



**AGENDA  
REGULAR MEETING  
CITY COUNCIL OF THE TOWN OF COLMA  
Wednesday, February 28, 2024  
7:00 PM**

*The City Council meeting will be held in person in the Council Chambers as detailed below. As a courtesy and technology permitting, the meeting will also be held virtually via Zoom Video Conference. However, the Town cannot guarantee that the public's access to the Zoom virtual platform will be uninterrupted, and technical difficulties may occur from time to time. In those instances, so long as the public may still attend the meeting in person, the meeting will continue.*

**To attend the meeting in person:**

Town Hall, Council Chamber, 1198 El Camino Real, Colma CA 94014

**To participate in the meeting via Zoom Video Conference:**

*Join Zoom Meeting:*

<https://us02web.zoom.us/j/81289976261>

Passcode: 074407

Meeting ID: 812 8997 6261

*Dial by your location:*

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Germantown)

**To provide Public Comment in person:**

Members of the public wishing to speak are requested to complete a yellow speaker card and submit it to the City Clerk. Comments should be kept to three minutes or less.

**To provide Public Comment via Zoom Video Conference:**

Live verbal public comments may be made by requesting to speak using the "raise hand" feature in Zoom or, if calling in by phone, by pressing \*9 on the telephone keypad prior to the consent calendar being heard, or prior to the close of the public comment period for agenda items or non-agenda items. In response, the Town will unmute the speaker and allow them to speak up to three minutes.

**To provide Public Comment in writing:**

Members of the public may provide written comments by email to the Interim City Clerk at [adometita@colma.ca.gov](mailto:adometita@colma.ca.gov) before the meeting. Emailed comments should include the specific agenda item on which you are commenting or note that your comment concerns an item that is not on the agenda. The length of the emailed comment should be commensurate with the three minutes customarily allowed for verbal comments, which is approximately 250-300 words.

*As a reminder, the Town cannot guarantee that the public's access to the Zoom virtual platform will be uninterrupted, and technical difficulties may occur from time to time. Therefore, if you want to ensure you are able to attend the meeting and/or make public comment, you may wish to attend in person.*

## **PLEDGE OF ALLEGIANCE AND ROLL CALL**

## **ADOPTION OF AGENDA**

## **PRESENTATION**

- Citizen Recognition
- Police Department Year in Review

## **PUBLIC COMMENTS**

Comments on the Consent Calendar and Non-Agenda Items will be heard at this time. Comments on Agenda Items will be heard when the item is called.

## **CONSENT CALENDAR**

1. Motion to Accept the Minutes from the February 14, 2024 Regular Meeting.
2. Motion to Accept the Minutes from the February 21, 2024 Special Meeting.
3. Motion to Adopt a Resolution Approving and Authorizing the City Manager to Execute the Funding Agreement with the City/County Association of Governments of San Mateo County and Daly City for the Construction Phase of the Smart Corridor Project Pursuant to CEQA Guidelines 15301 and 15304.

## **STUDY SESSION**

### **4. PENSION FUNDING UPDATE**

*This item is for discussion only; no action will be taken at this meeting.*

### **5. CREEKSIDE VILLAS RENTAL POLICY REVIEW**

*This item is for discussion only; no action will be taken at this meeting.*

## **REPORTS**

Mayor/City Council

City Manager

## **ADJOURNMENT**

The City Council Meeting Agenda Packet and supporting documents are available for review on the Town's website [www.colma.ca.gov](http://www.colma.ca.gov) or at Colma Town Hall, 1198 El Camino Real, Colma, CA. Persons interested in obtaining an agenda via e-mail should call 650-997-8300 or email a request to [citymanager@colma.ca.gov](mailto:citymanager@colma.ca.gov).

### Reasonable Accommodation

Upon request, this publication will be made available in appropriate alternative formats to persons with disabilities, as required by the Americans with Disabilities Act of 1990. Any person with a disability, who requires a modification or accommodation to view the agenda, should direct such a request to Juan Rumayor, ADA Coordinator, at 650-997-8300 or [jrumayor@colma.ca.gov](mailto:jrumayor@colma.ca.gov). Please allow two business days for your request to be processed.

**MINUTES  
REGULAR MEETING**

City Council of the Town of Colma  
Town Hall Council Chamber  
1198 El Camino Real, Colma CA  
Also Accessible via Zoom.us  
**Wednesday, February 14, 2024  
7:00 PM**

**PLEDGE OF ALLEGIANCE AND ROLL CALL**

Mayor Goodwin called the meeting to order at 7:00 p.m.

Council Present – Mayor John Irish Goodwin, Vice Mayor Ken Gonzalez, and Council Members Carrie Slaughter and Helen Fisicaro were present. Council Member Joanne F. del Rosario was absent.

Staff Present – City Manager Daniel Barros, City Attorney Christopher Diaz, Chief of Police John Munsey and Interim City Clerk Abigail Dometita were in attendance. Director of Public Works and Planning Brad Donohue and City Planner Farhad Mortazavi joined the meeting virtually.

The Mayor announced, "Regarding Public Comment: Members of the public who are here in person are requested to complete a yellow speaker card and submit it to the City Clerk. Those of you on Zoom may make public comments by using the "raise hand" feature in Zoom or, if calling in by phone, by pressing \*9 on the telephone keypad. The City Clerk will unmute your microphone and allow you to speak. Comments should be kept to three minutes or less."

**ADOPTION OF THE AGENDA**

Mayor Goodwin asked if there were any changes to the agenda. None were requested. The Mayor asked for a motion to adopt the agenda.

