

**FUNDING AGREEMENT BETWEEN THE CITY/COUNTY ASSOCIATION OF  
GOVERNMENTS OF SAN MATEO COUNTY AND THE CITY OF BRISBANE  
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 \_\_\_\_\_, 2024, by and between the City/County Association of Governments of San Mateo County (“C/CAG”) and the City of Brisbane (the “City”) (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 Brisbane, and Caltrans desire to extend the Smart Corridor concept north into the City of Brisbane, and on the following arterial streets: Bayshore Boulevard, Beatty Avenue, and Lagoon Road. 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 City of Brisbane (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 National Environmental Policy Act (NEPA) environmental clearance from Caltrans; and

WHEREAS, C/CAG has hired Kimley Horn and Associates to prepare the Project’s Plans, Specifications and Estimate (PS&E), and they will be acting as the Project Design Engineer of Record (“Designer”);

WHEREAS, C/CAG led the Project’s Plans, Specifications and Estimate (PS&E) phase, which was 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 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 City’s right-of-way; and

WHEREAS, C/CAG and the City 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 City and C/CAG agree as follows:

1. **City Performance.**

- a. **Brisbane’s General Roles and Responsibilities:** The City of Brisbane (the “City”) will lead the construction phase of the Project in the city limits of the City of Brisbane. 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 1) contract administration, 2) management of the selected civil contractor and construction manager, and 3) inspection of construction, and 4) reporting project progresses 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 may include one or more of the following; 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 City and C/CAG 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 City cannot agree on a course of action within ten (10) business days, the City will not award the construction contract and the City and C/CAG 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 all the construction components of the Project have been built consistent with the Project plans and specifications.

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).

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. 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 City acknowledges 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 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 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 the City’s 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 City and C/CAG 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 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 City agrees 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 City 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 City 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.

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 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 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 will maintain and make available to each other all work-related documents during the term of this Agreement. The City 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; or until completion of any litigation, claim or audit, whichever is longer. The City shall require any subconsultants or subcontractors hired to participate in the work to comply with this Section.

The City shall permit C/CAG and C/CAG's authorized representative to have access to the City'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 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 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 will timely and accurately complete, sign, and submit all necessary documentation of compliance.

13. **Prevailing Wages.** The City 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 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 will conform to the provisions of the Davis-Bacon and Related Acts.
14. **Non-discrimination.** The City and any subconsultants or subcontractors performing the services on behalf of the City 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 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 or its subconsultants or subcontractors performing the Project or City obligations under this Agreement shall not commence work under this Agreement until all insurance required under this Section has been obtained. The City shall use diligence to obtain such insurance. The City shall furnish C/CAG with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the City's coverage to include the contractual liability assumed by the City 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 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 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 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, 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's operations under this Agreement, whether such



operations be by the City 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 Executive Director, 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. 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
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City:

50 Park Place

Brisbane, CA 94005

Attention: Randy Breault, 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. 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 BRISBANE**

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

By: \_\_\_\_\_  
Clay Holstine  
City Manager

By: \_\_\_\_\_  
Sean Charpentier  
Executive Director

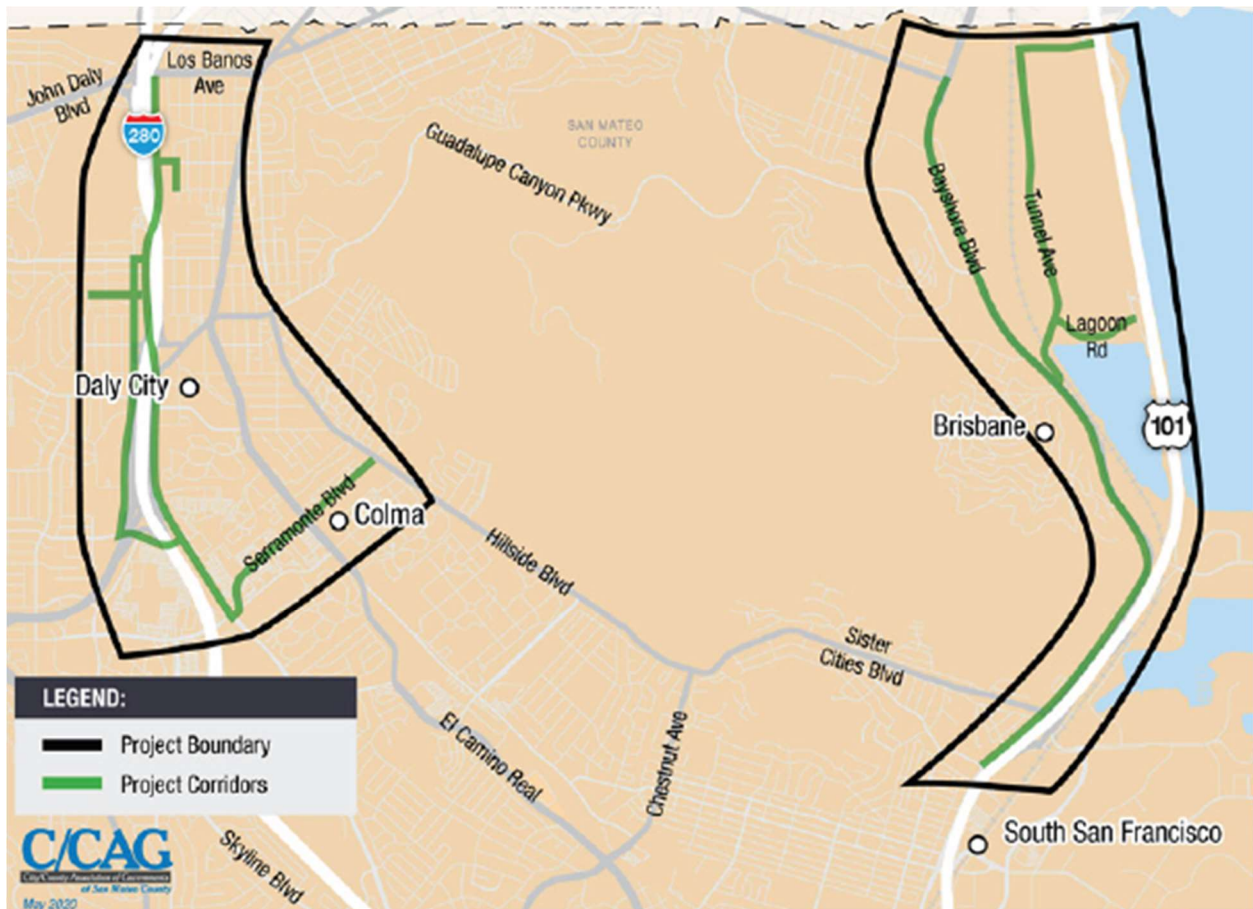
Approved as to Form:

