San Mateo County (“C/CAG”) and the City of Daly City and the Town of Colma (each a “Party” and collectively the “Parties”).

RECITALS:

WHEREAS, C/CAG is sponsoring the San Mateo County Smart Corridor Project, which is an Intelligent Transportation System project that extends along El Camino Real and major local streets in San Mateo County connecting to US-101 and I-280; and

WHEREAS, the Project enables cities and the California Department of Transportation (“Caltrans”) to proactively manage daily traffic and non-recurring traffic congestion caused by diverted traffic due to major incidents on the freeway; and

WHEREAS, C/CAG, the City of Daly City and the Town of Colma, and Caltrans desire to extend the Smart Corridor concept north into the Town of Colma and the City of Daly City, and on the following arterial streets: John Daly Boulevard, Junipero Serra Boulevard, Sullivan Avenue, Southgate Avenue, and Serramonte Boulevard. The Project includes the deployment of an interconnected traffic signal system, closed circuit video cameras, trailblazer/arterial dynamic message signs, and vehicle detection systems, along with the installation of fiber optic communication network in the Town of Colma (the “Project”); and

WHEREAS, the Project’s intelligent transportation system elements are illustrated on Exhibit A, Proposed Project Corridors; and

WHEREAS, the Project would enhance the communications and coordination between the City’s public safety and public works departments, other Smart Corridor cities, Caltrans, and the California Highway Patrol; and

WHEREAS, C/CAG led the Project Approval and Environmental Document (PA/ED) phase, and received Categorical Exemption determination for the NEPA from Caltrans; and

WHEREAS, C/CAG led the Project’s Plans, Specifications and Estimate (PS&E) phase, which is completed in June of 2023; and

WHEREAS, C/CAG and Caltrans entered into a cooperative agreement for the construction component of the Project (“Cooperative Agreement”) on May 11, 2023, amended on September 28, 2023, attached hereto as Exhibit C; and

WHEREAS, C/CAG and the City of Daly City have entered into a separate purchase reimbursement agreement to specify items that the City will be reimbursed for by C/CAG on October 12, 2023; and

WHEREAS, C/CAG and the Parties will enter into a separate Ownership, Operations, and Maintenance (OOM) agreement to identify the commitment and responsibilities regarding ownership, operations, and maintenance of Smart Corridor equipment located within the Parties' right-of-way; and

WHEREAS, C/CAG and the Parties desire to enter into an agreement to specify each Party's obligations and responsibilities for the upcoming construction phase of the Project;

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties as herein expressed, the Parties and C/CAG agree as follows:

1. **City and Town Performance.**

- a. **Daly City's General Roles and Responsibilities:** The City of Daly City (the "City") will lead the construction phase of the Project in the city/town limits of the City of Daly City and the Town of Colma (the "Town"). The City acknowledges and agrees to comply with all provisions of the Cooperative Agreement and its amendment (attached hereto as Exhibit C and incorporated herein by this reference) at all times while performing the City obligations under this Agreement. Duties include contract administration and management of the selected civil contractor, construction inspection and project reporting to the various grantors. As the implementing agency, the City shall be responsible for managing scope, cost, schedule, and quality of the work activities and products of the Project's construction phase. The construction phase includes construction contract administration, surveying/staking, inspecting, quality assurance, and assuring regulatory compliance. This also includes reviewing requests for information (RFIs), change orders, and submittals. Due to the nature of the Project, the construction phase will also include system integration activities and may include the development of incident response timing plans.
- b. **Construction Advertisement and Rules Compliance:** Prior to the advertisement of activities related to the construction phase, the City shall share document(s) that describe its procurement policies and its proposed bid documents with C/CAG. The City will manage the procurement process, and will advertise, open bids, award, negotiate, and approve the construction contract in accordance with the California Public Contract Code, the California Labor Code, any relevant federal regulations, and the provisions of the Cooperative Agreement (Exhibit C). If the negotiated price, or the lowest responsible construction contract bid, is greater than the funding commitment identified in Exhibit B, *Funding Summary*, the Parties must agree in writing on a course of action within ten (10) business days from the bid opening or conclusion of price negotiations. If the Parties cannot agree on a course of action within ten (10) business days, the City will not award the construction contract and the Parties agree to consult in good faith regarding the next steps.