**Action:** Vice Mayor Gonzalez moved to adopt the agenda; the motion was seconded by Council Member Fisicaro and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
John Irish Goodwin, Mayor	✓				
Ken Gonzalez	✓				
Carrie Slaughter	✓				
Helen Fisicaro	✓				
Joanne F. del Rosario					✓
	4	0			

**PRESENTATIONS**

The Mayor read a proclamation in honor of February 2024 as Black History Month.

## PUBLIC COMMENTS

Mayor Goodwin opened the public comment period at 7:04 p.m. and seeing no one request to speak, he closed the public comment period.

## CONSENT CALENDAR

1. Motion to Accept the Minutes from the January 24, 2024 Regular Meeting.
2. Motion to Approve Report of Checks Paid for January 2024.
3. Motion to Adopt an Ordinance Amending Subchapter 5.03 to Include and Remove Subchapters 5.05, 5.06, 5.12, 5.15, 5.19, and 5.20 of Chapter 5 (Planning, Zoning, Use & Development of Land & Improvements) of the Colma Municipal Code in Furtherance of the State Housing Element and Other State Law Changes, Pursuant to a Previously Certified Environmental Impact Report (second reading).

**Action:** Council Member Fiscaro moved to approve consent calendar items #1 through 3; the motion was seconded by Council Member Slaughter and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
John Irish Goodwin, Mayor	✓				
Ken Gonzalez	✓				
Carrie Slaughter	✓				
Helen Fiscaro	✓				
Joanne F. del Rosario					✓
	4	0			

## COUNCIL CALENDARING

- There will be a Special Meeting for the Status Update for the 2023-2025 Strategic Plan on Wednesday, February 21 at 1pm in Town Hall.
- The next Regular Meeting will be on Wednesday, February 28, 2024 at 7pm.

## REPORTS

City Manager Daniel Barros gave an update on the following topics:

- Recognition goes to Public Works Maintenance, Police, and PG&E for their response to the recent storms. Town will continue to provide sandbags at the Colma Community Center for residents in preparation for the upcoming wet weather.
- Of the many subjects covered at the League of Cities City Managers Conference, the areas that seemed the most relevant to the Town and our Strategic Plan were economic development, the pros and cons of artificial intelligence in local government and the decline in recruitment in the public sector.

Mayor Goodwin echoed the City Manager's appreciation to the storm's first responders; and wished everyone a Happy Valentine's Day!

## ADJOURNMENT

Mayor Goodwin adjourned the meeting at 7:12 p.m.

Respectfully submitted,

Abigail Dometita  
Interim City Clerk



**MINUTES  
SPECIAL MEETING**

City Council of the Town of Colma  
Town Hall, Conference Room  
1198 El Camino Real, Colma CA  
**Wednesday, February 21, 2024**  
**1:00 PM**

**PLEDGE OF ALLEGIANCE AND ROLL CALL**

Mayor John Goodwin called the meeting to order at 1:05 p.m.

Council Present – Mayor John Irish Goodwin, Vice Mayor Ken Gonzalez, Council Members Carrie Slaughter, Helen Fiscaro, and Joanne F. del Rosario were all present.

Staff Present – City Manager Daniel Barros, City Attorney Christopher Diaz, Chief of Police John Munsey, Interim Administrative Services Director Stuart Schillinger, Director of Public Works Brad Donohue, City Planner Farhad Mortazavi, Recreation Services Manager Angelika Abellana, Human Resources Analyst Juan Rumayor, Accounting Manager Jesse Bradley, Recreation Coordinator Daisy Esquivias, and Administrative Technician Shelby Wright were in attendance.

The Mayor announced, “Regarding Public Comment: Members of the public who are here in person are requested to complete a yellow speaker card and submit it to the City Clerk’s Office. Please keep your comments to 3 minutes or less. Thank you.”

**ADOPTION OF THE AGENDA**

Mayor Goodwin asked if there were any changes to the agenda; none were requested. He asked for a motion to adopt the agenda.

**Action:** Council Member Fiscaro moved to adopt the agenda; the motion was seconded by Council Member del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
John Irish Goodwin, Mayor	✓				
Ken Gonzalez	✓				
Carrie Slaughter					✓*
Helen Fiscaro	✓				
Joanne F. del Rosario	✓				
	4	0			

\*Council Member Slaughter arrived late at 1:08pm.

**PUBLIC HEARING**

**1. STATUS UPDATE TO 2023-2025 STRATEGIC PLAN**

City Manager Daniel Barros presented the staff report. Mayor Goodwin opened the public comment period after each of the five sections to allow members of the public to speak or ask questions. Community Member Fernando Duarte spoke at various moments of the staff report. Discussion points included: a question about local solar rebates, a thank you to the Police Department, an emphasis on the importance of asset management, a thank you to the Town for the recently added pickle ball resources, and a suggestion regarding the utilization of Centennial Color Contest submittals as background images in Recreation brochures and service booklets. Council discussion followed each public comment period.

**Action:** Council Member Fiscaro moved to Accept the Update to the 2023-2025 Town of Colma Strategic Plan; the motion was seconded by Council Member del Rosario and carried by the following vote:

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

**ADJOURNMENT**

Mayor Goodwin adjourned the meeting at 3:28 p.m.