Approved as to Form:

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

\_\_\_\_\_  
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>State Transportation Improvement Program Funds</b>	<b>Other Local Funds</b>	<b>LPP Funds</b>	<b>Funding Total</b>
Construction Capital*	\$2,837,444	\$2,606,597		\$230,848	<b>\$2,837,444</b>
Construction Support**	\$410,470	\$410,470			<b>\$410,470</b>
Dept. Furnished Materials	\$1,900		\$1,900		<b>\$1,900</b>
Contingency	\$374,253	\$374,253			<b>\$374,253</b>
<b>Total</b>	<b>\$3,624,068</b>	<b>\$3,391,320</b>	<b>\$1,900</b>	<b>\$230,848</b>	<b>\$3,624,068</b>

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

\*\* Include costs for a construction manager.

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

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## **COOPERATIVE AGREEMENT**

This AGREEMENT, executed on and effective from May 11, 2023, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City/County Association of Government of San Mateo County, a California joint powers authority, referred to hereinafter as C/CAG.

An individual signatory agency in this AGREEMENT is referred to as a PARTY. Collectively, the signatory agencies in this AGREEMENT are referred to as PARTIES.

### **RECITALS**

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per the California Streets and Highways Code, Sections 114 and 130.
2. For the purpose of this AGREEMENT, *the Smart Corridor Northern Cities Expansion Project, a joint effort by the cities of Daly City, Brisbane, Colma, C/CAG and Caltrans District 4, to deploy fiber communications, upgraded traffic signal controllers, dynamic message signs, vehicle detection stations, and traffic monitoring cameras along key arterial corridors that parallel US 101 and I-280* will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the project initiation and approval documents (e.g., Project Study Report, Design Engineering Evaluation Report, or Project Report).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:

- CONSTRUCTION

Each PROJECT COMPONENT is defined in the CALTRANS Workplan Standards Guide as a distinct group of activities/products in the project planning and development process.

4. The term AGREEMENT, as used herein, includes this document and any attachments, exhibits, and amendments.

This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between the PARTIES regarding the PROJECT.

PARTIES intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the WORK. The requirements of this AGREEMENT will preside over any conflicting requirements in any documents that are made an express part of this AGREEMENT.

If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.

Except as otherwise provided in the AGREEMENT, PARTIES will execute a written amendment if there are any changes to the terms of this AGREEMENT.

PARTIES agree to sign a CLOSURE STATEMENT to terminate this AGREEMENT. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement or expire by the statute of limitations.

5. The following work associated with this PROJECT has been completed or is in progress:
  - C/CAG completed the Project Initiation Document (Cooperative Agreement No. 04-2675).
  - CALTRANS approved the Categorical Exemption on August 31, 2020 (Cooperative Agreement No. 04-2732).
  - CALTRANS approved the Categorical Exclusion on August 31, 2020 (Cooperative Agreement No. 04-2732).
  - C/CAG is developing the R/W Certification (Cooperative Agreement No. 04-2820).
  - Caltrans approved C/CAG's Plans, Specifications and Estimate on April 21, 2023. (Cooperative Agreement No. 04-2820).
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

## **RESPONSIBILITIES**

### **Sponsorship**

8. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds committed in this AGREEMENT.

PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.

9. C/CAG is the SPONSOR for the WORK in this AGREEMENT.

### **Implementing Agency**

10. The IMPLEMENTING AGENCY is the PARTY responsible for managing the scope, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.