In addition to managing the contractor, the City shall ensure that contractors adhere to site and job specific safety requirements in accordance with Project contract documents and funding requirements.

The City shall perform inspection services in accordance with all applicable regulations. Prior to final acceptance by City, the City and/or the City's contractor(s) shall demonstrate to C/CAG that C/CAG, the Town, and Caltrans have the ability to observe CCTV inputs, operate and modify trailblazer sign messages, and monitor and control traffic signal operations.

The City shall provide and maintain accurate field data on a red-lined set of Project Plans, which are to be kept current and submitted to C/CAG as complete at the conclusion of the construction. These record Plans will be used as documentation for the preparation of "as-built" Plans. The City shall provide C/CAG a set of the "as-built" plans within a month of receipt of same from City's contractor(s).

- c. Town of Colma's General Roles and Responsibilities: The Town shall work with the City throughout the construction phase of the Project. The Town acknowledges and agrees to comply with all provisions of the Cooperative Agreement and its amendment (attached hereto as Exhibit C and incorporated herein by this reference) at all times while performing the Town obligations under this Agreement. This includes participating in project team meetings, providing permits to allow the contractor to perform work within the Town's jurisdiction, responding to RFIs and change orders, and performing inspection services of completed work within the Town's limits, if desired.
2. **Time of Performance; Termination.** The term of this Agreement shall commence on the date first written above and end on December 31, 2025, unless further extended by an amendment to this Agreement, or sooner terminated by mutual consent of the Parties. In addition, either Party may terminate the Agreement with written notice in the event that the other Party breaches a material term or condition of this Agreement or is in violation of federal, state, or local law or regulation, and such breach or violation has not been corrected after thirty (30) days of advance written notice from the non-breaching Party. In the event that the Agreement is terminated early, C/CAG will disburse funds for authorized Project work performed up to the date of termination. C/CAG will also disburse funds for authorized Project close-up costs, including:
    - a. Early termination costs incurred from the construction contractor,
    - b. Costs incurred from construction contractor demobilization, and
    - c. Restocking fees for materials purchased by the construction contractor.

C/CAG may disburse funds for other authorized Project close-out costs not listed for up to 45 days after the termination date. The Parties shall provide supporting documentation for C/CAG to authorize Project close-out costs not listed in this Section.

3. **Funding.** In addition to C/CAG local funds committed by this Agreement, C/CAG will

receive State Transportation Improvement Program (STIP) and Local Partnership Program (LPP) for the Project's construction phase. C/CAG will distribute these funds to the City as a funding sub-recipient. Accordingly, the City shall comply with all applicable federal and state laws and statutory regulations, Cost Principles, and any other requirements related to administering federal-aid projects. The City is also responsible for and will comply with all applicable audit and reporting requirements pursuant to conditions of receiving such funding.

Funding amounts are those set forth in Exhibit B, *Funding Summary*, of this Agreement. In the event that the funding details require revision, the Parties will approve such changes with an amendment to this Agreement updating and replacing Exhibit B, *Funding Summary*, in its entirety. Such amendments will be executed by a legally authorized representative of the respective Parties.

The Parties acknowledge that C/CAG, as the Project sponsor, shall fully fund those Project costs and expenses for work that are within the scope of the conformed Project plans and specifications, in excess of STIP and local funds. However, C/CAG will not reimburse the City and Town for costs beyond the amount of "Other Local Funds" identified in Exhibit B, *Funding Summary*, and obligated in this Agreement, without a written amendment to this Agreement. Work costs, except those that are specifically excluded in this Agreement, are to be paid from the funds obligated in Exhibit B, *Funding Summary*. Costs for work that is not within the scope of the conformed Project plans and specifications are either to be paid by the Party incurring the costs from funds that are independent of this Agreement or to be reviewed by the Parties pursuant to the Change Order process outlined in Section 4 below.