Respectfully submitted,

Shelby Wright  
 Administrative Technician II





# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brad Donohue, Director of Public Works  
 VIA: Daniel Barros, City Manager  
 MEETING DATE: February 28, 2024  
 SUBJECT: Smart Corridor Project - Funding Agreement

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## RECOMMENDATION

Staff recommends that the City Council adopt the following:

RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE FUNDING AGREEMENT WITH THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY AND DALY CITY FOR THE CONSTRUCTION PHASE OF THE SMART CORRIDOR PROJECT PURSUANT TO CEQA GUIDELINES 15301 AND 15304

## EXECUTIVE SUMMARY

Staff recommends the City Council approve and authorize the City Manager to execute the Funding Agreement between the Town of Colma (Town) the City/County of Association of Governments of San Mateo County (C/CAG) and Daly City (City) for reimbursement of costs associated during the construction phase of the Smart Corridor Project.

## FISCAL IMPACT

C/CAG has secured funds for the project and will reimburse Daly City and the Town for costs incurred to manage the construction contract, provide inspection services, and staff time for project-related work. In the event the costs exceed the amount identified in Exhibit C of the Funding Agreement, a written amendment will be executed.

## BACKGROUND

The San Mateo County Smart Corridor project (Project) is a longstanding C/CAG priority. It is designed to improve mobility of local arterial streets by installing Intelligent Transportation System (ITS) equipment. The project is a Countywide undertaking, currently the project has

been completed from San Bruno to the southern county border line between San Mateo County and Santa Clara County.

South San Francisco is nearing completion and Brisbane, Daly City and Colma will be underway in early to mid-spring of 2024. Colma's portion of the project will extend from Serramonte Boulevard and travel North to the Colma/Daly City Border, (see Attachment A). The Project will interconnect the Junipero Serra Traffic signals system within Colma and Daly City, install close circuit television (CCTV) cameras to monitor traffic flow, provide dynamic message signs (trail blazer signage), and vehicle detection system, on Junipero Serra Boulevard and various adjacent streets that also serve as detour routes. The equipment is connected to underground fiberoptic communication infrastructure, enabling the equipment to communicate and share data with local transportation management centers (TMCs). The ITS infrastructure provides local cities and Caltrans with day-to-day traffic management capabilities to address recurring and non-recurring traffic congestion issues as they arise.

## **ANALYSIS**

Because this portion of the project will take place mostly within the City of Daly City and partially within the Town of Colma, the City of Daly City will be the "Implementing Agency" leading the construction phase and administering construction contract. However, C/CAG will remain as the overall "Project sponsor" of the project. This funding agreement with the City of Daly City and Town of Colma outlines the obligations and responsibilities for the construction phase of the project. Costs that Colma could incur that are associated with the construction phase of the project could include but limited to, encroachment inspection and construction management obligations to assist in moving the project forward. These costs are reimbursable through the funding agreement.

Separate agreements regarding the ongoing ownership, operations, and maintenance commitments will be forthcoming in a future agreement between the Town of Colma and C/CAG.

## **ENVIRONMENTAL REVIEW**

The C/CAG is designated as the lead agency under the California Environmental Quality Act (CEQA). This Project is exempt from further environmental review pursuant to CEQA Guidelines Section 15301(c), minor alteration of existing facilities, mechanical equipment, highways and streets involving negligible or no expansion of use beyond that which presently exists. It is also exempt pursuant to CEQA Guideline 15304 as a minor alteration to land.

The project is also evaluated for compliance under the National Environmental Policy Act (NEPA). A Determination of Categorical Exclusion under 23 CFR 771.117(c) activity (c)(21) for NEPA was made on July 28, 2020.

A Notice of Exemption (NOE) has been filed with the County Recorder's Office (Attachment "D") and submitted to the Governor's Office of Planning and Research State Clearinghouse (Attachment "E").

## **Council Adopted Values**

By approving this funding agreement and authorizing the City Manager to execute the agreement between C/CAG, Daly City and Colma, promotes intelligent and innovated technology to assist the community at large to monitor and responsibly manage vehicular traffic during sever traffic conditions on State Route 280.

### **CONCLUSION/RECOMMENDATION**

Staff recommends the City Council approve and authorize the City Manager to execute the Funding Agreement with C/CAG and Daly City for the construction phase of the Smart Corridor Project.

### **ATTACHMENTS**

- A. Resolution
- B. Draft Funding Agreement
- C. Map of Colma/Daly City portion of the Smart Corridor Project
- D. Notice of Exemption, Filing with San Mateo County Recorder's Office
- E. Notice of Exemption, Filing with the State Clearinghouse



**RESOLUTION NO. 2024-\_\_**  
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE  
THE FUNDING AGREEMENT WITH THE CITY/COUNTY ASSOCIATION OF  
GOVERNMENTS OF SAN MATEO COUNTY AND DALY CITY FOR THE CONSTRUCTION  
PHASE OF THE SMART CORRIDOR PROJECT PURSUANT TO CEQA GUIDELINES  
15301 AND 15304**

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

**1. Background**

(a) The San Mateo County Smart Corridor project (Project) is a longstanding C/CAG priority. It is designed to improve mobility of local arterial streets by installing Intelligent Transportation System (ITS) equipment.

(b) In Colma, the Project will interconnect the Junipero Serra traffic signals system within Colma and Daly City, install close circuit television (CCTV) cameras to monitor traffic flow, provide dynamic message signs (trail blazer signage), and vehicle detection system, on Junipero Serra Boulevard and various adjacent streets that also serve as detour routes.

(c) The proposed funding agreement outlines the obligations and responsibilities for the construction phase of the Project. Costs that Colma could incur that are associated with the construction phase of the Project could include but limited to, encroachment inspection and construction management obligations to assist in moving the Project forward. These costs are reimbursable through the funding agreement.