- C/CAG is the CONSTRUCTION IMPLEMENTING AGENCY.

CONSTRUCTION includes construction contract administration, surveying/staking, inspection, quality assurance, and assuring regulatory compliance. The CONSTRUCTION component budget identifies the capital costs of the construction contract/furnished materials (CONSTRUCTION CAPITAL) and the cost of the staff work in support of the construction contract administration (CONSTRUCTION SUPPORT).

11. C/CAG will provide a Quality Management Plan (QMP) for the WORK in every PROJECT COMPONENT that they are the IMPLEMENTING AGENCY of. The QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and approval.
12. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.



**Funding**

13. Funding sources, PARTIES committing funds, funding amounts, and invoicing/payment details are documented in the Funding Summary section of this AGREEMENT.

PARTIES will amend this AGREEMENT by updating and replacing the Funding Summary, in its entirety, each time the funding details change. Funding Summary replacements will be executed by a legally authorized representative of the respective PARTIES. The most current fully executed Funding Summary supersedes any previous Funding Summary created for this AGREEMENT.

14. PARTIES will not be reimbursed for costs beyond the funding commitments in this AGREEMENT.
15. Unless otherwise documented in the Funding Summary, overall liability for project costs within a PROJECT COMPONENT, subject to program limitations, will be in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
16. Federally ineligible work shall not be paid with federal or local-federal fund types, or the portion of non-federal fund types used to match the federal funds. PARTIES shall ensure any fund type used for federally ineligible work will not exceed the proportional share of fund types within PROJECT COMPONENT.
17. Unless otherwise documented in the Funding Summary, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
18. WORK costs, except those that are specifically excluded in this AGREEMENT, are to be paid from the funds obligated in the Funding Summary. Costs that are specifically excluded from the funds obligated in this AGREEMENT are to be paid by the PARTY incurring the costs from funds that are independent of this AGREEMENT.

**CALTRANS' Quality Management**

19. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Quality Management Assessment (QMA) and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
20. CALTRANS' Quality Management Assessment (QMA) efforts are to ensure that C/CAG's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's quality management plan (QMP). QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

When CALTRANS performs QMA, it does so for its own benefit. No one can assign liability to CALTRANS due to its QMA.

21. CALTRANS, as the owner/operator of the State Highway System, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
22. C/CAG will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

### **CEQA/NEPA Lead Agency**

23. CALTRANS is the CEQA Lead Agency for the PROJECT.
24. CALTRANS is the NEPA Lead Agency for the PROJECT.

### **Environmental Permits, Approvals and Agreements**

25. PARTIES will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTY's responsibilities in this AGREEMENT.
26. Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits, agreements, and approvals whether they are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.
27. The PROJECT will not require environmental permits/approvals.

### **CONSTRUCTION**

28. As the CONSTRUCTION IMPLEMENTING AGENCY, C/CAG is responsible for all CONSTRUCTION WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.

29. CALTRANS will be responsible for completing the following CONSTRUCTION SUPPORT activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.20.10.xx Quality Management	No

30. Physical and legal possession of the right-of-way must be completed prior to advertising the construction contract, unless PARTIES mutually agree to other arrangements in writing.
31. Right-of-way conveyances must be completed prior to WORK completion, unless PARTIES mutually agree to other arrangements in writing.
32. C/CAG will include a Disadvantaged Business Enterprise (DBE) utilization goal in the PROJECT construction contract(s) in accordance with the Local Assistance Procedures Manual. C/CAG will award the construction contract to the lowest responsive bidder who makes a Good Faith Effort to meet the DBE goal.
33. CALTRANS will not issue an encroachment permit to C/CAG for construction work until the following conditions are met:
- CALTRANS accepts the final plans, specifications, and estimate
  - CALTRANS accepts the Right-of-Way Certification
  - Any new or amended maintenance agreements required for the WORK are executed.
34. C/CAG will require the construction contractor to furnish payment and performance bonds naming C/CAG as obligee, and CALTRANS as additional obligee, and to carry liability insurance in accordance with CALTRANS Standard Specifications.

35. C/CAG will be responsible for ensuring that its designees advertise, open bids, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code. By accepting responsibility to advertise and award the construction contract, C/CAG also accepts responsibility to administer the construction contract. CALTRANS acknowledges that C/CAG may fulfill these responsibilities through its designees.
36. If the lowest responsible construction contract bid is greater than the funding commitment to CONSTRUCTION CAPITAL, PARTIES must agree in writing on a course of action within fifteen (15) working days. If no agreement is reached within fifteen (15) work days the IMPLEMENTING AGENCY will not award the construction contract.
37. CALTRANS will not issue an encroachment permit to C/CAG's construction contractor until CALTRANS accepts:
- The payment and performance bonds
  - The CONSTRUCTION Quality Management Plan
38. The CONSTRUCTION Quality Management Plan (QMP) will describe how construction material verification and workmanship inspections will be performed at manufacturing sources and the PROJECT job-site. The construction material and Source Inspection QMP (SIQMP) are subject to review and approval by the State Materials Engineer.
39. The CONSTRUCTION Quality Management Plan will address the radiation safety requirements of the California Code of Regulations 17 CCR § 30346 when the work requires Gamma-Gamma Logging acceptance testing for Cast in Drilled Hole (CIDH) pile or whenever else it is applicable. In accordance with these regulations C/CAG, as the "well operator", will have a written agreement with any consultant or external entity performing these tests.
40. C/CAG will provide a Resident Engineer and CONSTRUCTION SUPPORT staff that are independent of the construction contractor. The Resident Engineer will be a Civil Engineer, licensed in the State of California, who is responsible for construction contract administration activities.