4. **Contract Change Orders.** The City and Town shall respond to Requests for Information and negotiate contract change orders, if necessary. When contractor(s) requests a change order, the City shall make the initial determination whether the requested change order is essential to completion or is within the scope of the Project. The City shall reject all change orders that are not essential to completion or are not within the scope of the Project, or may choose to implement the non-essential change order with funds that are independent of this Agreement. The City shall forward those change orders they deem essential to either the Project Design Engineer of record ("Designer") or their Construction Manager for a final determination regarding whether the requested change order is essential to completion of the Project. In this context, "essential" shall mean the requested change order is for work within the Smart Corridor Project scope and critical to overall Smart Corridor operation. If the Designer or Construction Manager, depending on which is selected, determines the change order is essential, the City shall negotiate with the contractor on the cost and approve the change order, as long as the subject change order, and all cumulative change orders, do not exceed the total funds obligated in Exhibit B, *Funding Summary*. If the Designer/Construction Manager determines the change order is non-essential, the City may choose to pay for the cost of the change order from funds that are independent of this Agreement, or not implement the change, or the C/CAG Executive Director will decide whether to approve the non-essential change order.

In the event the City receives change order requests that will exceed the amount specified in Exhibit B, *Funding Summary*, the City will notify C/CAG and the Parties must agree in writing on a proposed course of action within fifteen (15) business days from receipt of the contract change order request. The City shall properly manage contract change orders and maintain proper documentation.

5. **Reimbursement.** The City shall submit reimbursement requests to C/CAG for the State Transportation Improvement Program (STIP) and Local Partnership Program (LPP) funds. Reimbursement requests shall include all the necessary materials for C/CAG to submit invoices to Caltrans. The City shall submit an invoice reflecting Project expenditures, accompanied by supporting documentation. For local funds, C/CAG agrees to reimburse the City up to the amount identified as “Other Local Funds” in Exhibit B, *Funding Summary*, for the construction component. No funds in excess of the amount identified as “Other Local Funds” in Exhibit B shall be reimbursed without written amendment of this Agreement. The construction component includes activities that will, when complete, enable C/CAG, Caltrans, and the City and Town to observe CCTV inputs, operate and modify trailblazer sign messages, and monitor and control traffic signal operations, as described in Section 1 above. Upon receipt and approval of the invoices and accompanying documentation as provided herein, C/CAG shall reimburse the amount claimed under the invoice within thirty (30) calendar days. In the event that Caltrans deems an invoice and/or expenditures ineligible but C/CAG determines that the invoice is eligible as defined in this Agreement, the parties agree to engage in good faith efforts to identify sufficient local funding sources and to pursue an amendment to this Agreement to augment the funding set forth in Exhibit B.

Eligible expenditures for reimbursement include:

- a. Payment to the construction contractor and system integrator,
- b. Fees for the City’s third parties to conduct inspections and manage construction,
- c. City staff time for Project-related work, and
- d. Fees for testing agencies.

C/CAG may reimburse the City for additional, duly authorized Project related expenses that fall outside the aforementioned categories are not listed above. The City is required to furnish appropriate supporting documentation and secure approval in order to receive reimbursement.

6. **Schedule.** The Parties will manage the work schedule to ensure the timely use of obligated funds and to ensure compliance with any environmental permits, right-of-way agreements, construction contracts, and any other commitments. The Parties will communicate schedule risks or changes as soon as they are identified and will actively manage and mitigate schedule risks.
7. **Permits and Approvals.** C/CAG is responsible for coordinating, obtaining, implementing, renewing and amending encroachment permits, agreements, and approvals necessary to construct the Project within the State’s right-of-way, whether they are identified in the Project scope of work or become necessary in the course of completing the Project.

The City is responsible for coordinating, obtaining, implementing, renewing and amending Project permits within the City's jurisdiction, whether they are identified in the Project scope of work or become necessary in the course of completing the Project.

The Town is responsible for coordinating, obtaining, implementing, renewing and amending Project permits within the Town's jurisdiction, whether they are identified in the Project scope of work or become necessary in the course of completing the Project, to enable the City to successfully construct the Project.