(d) C/CAG is the lead agency on the Project and has conducted CEQA review finding the Project to be exempt pursuant to CEQA Guidelines 15301 and 15304. Caltrans conducted NEPA review finding the Project to be subject to a Categorical Exclusion under 23 CFR 771.117(c) activity (c)(21).

(e) Staff is now recommending that the City Council approve and authorize the City Manager to sign the funding agreement.

**2. Approval and Authorization**

(a) The funding agreement between the Town of Colma and C/CAG, a copy of which is on file with the City Clerk, is approved by the City Council of the Town of Colma.

(b) The City Manager is hereby authorized to execute said agreement on behalf of the Town of Colma, with such minor technical amendments as may be deemed appropriate by the City Attorney.

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### Certification of Adoption

I certify that the foregoing Resolution 2024-\_\_ was duly adopted at a regular meeting of said City Council held on February 28, 2024 by the following vote:

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

Dated \_\_\_\_\_

\_\_\_\_\_  
John Irish Goodwin, Mayor

Attest: \_\_\_\_\_  
Abigail Dometita, Interim City Clerk

**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 (“City”) and the Town of Colma (“Town”) (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 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, on October 12, 2023, C/CAG and the City of Daly City entered into a separate purchase reimbursement agreement to specify items that C/CAG will reimburse the City for ; 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 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 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 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 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, 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 all the construction components of the Project has 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).

- 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 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 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 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 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 and Town’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 or Town, impair any right of C/CAG or Town, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of C/CAG or Town without C/CAG’s or Town’s prior written consent, which shall not be unreasonably withheld. The City shall notify C/CAG and Town 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, 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 Party will indemnify, hold harmless and defend the other Parties and their directors/councilmembers, officers, employees and agents (collectively, "Indemnitees") against all liability, claims, suits, actions, costs or expenses 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) to the extent 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 Party will also fully release, indemnify, hold harmless and defend the other Parties 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. Each 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 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 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 J. Piccolotti  
City Manager

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

Approved as to Form:

Approved as to Form:

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

\_\_\_\_\_  
Christopher Diaz  
City Attorney

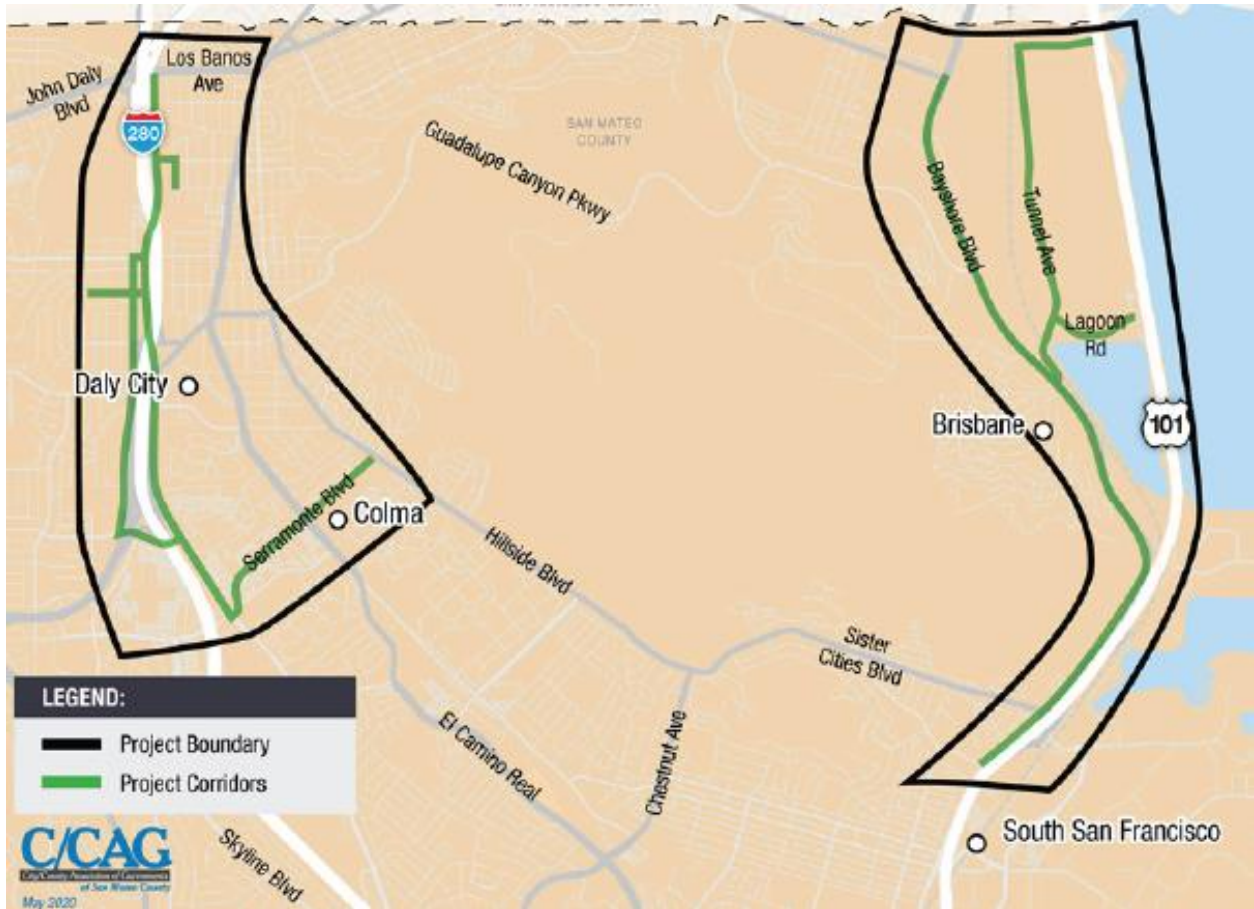
**CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY**