41. C/CAG will implement changes to the construction contract through Change Orders. PARTIES will review and concur on all Change Orders over \$50,000. This applies only to Change Order within CALTRANS right-of-way.
42. CALTRANS will review and concur with:
  - Change Orders affecting public safety, public convenience, protected environmental resources, the preservation of property, all design and specification changes, and all major changes as defined in the CALTRANS Construction Manual. These Change Orders must receive written concurrence by CALTRANS prior to implementation. This shall only apply to Change Orders within CALTRANS right-of-way.
  - The Stormwater Pollution Prevention Plan (SWPPP) or the Water Pollution Control Plan (WPCP).
43. C/CAG will be responsible for ensuring that its designees administer and process all construction contract claims pursuant to the requirements set forth under Public Contract Code, Section 9204. In addition, all public works claims of \$375,000 or less shall be resolved in accordance with Public Contract Code Section 20104, et seq. and other applicable laws.
44. C/CAG is designated as the Legally Responsible Person pursuant to the Construction General Permit, State Water Resources Control Board (SWRCB) Order Number 2009-0009-DWQ, as defined in Appendix 5, Glossary, and assumes all roles and responsibilities assigned to the Legally Responsible Person as mandated by the Construction General Permit. C/CAG is required to comply with the CALTRANS MS4 National Pollutant Discharge Elimination System (NPDES) permit for all work within the State Highway System.
45. C/CAG will submit a written request to CALTRANS for any Department Furnished Material (DFM) identified in the PROJECT plans, specifications, and estimate a minimum of sixty (60) working days prior to the construction start of work. C/CAG will submit a written request to CALTRANS for any additional DFM deemed necessary during the PROJECT construction.

CALTRANS will make the DFM available at a CALTRANS-designated location.

46. As the CONSTRUCTION IMPLEMENTING AGENCY, C/CAG is responsible for maintenance of the State Highway System (SHS) within the PROJECT limits as part of the construction contract until the following conditions are met:
- Any required maintenance agreements are executed for the portions of SHS for which relief of maintenance is to be granted.
  - CALTRANS approves a request from C/CAG for relief from maintenance of the PROJECT or a portion thereof.
47. C/CAG will ensure all necessary maintenance agreements will be executed and/or amended between the local agency with land-use jurisdiction and CALTRANS.
48. Upon WORK completion, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the State Highway System (SHS) within SHS right-of-way as part of WORK become the property of CALTRANS.

CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside SHS right-of-way.

49. Within one hundred eighty (180) calendar days following the completion and acceptance of the PROJECT construction contract, C/CAG will furnish CALTRANS with a complete set of “As-Built” plans and Change Orders, including any changes authorized by CALTRANS, using an approved transfer mechanism, such as a CD ROM, flash drive, Filr. The submitted digital files must be completed in accordance with Caltrans specifications, policies, and manuals, including requirements in Sections 2 and 3, of Chapter 17 in the Project Development Procedures Manual, then current CADD User’s Manual (Section 4.3), Plans Preparation Manual, and CALTRANS practice. The plans will have the Resident Engineer’s name, contract number, and construction contract acceptance date printed on each plan sheet, and with the Resident Engineer’s signature only on the title sheet. The As-Built plans will be in Microstation DGN format, version 8.0. When applicable, the digital submittal must also include high accuracy locating and underground facilities data. In addition, C/CAG will provide one set of As-Built plans and addenda in TIFF format.

The submittal must also include all CALTRANS requested contract records, and land survey documents. The land survey documents include monument preservation documents and records of surveys prepared to satisfy the requirements of the California Professional Land Surveyors Act (Business and Professions Code, Sections 8700 – 8805). Copies of survey documents and Records of Surveys filed in accordance with Business & Professions Code, Sections 8762 and 8771, will contain the filing information provided by the county in which filed.

**Schedule**

50. PARTIES will manage the WORK schedule to ensure the timely use of committed funds and to ensure compliance with any environmental permits, right-of-way agreements, construction contracts, and any other commitments. PARTIES will communicate schedule risks or changes as soon as they are identified and will actively manage and mitigate schedule risks.
51. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with written monthly progress reports during the completion of the WORK.

**Additional Provisions****Standards**

52. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; Federal Highway Administration (FHWA) standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:
- CADD Users' Manual
  - CALTRANS policies and directives
  - Plans Preparation Manual
  - Project Development Procedures Manual (PDPM)
  - Workplan Standards Guide
  - Construction Manual
  - Construction Manual Supplement for Local Agency Resident Engineers
  - Local Agency Structure Representative Guidelines
  - Encroachment Permit Manual

**Noncompliant Work**

53. CALTRANS retains the right to reject noncompliant WORK. C/CAG agrees to suspend WORK upon request by CALTRANS for the purpose of protecting public safety, preserving property rights, and ensuring that all WORK is in the best interest of the State Highway System.