8. **Construction Claims.** As the implementing agency, the City may accept, reject, compromise, settle, or litigate claims arising from the Project construction activities, provided City shall not resolve any such claims without C/CAG's prior written consent, which shall not be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on C/CAG, impair any right of C/CAG, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of C/CAG without C/CAG's prior written consent, which shall not be unreasonably withheld. The City shall notify C/CAG within five (5) business days when a claim has been filed against the Project.

The City is responsible for covering the cost of such claims. Work costs are to be allocated for payment pursuant to the requirements and procedures of Sections 3 and 4 above, unless such claims arose due to negligence of the City. In the event the City settles or accepts any claims that would result in a Project cost exceeding the amount specified in Exhibit B, *Funding Summary*, such costs shall be borne solely by the City and Town or the Parties shall pursue an amendment to this Agreement.

9. **Reporting.** The City shall provide a bi-weekly Resident Engineer's report to C/CAG. In addition, the City shall provide a weekly statement of working days, update the schedule on a monthly basis, and maintain current information regarding critical and near-critical activities, milestones, progress and outstanding issues affecting the schedule.
10. **Construction Meetings.** The City, the Town and C/CAG will participate in biweekly Project coordination meetings with contractor to keep apprised of Project progress.
11. **Accounting and Audits.** The City will maintain and will ensure that any Project subconsultant or subcontractor will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred Project costs and billings.

The City and Town will maintain and make available to each other all work-related documents during the term of this Agreement. The City and Town must retain documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the City and Town; or until completion of any litigation, claim or audit, whichever is longer. The City and Town shall require any subconsultants or subcontractors hired to participate in the work to comply with this Section.

The City and Town shall permit C/CAG and C/CAG's authorized representative to have access to the City's and Town's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in this Section. In no event shall the City and Town dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

12. **Compliance with All Laws.** The City and Town shall at all times comply with all applicable federal, state, San Mateo County, and municipal laws, ordinances, and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973. In the event of a conflict between the terms of this Agreement and any applicable state, federal, San Mateo County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement. The City and Town will timely and accurately complete, sign, and submit all necessary documentation of compliance.
13. **Prevailing Wages.** The City and Town shall comply with applicable sections of the California Labor Code and regulations promulgated thereunder (including without limitation, Labor Code Section 1720 *et seq.* and Title 8 of the California Code of Regulations Section 16000 *et seq.*) governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations, in regards to all work performed under this Agreement. The City and Town will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts. If the Project work is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, the City and Town will conform to the provisions of the Davis-Bacon and Related Acts.
14. **Non-discrimination.** The City and Town and any subconsultants or subcontractors performing the services on behalf of the City and Town shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.
15. **Disclosures.** If a Party receives a public records request pertaining to the Project, that Party will notify the other Party within five (5) working days of receipt and make the other Party aware of any public records disclosed.
16. **Ownership, Operations and Maintenance.** Upon completion of the construction phase,

C/CAG and the City and Town agree to negotiate in good faith to develop and execute new agreements regarding ownership, operations, and maintenance of the equipment.

**17. Indemnity and Hold Harmless.**

- a. Each of the Parties will indemnify, hold harmless and defend the other Party and its directors/councilmembers, officers, employees and agents (collectively, "Indemnitees") against all liability, claims, suits, actions, costs or expenses arising from loss of or damage to property, and injuries to or death of any person (including but not limited to the property or employees of each Party) when arising out of or resulting from any act or omission by the indemnifying Party, its agents, employees, contractors or subcontractors in connection with any aspect of the Project, including Project design, construction and/or maintenance.
- b. Each of the Parties will also fully release, indemnify, hold harmless and defend the other Party and Indemnitees from and against any and all claims or suits that may be brought by any of the indemnifying Party's contractors or subcontractors performing work in connection with or related to the Project.
- c. The indemnifying Party's obligation to defend includes the payment of all reasonable attorneys' fees and all other costs and expenses of suit, and if any judgment is rendered, or settlement entered, against any Indemnitee, the indemnifying Party must, at its expense, satisfy and discharge the same. Indemnitees may require the indemnifying Party to obtain counsel satisfactory to the Indemnitees.
- d. In the event of concurrent negligence (or intentional/reckless acts) of the Parties and/or their officers, employees, agents, and servants, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative fault.
- e. This indemnification provision will survive termination or expiration of this Agreement.