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**

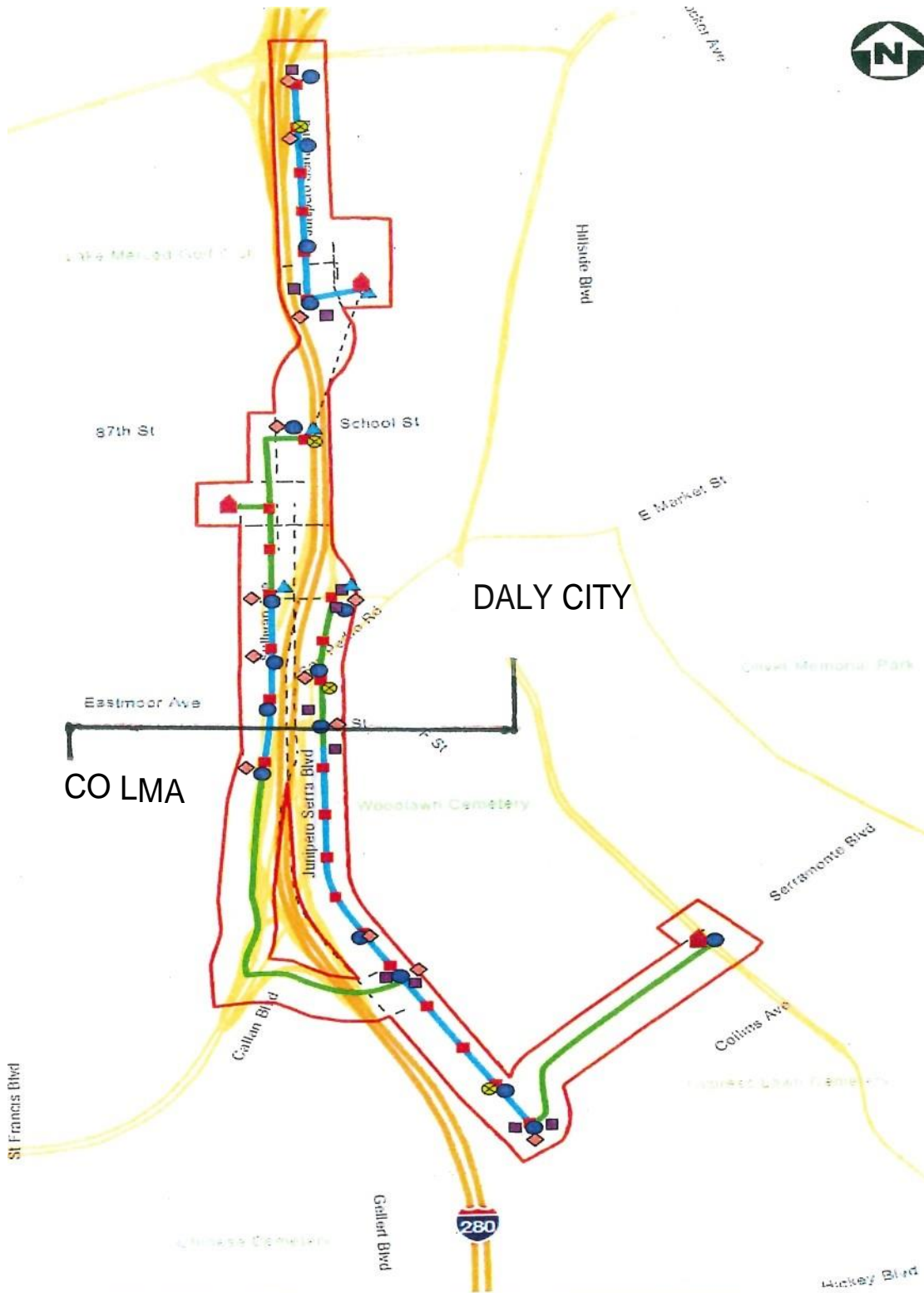
<b>Component</b>	<b>Project Cost</b>	<b>STIP Funds</b>	<b>Other Local Funds</b>	<b>LPP Funds</b>	<b>Funding Total</b>
Construction Capital*	\$4,537,406	\$4,168,253		\$369,152	<b>\$4,537,406</b>
Construction Support	\$656,390	\$656,390			<b>\$656,390</b>
Dept. Furnished Materials	\$3,038		\$3,038		<b>\$3,038</b>
Contingency	\$598,474	\$598,474			<b>\$598,474</b>
<b>Total</b>	<b>\$5,795,308</b>	<b>\$5,423,117</b>	<b>\$3,038</b>	<b>\$369,152</b>	<b>\$5,795,308</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



- Legend**
- Wireless Radio
  - Trail Blazer
  - Traffic Signal Controllers
  - Fiber Hub (City Building Connection)
  - Camera
  - Pull Box
  - New Conduit and Fiber Optic Cable
  - EZI Project Boundary
  - - Wireless Communication
  - Existing Conduit and Fiber Optic Cable



## Attachment "D"

## Notice of Exemption

## Appendix E

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: San Mateo

555 County Center

Redwood City, CA 94063

From: (Public Agency): \_\_\_\_\_

City/County Association of Governments of San Mateo County (C/CAG)

555 County Center, 5th Floor Redwood City, CA 94063

(Address)

Project Title: San Mateo County Smart Corridor Project – Phase IV

Project Applicant: City/County Association of Governments of San Mateo County (C/CAG)

Project Location - Specific:

The project corridor consists of several roadways located along the US 101 and I-280.