### Qualifications

54. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.

### Consultant Selection

55. C/CAG will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

### Encroachment Permits

56. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. C/CAG, the cities of Brisbane, Colma and Daly City, their contractors, consultants, agents, and utility owners will not work within the SHS right-of-way without an encroachment permit which specifically allows them to do so. CALTRANS will provide encroachment permits to C/CAG and/or the cities of Brisbane, Colma and Daly City at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
57. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

### Protected Resources

58. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and CALTRANS approves a plan for its removal or protection.

### Disclosures

59. PARTIES will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the WORK in confidence to the extent permitted by law and where applicable, the provisions of California Government Code, Section 7921.505(c)(5) will protect the confidentiality of such documents in the event that said documents are shared between PARTIES.



PARTIES will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the WORK without the written consent of the PARTY authorized to release them, unless required or authorized to do so by law.

60. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify PARTIES within five (5) working days of receipt and make PARTIES aware of any disclosed public records.

### Hazardous Materials

61. HM-1 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, irrespective of whether it is disturbed by the PROJECT or not.

HM-2 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by the PROJECT.

The management activities related to HM-1 and HM-2, including and without limitation, any necessary manifest requirements and disposal facility designations are referred to herein as HM-1 MANAGEMENT and HM-2 MANAGEMENT respectively.

62. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
63. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing State Highway System right-of-way. CALTRANS will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

CALTRANS will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the existing State Highway System right-of-way with funds that are independent of the funds committed in this AGREEMENT.

64. If HM-1 is found within the PROJECT limits and outside the existing State Highway System right-of-way, responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. C/CAG, in concert with the local agency having land use jurisdiction, will ensure that HM-1 MANAGEMENT is undertaken with minimum impact to PROJECT schedule.

The cost of HM-1 MANAGEMENT for HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way will be paid from funds that are independent of the funds committed in this AGREEMENT and will be the responsibility of the owner(s) of the parcel(s) where the HM-1 is located.

65. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.

C/CAG and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and C/CAG each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. C/CAG will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during PROJECT COMPONENTS for which they are the IMPLEMENTING AGENCY except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.

66. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.

#### Claims

67. Any PARTY that is responsible for completing WORK may accept, reject, compromise, settle, or litigate claims arising from the WORK without concurrence from the other PARTY.
68. PARTIES will confer on any claim that may affect the WORK or PARTIES' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTY will prejudice the rights of another PARTY until after PARTIES confer on the claim.
69. If the WORK expends state or federal funds, each PARTY will comply with the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTIES will ensure that any for-profit consultant hired to participate in the WORK will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the WORK these principles and requirements apply to all funding types included in this AGREEMENT.

#### Accounting and Audits

70. PARTIES will maintain, and will ensure that any consultant hired by PARTIES to participate in WORK 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.

71. PARTIES will maintain and make available to each other all WORK-related documents, including financial data, during the term of this AGREEMENT.

PARTIES will retain all WORK-related records for three (3) years after the final voucher.

PARTIES will require that any consultants hired to participate in the WORK will comply with this Article.

72. PARTIES have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the State Auditor, FHWA (if the PROJECT utilizes federal funds), and C/CAG will have access to all WORK -related records of each PARTY, and any consultant hired by a PARTY to participate in WORK, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTY will be permitted to make copies of any WORK-related records needed for the audit.

The audited PARTY will review the draft audit, findings, and recommendations, and provide written comments within thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTIES have forty-five (45) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTIES is subject to mediation. Mediation will follow the process described in the General Conditions section of this AGREEMENT.

73. If the WORK expends state or federal funds, each PARTY will undergo an annual audit in accordance with the Single Audit Act in the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as defined in 2 CFR, Part 200.
74. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.

#### Interruption of Work

75. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.

76. If WORK stops for any reason, each PARTY will continue with environmental commitments included in the environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, and will keep the PROJECT in environmental compliance until WORK resumes.

Penalties, Judgements and Settlements

77. The cost of awards, judgements, fines, interest, penalties, attorney's fees, and/or settlements generated by the WORK are considered WORK costs.
78. The cost of legal challenges to the environmental process or documentation are considered WORK costs.
79. Any PARTY whose action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

Project Files

80. C/CAG will furnish CALTRANS with the Project History Files related to the PROJECT facilities on State Highway System within sixty (60) days following the completion of each PROJECT COMPONENT. C/CAG will assure that the Project History File is prepared and submitted in compliance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and in PDF format.

Environmental Compliance

81. If during performance of WORK additional activities or environmental documentation is necessary to keep the PROJECT in environmental compliance, PARTIES will amend this AGREEMENT to include completion of those additional tasks.

**ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017 (SB 1)**

82. As the IMPLEMENTING AGENCY, C/CAG will prepare and submit to CALTRANS a Completion Report, in accordance with California Transportation Commission (CTC) SB1 Accountability and Transparency Guidelines.