**18. Insurance.**

- a. *General Requirements.* The City and Town or its subconsultants or subcontractors performing the Project or City and Town obligations under this Agreement shall not commence work under this Agreement until all insurance required under this Section has been obtained. The City and Town shall use diligence to obtain such insurance. The City and Town shall furnish C/CAG with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the City and Town's coverage to include the contractual liability assumed by the City and Town



pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to C/CAG of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.

- b. *Workers' Compensation and Employer Liability Insurance.* The City and Town shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, the City and Town certify, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.
- c. *Liability Insurance.* The City and Town shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect the City and Town, its employees, officers and agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage that may arise from the City and Town's operations under this Agreement, whether such operations be by the City and Town or by any consultant or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than \$1,000,000, with a general aggregate liability of not less than \$5,000,000, unless another amount is specified below and shows approval by C/CAG Staff.
- d. *Insurance Limits; Insured Entities; Breach.* Required insurance shall include:

	Required Amount	Approval by C/CAG Staff if under specified limit
1. Comprehensive General Liability	\$ 5,000,000	_____
2. Workers' Compensation	\$ Statutory	_____
3. Motor Vehicle Liability	\$1,000,000	_____

C/CAG and its officers, agents, and employees shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to C/CAG, its officers, agents and employees, shall be primary insurance to the full limits of liability of the policy, and that if

C/CAG, or its officers, agents, and employees, have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the C/CAG Chairperson, at his/her option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

19. **No Partnership; Independent Contractor.** The terms of this Agreement shall in no way be construed to create a partnership, joint venture or any other joint relationship between C/CAG and the City and Town. The Parties and their respective employees are not employees of the other but rather are and shall always be considered independent contractors when performing services under this Agreement for the other Party.

20. **Notices.** All notices or other communications to either Party by the other shall be deemed given when made in writing and delivered or mailed to such Party at their respective addresses as follows:

C/CAG: 555 County Center, 5th Floor  
Redwood City, CA 94063  
Attention: Sean Charpentier, Executive Director

City: 333 90th Street  
Daly City, CA 94015  
Attention: Richard Chiu, Public Works Director

Town: 1198 El Camino Real  
Colma, CA 94014  
Attention: Brad Donohue, Public Works Director

21. **Merger Clause; Amendments.** This Agreement, including Exhibits A, B, and C attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties and obligations of each Party as of the document's date. Any prior agreement, promises, negotiations or representations between the Parties not expressly stated in this Agreement are not binding. All subsequent amendments shall be in writing and signed by the C/CAG Executive Director and authorized representatives of the City and Town. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibits A, B, and C attached hereto, the terms, conditions or specifications set forth herein shall prevail.

22. **Governing Law; Venue.** This Agreement shall be enforced and interpreted under the laws of the State of California. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of San Mateo,

State of California.

**IN WITNESS WHEREOF**, the Agreement has been executed by the Parties hereto as of the day and year first written above.

**CITY OF DALY CITY**

**TOWN OF COLMA**

By: \_\_\_\_\_  
Thomas Piccolotti  
City Manager

By: \_\_\_\_\_  
Daniel Barros  
City Manager

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Rose Zimmerman  
City Attorney