Project Location - City: Daly City, Brisbane, and Colma. Project Location - County: San Mateo County

Description of Nature, Purpose and Beneficiaries of Project:

The purpose of this project is to expand the San Mateo County Smart Corridor from its current northern terminus of I-380 further north to the San Francisco County line, encompassing arterials along US 101 and I-280. The proposed project is needed to integrate Daly City, Colma, and Brisbane with the rest of the Smart Corridor cities and enable the Smart Corridor deployment to extend to the San Francisco County line. The project would improve traffic operations on local streets during major incidents on the freeways, as well as non-incident situations, through the implementation of ITS strategies and infrastructure that provide improved coordinated operation of the freeway and arterial systems in San Mateo County.

Name of Public Agency Approving Project: City/County Association of Governments of San Mateo County (C/CAG)

Name of Person or Agency Carrying Out Project: N/A

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Class 1, Section 15301 and Class 4, Section 15304
- Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

See Attachment A for detailed exemption discussion.

Lead Agency

Contact Person: Kaki Cheung Area Code/Telephone/Extension: 6503634105

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

Signature:  Date: 5/8/2020 Title: Program Director

Signed by Lead Agency  Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

# **Attachment A**

## **San Mateo County Smart Corridor Project – Phase IV**

### **San Mateo County**

#### **Project Location**

The proposed project is located within the limits of Daly City, Brisbane, and Colma in the County of San Mateo. The project corridor consists of several roadways located along the US 101 and I-280. The project corridor within the limits of Daly City and Colma is generally linear, its most northern portion is located in Daly City at the intersection of Junipero Serra Blvd and John Daly Blvd and extends south to the intersection of Junipero Serra Blvd and Collins Ave, where it turns northeast and continues on Serramonte Blvd until El Camino Real in the Town of Colma. The project corridor within the limits of Brisbane is also generally linear, its most northern portion is located at the intersection of Bayshore Blvd and Geneva Ave and extends south on Bayshore Blvd to Sister Cities Blvd. Figures 1 and 2 show the project vicinity and project location.

#### **Project Purpose and Need**

Smart Corridor is currently implemented throughout the county south of I-380 to the Santa Clara County line. The purpose of this project is to expand the San Mateo County Smart Corridor from its current northern terminus of I-380 further north to the San Francisco County line, encompassing arterials along US 101 and I-280. US 101 and I-280 create significant traffic impacts on local streets during major traffic incidents on the freeway. There are currently no clearly designated routes that traffic can follow today to bypass a freeway incident, so traffic filters through the local network seeking a viable route around the incident. The cities of Daly City, Brisbane, and Colma to date have little to no tools on the local streets to proactively manage incident traffic that has exited the freeway, and with existing infrastructure there is no opportunity to improve the poor level of service on the local network during major incidents.

The proposed project would address this need by providing the above municipalities and Caltrans the tools to proactively manage the traffic on local streets, by clearly designating routes that traffic can follow to bypass a freeway incident, as well as non-incident situations. The Smart Corridors expansion would proactively manage traffic on local streets when diverted due to major freeway incident or normal operation conditions, as well as enhance communications between agencies to create a regional approach to managing incident traffic. By clearly designating routes that traffic can follow to bypass a freeway incident and providing cities and Caltrans the tools to proactively manage the traffic on the local streets, the project would improve traffic operations on the network during major incidents on freeway as well as non-incident situations.

#### **Project Description**

The San Mateo County Smart Corridor Project – Phase IV (proposed project, project) continues the San Mateo Smart Corridor implementation efforts of the City/County Association of Governments of San Mateo County (C/CAG), California Department of Transportation (Caltrans District 4) and the partner agencies that originally initiated the previous segments of the San Mateo County Smart Corridors project — expanding from its current northern terminus of I-380 further north to the San Francisco County line, encompassing arterials along US 101 and I-280 within the city limits of Daly City, Colma, and Brisbane.

The proposed project would use Intelligent Transportation Systems (ITS) tools to proactively manage traffic congestion during freeway incidents and non-incident situations and use previous Smart Corridor Projects as a basis for design. The ITS infrastructure that will support the proposed project and overall San Mateo County Smart Corridors program would include the design of fiber optic cable in new and existing conduit, wireless communications, traffic signal controller upgrades and replacement, Closed Circuit Television (CCTV) cameras, system detection, and Trailblazer Signs along the project corridors.



The project would not include physical roadway improvements.

This project would occur within Caltrans and public right of way (ROW), and city-owned property. No ROW acquisitions would be required for the proposed project. The location and extent of project improvements are shown in Figure 3 (attached).

Equipment storage would occur off-site or on public ROW within existing paved streets and shoulders in the project area. Materials would be brought to the site as they are being installed and would not be stored on-site.

No utility relocation is anticipated to occur. Proposed devices or conduit would be relocated if found in conflict with existing utilities.

Landscape trees exist along the project corridor; however, no trees would be removed as a result of the proposed project.

The proposed project would implement a Traffic Management Plan to clearly direct and control traffic disruptions that may result from construction activities. Construction activities are predominantly expected to take place within sidewalk areas (for placement of pull boxes and trailblazers), and in shoulders and parking areas (for interconnect conduit). For work occurring in sidewalk areas, alternate accessible pedestrian paths of travel would be provided meeting the California Manual on Uniform Traffic Control Devices (MUTCD). Any lane closures necessary for the installation of interconnect conduit would adhere to the local agency permit requirements, and closures would be anticipated during daytime business hours (outside of AM and PM peak periods). Full closures are not anticipated; as such, detours routes would not be necessary. Night work would not be allowed.