C/CAG must submit a Completion Report for the construction component to CALTRANS for approval within four (4) months of Construction Contract Acceptance or when the project becomes operable, whichever is sooner. Thereafter, CALTRANS will have two (2) months to review and approve the report prior to submission to the CTC. The Completion Report should not be delayed due to claims, plant establishment periods, ongoing environmental mitigation monitoring, or other reasons.

C/CAG must submit a Final Delivery Report to CALTRANS for approval within four (4) months of conclusion of all remaining project activities beyond the acceptance of the construction contract. Thereafter, CALTRANS will have two (2) months to review and approve the report prior to submission to the CTC. The Final Delivery Report will reflect final project expenditures, any changes that occurred after submittal of the Completion Report, and an updated evaluation of the benefits.

83. In those instances where PARTIES have signed a PROJECT scope, cost, and schedule and benefit baseline data agreement (BASELINE AGREEMENT), PARTIES agree to abide by the terms and conditions of that PROJECT BASELINE AGREEMENT. The PROJECT BASELINE AGREEMENT is attached to and made a part of this AGREEMENT, by reference.
84. Notwithstanding anything to the contrary in this AGREEMENT, PARTIES are not permitted to make changes to the scope, cost, schedule or benefits of the PROJECT, unless approved by CTC.
85. PARTIES will meet the requirements of The Road Repair and Accountability Act of 2017 (SB 1), Chapter 5, Statutes of 2017, California Transportation Commission (CTC) SB1 Accountability and Transparency Guidelines and the CTC's Local Partnership Program (LPP) guidelines.

PARTIES agree that contributed funds originating from the LPP can be expended on any item identified in the PROJECT phase that is funded with LPP. LPP Competitive Grant Program funds and funds in the initial cycle of the LPP Formulaic Program shall not supplant other committed funds and are not available to fund cost increases, except as noted in the CTC's LPP Guidelines Resolution G-18-30.

### **GENERAL CONDITIONS**

86. All portions of this AGREEMENT, including the Recitals Section, are enforceable.

#### **Venue**

87. PARTIES understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTY initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.

**Exemptions**

88. All CALTRANS' obligations and commitments under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming and allocation of funds by the California Transportation Commission (CTC).

**Indemnification**

89. Neither CALTRANS nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by C/CAG, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon C/CAG under this AGREEMENT. It is understood and agreed that C/CAG, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by C/CAG, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
90. Neither C/CAG nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless C/CAG and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

**Non-parties**

91. PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.
92. PARTIES will not assign or attempt to assign obligations to entities not signatory to this AGREEMENT without an amendment to this AGREEMENT.

**Ambiguity and Performance**

93. Neither PARTY will interpret any ambiguity contained in this AGREEMENT against the other PARTY. PARTIES waive the provisions of California Civil Code, Section 1654.

A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.

94. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

**Defaults**

95. If any PARTY defaults in its performance of the WORK, a non-defaulting PARTY will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution.

**Dispute Resolution**

96. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of C/CAG will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of the WORK in accordance with the terms of this AGREEMENT. However, if any PARTY stops fulfilling its obligations, any other PARTY may seek equitable relief to ensure that the WORK continues.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS District Office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located.

97. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

**Prevailing Wage**

98. When WORK falls within the Labor Code § 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code § 1771, PARTIES will conform to the provisions of Labor Code §§ 1720-1815, and all applicable provisions of California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTIES will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts.

Work performed by a PARTY's own employees is exempt from the Labor Code's Prevailing Wage requirements.

If WORK is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, PARTIES will conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. §§ 3141-3148.

When applicable, PARTIES will include federal prevailing wage requirements in contracts for public works. WORK performed by a PARTY's employees is exempt from federal prevailing wage requirements.

**Contact Information****CALTRANS**

Nandini N. Shridhar, Project Manager

111 Grand Avenue

Oakland, CA 94612

Office Phone: (510) 290-7039

Email: nandini.shridhar@dot.ca.gov

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

Audrey Shiramizu, Program Specialist

555 County Center, 5th Floor

Redwood City, CA 94063

Office Phone: (650) 599-1406

Email: ashiramizu@smcgov.org



## SIGNATURES

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and hereby covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

### STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION



Helena (Lenka) Culik-Caro  
Deputy District Director, Design

#### Verification of funds and authority:



Jeffrey Kuehnel  
District Budget Manager

#### Certified as to financial terms and policies:



Nadine Karavan  
HQ Accounting Supervisor

### CITY/COUNTY ASSOCIATION OF GOVERNMENT OF SAN MATEO COUNTY



SEan Charpentier (May 9, 2023 16:03 PDT)

Sean Charpentier  
Executive Director

#### Attest:



Kaki Cheung (May 9, 2023 15:13 PDT)

Kaki Cheung  
Program Director

#### Approved as to form and procedure:



Melissa Andrikopoulos (May 9, 2023 14:01 PDT)