\_\_\_\_\_  
City Attorney

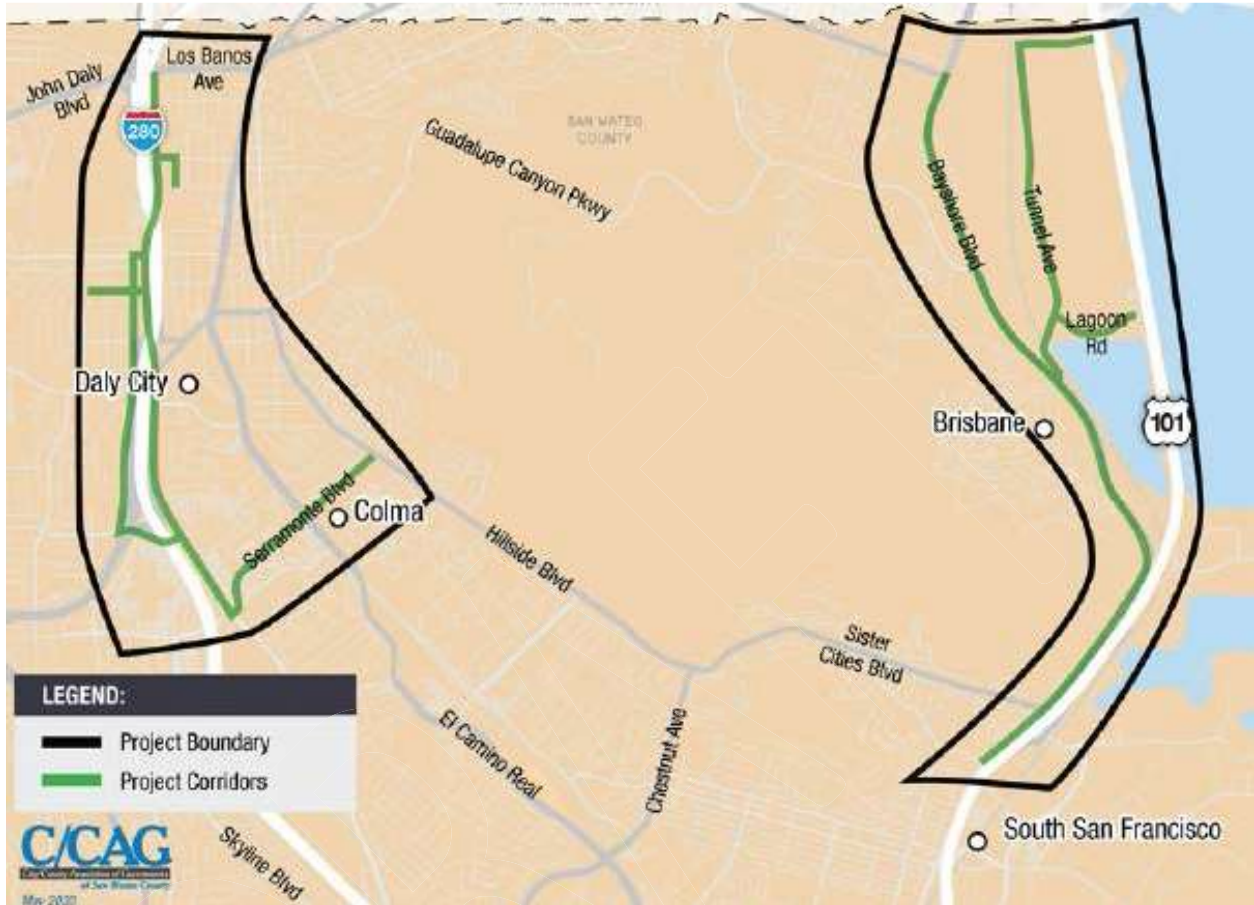
**CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY**

By: \_\_\_\_\_  
Sean Charpentier  
C/CAG Executive Director

Approved as to Form:

By: \_\_\_\_\_  
Melissa Andrikopoulos  
Legal Counsel for C/CAG

# Exhibit A Northern City Proposed Project Corridors



**Exhibit B**  
**Northern Cities Funding Summary**

<b>Component</b>	<b>Project Cost</b>	<b>STIP Funds</b>	<b>Other Local Funds</b>	<b>LPP Funds</b>	<b>Funding Total</b>
Construction Capital*	\$4,537,406	\$4,168,253		\$369,152	<b>\$4,537,406</b>
Construction Support	\$779,441	\$779,441			\$779,441
Dept. Furnished Materials	\$3,038		\$3,038		<b>\$3,038</b>
Contingency	\$598,474	\$598,474			<b>\$598,474</b>
<b>Total</b>	<b>\$5,918,359</b>	<b>\$5,546,168</b>	<b>\$3,038</b>	<b>\$369,152</b>	<b>\$5,918,359</b>

\*Includes capital and construction costs, incident response timing plan, as-builts, and PG&E utility costs.

**Exhibit C**  
**C/CAG - Caltrans Cooperative Agreement and Amendment**

DRAFT