Additional details on the proposed ITS elements are provided below.

#### *Fiber Optic Communications*

The proposed project would use a combination of new fiber optic cable installed in new conduit and replacement of existing twisted pair cable with new fiber optic cable in existing conduit where applicable. Approximately 8 miles of new conduit and fiber optic cable would be installed below ground, through a combination of trenching and directional boring within the existing utility corridor and ROW. Conduit would be typically installed at the lip of the gutter. Typical excavation depth is 24" with a maximum depth of 36". Excavation would occur within the existing roadbed near the lip of gutter and is not anticipated to extend into native subgrade. The locations of fiber optic conduits are flexible if site or resource constraints are encountered that would require avoidance. Fiber optic communications would establish connections to traffic signals, ITS equipment, the City of Daly City Public Works Building at 333 90th Street, the City of Daly City Corporation Yard at 798 Niantic Avenue and the City of Brisbane Public Works at 50 Park Place, and if possible Colma's Town Hall at 1198 El Camino Real.

#### *Fixed CCTV Cameras*

The proposed project would install fixed CCTV cameras on existing poles for full viewing at key intersections. The fixed CCTV cameras would monitor traffic congestion and provide video surveillance of the project corridors. Fixed CCTV Cameras are proposed at the following intersections:

- City of Brisbane
  - Bayshore Blvd at Tunnel Ave
  - Bayshore Blvd at Geneva Ave
  - Tunnel Ave at Beatty Rd
  
- Daly City

- Junipero Serra Blvd at John Daly Blvd
- Junipero Serra Blvd at Parking Garage
- Junipero Serra Blvd at Citrus Ave
- Junipero Serra Blvd at 87th/School St
- Junipero Serra Blvd at Washington St
- Sullivan Ave at Washington St
- Sullivan Ave at Pierce St
- Junipero Serra Blvd at San Pedro Rd
- Junipero Serra Blvd at D St
- Sullivan Ave at I-280/California 1 South
- Junipero Serra Blvd at Colma Blvd
- Junipero Serra Blvd at Southgate Ave
- Junipero Serra Blvd at Serramonte Blvd/Collins Ave

*Trailblazer Signs/Arterial Dynamic Message Signs (ADMS)*

The proposed project would install trailblazer signs, similar to the one at the intersection of Holly Street and El Camino Real in San Carlos. Trailblazer signs would provide route guidance and information to motorists and are proposed at the following intersections:

- City of Brisbane
  - Bayshore Blvd at Tunnel Ave
  - Bayshore Blvd at Geneva Ave
  - Tunnel Ave at Lagoon Way\*
  - Tunnel Ave at Beatty Rd\*
- Daly City
  - Junipero Serra Blvd at John Daly Blvd
  - Junipero Serra Blvd at Citrus Ave
  - Junipero Serra Blvd at Washington St
  - Junipero Serra Blvd at D St
  - Junipero Serra Blvd at Southgate Ave
  - Junipero Serra Blvd at Serramonte Blvd/Collins Ave

A majority of trailblazer signs would be installed on existing traffic signal poles, with the exception of two poles that are planned in Brisbane at the two intersections noted with an asterisk ‘\*’ in the above list. If existing poles are structurally insufficient for the new trailblazer signs, new poles would be installed at the above intersections, for a maximum of up to 10 new poles. All trailblazer signs and any new poles would be installed within 150 feet of existing pole locations and within the sidewalk area on the right-hand side approaching the intersection.

*Arterial System Detection*

The proposed project would install arterial system detection stations to collect volume, occupancy, and speed data within the project corridor for detecting traffic incidents and congestion. The system detectors would provide mid-block detection to provide arterial speed and flow data, as well as to support and advance traffic operations during periods of non-recurring congestion. Potential detection technologies for system detector stations include above and below ground detection systems including: microwave radar, video, loops, and Bluetooth. Below ground systems would be installed within the existing roadway and require a maximum excavation depth of 3”. Arterial System Detection are proposed at the following locations:

- City of Brisbane

- Bayshore Blvd/Airport Blvd at US 101
- Bayshore Blvd at Van Waters and Rodgers Rd
- Bayshore Blvd at Valley Dr
- Tunnel Ave at Lagoon Way
- Bayshore Blvd at Geneva Ave
- Daly City
  - Junipero Serra Blvd at Parking Garage
  - Junipero Serra Blvd at 87th/School St
  - Junipero Serra Blvd at San Pedro Rd
  - Junipero Serra Blvd at Serra Center

### *Traffic Signal Controllers*

The proposed project would include upgrades to existing traffic signal controllers, enabling coordinated operations of signals between agencies during traffic incidents. Existing traffic signal controllers would be upgraded to Model 2070 traffic signal controllers. In addition, the existing City signal system software would be upgraded to the Kimley-Horn KITS. The City’s traffic signal controllers would be monitored from the KITS traffic control system that is deployed throughout the San Mateo County Smart Corridor. Signal system upgrades include functionality upgrades for advanced management strategies such as adaptive signal control, adaptive transit signal priority, or automated performance monitoring. Existing signal cabinets would be upgraded for compatibility with the proposed ITS elements. Minor excavation or surface disturbance would be required to complete these controller upgrades and would occur in sidewalk or existing paved surfaces.