Melissa Adrikopoulos  
Legal Counsel

# **FUNDING SUMMARY NO. 01**

<b><u>FUNDING TABLE</u></b> <span>v. 2</span>					
<u>IMPLEMENTING AGENCY</u> →			<u>C/CAG</u>		Totals
Source	Party	Fund Type	CONST. SUPPORT	CONST. CAPITAL	
STATE	CALTRANS	SB 1 (LPP)	0	600,000	600,000
STATE	C/CAG	STIP/RIP	0	7,900,000	7,900,000
FEDERAL	C/CAG	RIP - COVID	1,336,860	75,140	1,412,000
Totals			1,336,860	8,575,140	9,912,000

v 22

<b><u>SPENDING SUMMARY</u></b>					
Fund Type	CONST. SUPPORT		CONST. CAPITAL		Totals
	CALTRANS	<u>C/CAG</u>	<u>C/CAG</u>	DFM CALTRANS	
STIP/RIP	0	0	7,895,062	4,938	7,900,000
SB 1 (LPP)	0	0	600,000		600,000
FEDERAL (RIP - COVID)	0	1,336,860	75,140		1,412,000
<b>Totals</b>	0	1,336,860	8,570,202	4,938	9,912,000

**Funding**

1. If there are insufficient funds available in this AGREEMENT to place the PROJECT right-of-way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTIES amend this AGREEMENT.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

2. If there are insufficient funds in this AGREEMENT to implement the obligations and responsibilities of this AGREEMENT, including the applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTY accepts responsibility to fund their respective WORK until such time as PARTIES amend this AGREEMENT.

Each PARTY may request reimbursement for these costs during the amendment process.

3. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.
4. If the WORK is funded with state or federal funds, any PARTY seeking CALTRANS reimbursement of indirect costs must submit an indirect cost rate proposal and central service cost allocation plan (if any) in accordance with Local Assistance Procedures Manual, 2 CFR, Part 200 and Chapter 5. These documents are to be submitted annually to CALTRANS' Audits and Investigations for review and acceptance prior to CALTRANS' reimbursement of indirect costs.
5. Travel, per diem, and third-party contract reimbursements for WORK are to be paid from the funds in this AGREEMENT only after the contractor performs the work and incurs said costs.

Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Human Resources (CalHR) rules current at the effective date of this AGREEMENT.

If C/CAG invoices for rates in excess of CalHR rates, C/CAG will fund the cost difference and reimburse CALTRANS for any overpayment.

6. In accordance with the CALTRANS Federal-Aid Project Funding Guidelines, PARTIES must obtain approval from the Federal Highway Administration prior to any PROJECT funding changes that that will change the federal share of funds.
7. Notwithstanding the terms of this AGREEMENT, PARTIES agree to abide by the funding guidelines for all contributed funds that are programmed and allocated by the CTC.

### **Invoicing and Payment**

8. PARTIES will invoice for funds where the SPENDING SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, C/CAG will pay invoices within five (5) calendar days of receipt of invoice.
9. If C/CAG has received EFT certification from CALTRANS then C/CAG will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
10. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.
11. If an executed Program Supplement Agreement (PSA) or STIP Planning, Programming, and Monitoring Program Fund Transfer Agreement (PPM) exists for this PROJECT then C/CAG will abide by the billing and payment conditions detailed for the fund types identified in the PSA or PPM.
12. If CALTRANS reimburses C/CAG for any costs later determined to be unallowable, C/CAG will reimburse those funds.

*CONSTRUCTION Support*

13. No invoicing or reimbursement will occur for the CONSTRUCTION SUPPORT PROJECT COMPONENT.

*CONSTRUCTION Capital*

14. C/CAG will invoice and CALTRANS will reimburse for actual costs incurred and paid.

## Funding Summary Amendment – Funding Summary No. 02

### Agreement Amendment No. 1

#### **Work Description**

THE SMART CORRIDOR NORTHERN CITIES EXPANSION PROJECT IS A JOINT EFFORT BY THE CITIES OF DALY CITY, BRISBANE, COLMA, C/CAG AND CALTRANS DISTRICT 4 TO DEPLOY FIBER COMMUNICATIONS, UPGRADED TRAFFIC SIGNAL CONTROLLERS, DYNAMIC MESSAGE SIGNS, VEHICLE DETECTION STATIONS, AND TRAFFIC MONITORING CAMERAS ALONG KEY ARTERIAL CORRIDORS THAT PARALLEL US 101 AND I-280.

#### **Contact Information**

##### CALTRANS

Nandini N. Shridhar, Project Manager

111 Grand Avenue

Oakland, CA 94612

Office Phone: (510) 290-7039

Email: [nandini.shridhar@dot.ca.gov](mailto:nandini.shridhar@dot.ca.gov)

##### CITY/COUNTY ASSOCIATION OF GOVERNMENT OF SAN MATEO COUNTY

Audrey Shiramizu, Program Specialist

555 County Center, 5th Floor

Redwood City, CA 94063

Office Phone: (650) 599-1406

Email: [ashiramizu@smcgov.org](mailto:ashiramizu@smcgov.org)

# **AMENDMENT NO. 1**

## **FUNDING SUMMARY NO. 02**

1. PARTIES, in accordance with the provisions of this AGREEMENT, hereby amend this AGREEMENT by replacing Funding Summary No. 01 in its entirety with Funding Summary No. 02.
2. Funding Summary No. 2 revises STIP/RIP and RIP-COVID funding for Construction Support and Construction Capital and adds \$4,938 of Local funds for DFM.

<b><u>FUNDING TABLE</u></b>					
<b><u>IMPLEMENTING AGENCY →</u></b>			<b><u>C/CAG</u></b>		<b>Totals</b>
<b>Source</b>	<b>Party</b>	<b>Fund Type</b>	<b>CONST. SUPPORT</b>	<b>CONST. CAPITAL</b>	
LOCAL	C/CAG	Local	0	4,938	4,938
STATE	CALTRANS	SB 1 (LPP)	0	600,000	600,000
STATE	C/CAG	STIP/RIP	0	6,215,000	6,215,000
STATE	C/CAG	RIP-COVID	1,266,860	1,830,140	3,097,000
<b>Totals</b>			<b>1,266,860</b>	<b>8,650,078</b>	<b>9,916,938</b>



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<b><u>SPENDING SUMMARY</u></b>					
Fund Type	CONST. SUPPORT		CONST. CAPITAL		Totals
	CALTRANS	<u>C/CAG</u>	<u>C/CAG</u>	DFM CALTRANS	
Local	0	0	0	4,938	4,938
STIP/RIP	0	0	6,215,000		6,215,000
SB 1 (LPP)	0	0	600,000		600,000
STATE (RIP - COVID)	0	1,266,860	1,830,140		3,097,000
<b>Totals</b>	0	1,266,860	8,645,140	4,938	9,916,938

**Funding**

3. If there are insufficient funds available in this AGREEMENT to place the PROJECT right-of-way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTIES amend this AGREEMENT.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

4. If there are insufficient funds in this AGREEMENT to implement the obligations and responsibilities of this AGREEMENT, including the applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTY accepts responsibility to fund their respective WORK until such time as PARTIES amend this AGREEMENT.

Each PARTY may request reimbursement for these costs during the amendment process.

5. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.
6. If the WORK is funded with state or federal funds, any PARTY seeking CALTRANS reimbursement of indirect costs must submit an indirect cost rate proposal and central service cost allocation plan (if any) in accordance with Local Assistance Procedures Manual, 2 CFR, Part 200 and Chapter 5. These documents are to be submitted annually to CALTRANS' Audits and Investigations for review and acceptance prior to CALTRANS' reimbursement of indirect costs.
7. Travel, per diem, and third-party contract reimbursements for WORK are to be paid from the funds in this AGREEMENT only after the contractor performs the work and incurs said costs.

Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Human Resources (CalHR) rules current at the effective date of this AGREEMENT.

If C/CAG invoices for rates in excess of CalHR rates, C/CAG will fund the cost difference and reimburse CALTRANS for any overpayment.

8. In accordance with the CALTRANS Federal-Aid Project Funding Guidelines, PARTIES must obtain approval from the Federal Highway Administration prior to any PROJECT funding changes that that will change the federal share of funds.
9. Notwithstanding the terms of this AGREEMENT, PARTIES agree to abide by the funding guidelines for all contributed funds that are programmed and allocated by the CTC.

### **Invoicing and Payment**

10. PARTIES will invoice for funds where the SPENDING SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, C/CAG will pay invoices within five (5) calendar days of receipt of invoice.
11. If C/CAG has received EFT certification from CALTRANS then C/CAG will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
12. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.
13. If an executed Program Supplement Agreement (PSA) or STIP Planning, Programming, and Monitoring Program Fund Transfer Agreement (PPM) exists for this PROJECT then C/CAG will abide by the billing and payment conditions detailed for the fund types identified in the PSA or PPM.

14. If CALTRANS reimburses C/CAG for any costs later determined to be unallowable, C/CAG will reimburse those funds.

CONSTRUCTION Support

15. C/CAG will invoice and CALTRANS will reimburse for actual costs incurred and paid.

CONSTRUCTION Capital

16. C/CAG will invoice and CALTRANS will reimburse for actual costs incurred and paid.

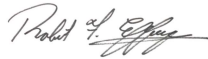
*Department Furnished Materials (DFM)*

17. CALTRANS will invoice C/CAG for a fixed amount as a lump sum (single payment) after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of CONSTRUCTION CAPITAL expenditures.

**Signatures**

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and hereby covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION**

Robert Effinger  
Acting Deputy District Director, Design

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

Sean Charpentier (Sep 28, 2023 13:28 PDT)

Sean Charpentier  
Executive Director

Date: September 28, 2023

**Attest:****Verification of funds and authority:**

Jeffrey Kuchnel  
District Budget Manager



Kaki Cheung (Sep 27, 2023 18:22 PDT)

Kaki Cheung  
Program Director

**Certified as to financial terms and  
policies:**

Nadine Karavan  
HQ Accounting Supervisor



Melissa Andrikopoulos (Sep 27, 2023 17:26 PDT)

Melissa Andrikopoulos  
Legal Counsel

**Approved as to form and procedure:**