### *Pull boxes*

The project consists of the installation of approximately 80 pull boxes of two different types in sidewalk areas or disturbed shoulder areas within the public ROW. Pull boxes are installed to create an access point for installation and maintenance of fiber optic cable. The project includes Caltrans N48 (35 in. X 53 in.) pull box as well as the Caltrans 6E (24 in. X 37 in.) pull box. Excavation to install pull boxes is up to 24” and will not extend into native subgrade.

### **Reasons Why Project is Exempt**

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301 (Class 1) and Section 15304 (Class 4).

- Section 15301, Class 1, is a categorical exemption which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.
- Section 15304, Class 4, is a categorical exemption which permits the minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes.

The proposed project would improve traffic operations on local streets during major incidents on the freeways, as well as non-incident situations, through the implementation of ITS strategies/ utilities that provide improved coordinated operation of the freeway and arterial systems in San Mateo County. The proposed project would not expand the existing use of the project roadways or include removal of scenic trees or resources. With the inclusion of Standard Conditions, no significant impacts or adverse effects to resources are anticipated to occur as a result of the proposed project.

The project does not meet any of the exceptions listed in CEQA Section 15300.2 per the following:

- (a) *Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may be in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.*

The project does not occur within a hazardous waste site. An Initial Site Assessment (ISA), was completed to assess potential risks posed by hazardous materials in the project area to environmental resources and human health. The ISA includes the review of California State Water Resources Control Board's (SWRCB) GeoTracker database, the Department of Toxic Substances Control's (DTSC) EnviroStor database, and the EDR databases and historic maps for information relevant to the potential presence of pollution in the project area, as well as a field reconnaissance to evaluate existing conditions at the site. The ISA concluded that the project does not occur within a hazardous waste site and provided recommendations that will be implemented during the project to protect workers, if required by the proposed work (see Summary of Technical Findings and Standard Environmental Conditions section). Additionally, potentially hazardous materials that may exist at the project site would be treated in accordance with the preparation of a SMP, Caltrans requirements, Health and Safety Code standards, and other applicable standard BMPs.

- (b) *Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.*

As stated above, the project would not have an impact on surrounding areas, adjoining the site, or result in a cumulative impact over time. The project is Phase IV of the San Mateo County Smart Corridor Project and will provide an overall benefit to improve traffic operations on local streets through implementation of ITS tools. Other phases are to be completed in other geographic locations and provide enhanced traffic operations throughout the region. The project is supported by regulatory agencies, such as C/CAG, Caltrans and partner agencies. There would be no cumulative impact as a result of the proposed project.

- (c) *Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.*

The project would not have a significant effect on the environment as there is little to no suitable habitat for federal or state listed species, the project would have minimal excavation depths within an existing roadbed, sidewalk, or disturbed areas, and the project can avoid known cultural resources. The project area is considered to have low biological sensitivity because there are little to no areas that are suitable to support native habitat within the project area. The project would include standard conditions to completely avoid impacts associated with biological resources, as described below in the Standard Environmental Conditions section.

- (d) *Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.*

The project does not include work on an officially-designated state scenic highway. The nearest officially-designated state scenic highway occurs on SR 280 from Santa Clara to San Bruno, CA. Thus, the proposed project does not have the potential to affect a scenic highway or resource.

(e) *Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.*

See response to (a) above.

(f) *Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.*

No historic artifacts were identified within the project's Area of Potential Effect (APE) during the survey conducted to support the findings in the Archaeological Survey Report (ASR). Although one-previously known archaeological resource was identified within the APE in Brisbane and two potential archaeological resources were identified during the survey, the project appears to have low potential to affect these historic-era archaeological resources because ground disturbing activities would be within existing ROW and no work would involve structures or work on historic structures or resources. As described further below in the Summary of Technical Findings, it is anticipated that excavation would not occur beyond native subgrade and project features could be relocated to avoid coinciding with identified resources.

### **Summary of Technical Findings**

The following technical studies were completed at the request of Caltrans to substantiate the Categorical Exemption findings in compliance with the National Environmental Policy Act (NEPA):

- Natural Environment Study-Minimal Impacts (NES-MI);
- Initial Site Assessment (ISA); and
- Archaeological Survey Report (ASR), which includes an analysis of the Area's Potential Effect (APE) and an archival records search.

These reports did not identify adverse effects or any further exceptions to the exemptions. Standard conditions and avoidance measures were recommended and would be implemented as part of the project to avoid impacts.

The NES-MI provides technical information and evaluates the extent to which the project may affect special-status species, their habitats, and other natural areas in accordance with the NEPA and the CEQA. The Standard Environmental Conditions would be incorporated into the project to avoid impacts on biological resources.

In order to qualify for the exemption, the project must not occur within a hazardous waste site, as defined by CEQA, as a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code, also known as the Cortese List. An ISA was completed to assess potential risks posed by hazardous materials in the project area to environmental resources and human health. The ISA identified potential Recognized Environmental Conditions (REC) within and adjacent to the project corridor, however did not identify any hazardous waste sites within the project area. The ISA recommended standard construction procedures to avoid and minimize effects as necessary to protect worker safety. These measures are summarized below in the Summary of RECs and Recommendations table of the Standard Environmental Conditions section.

A record search and archaeological survey of the project's APE was also conducted to take into consideration any potential effects the proposed project may have on culturally- sensitive resources. The ASR identified one previously-known archaeological resource, prehistoric site CA-SMA-40, located within the APE in Brisbane and two potential archaeological resources were identified during the field survey, both in Brisbane. Review of archival material and geoarchaeological sensitivity analysis suggests that the project area in Daly City and Colma has low sensitivity for archaeological resources, while the project area in Brisbane has moderate to high sensitivity. However, ground disturbing activities would be within existing

ROW. It is anticipated that excavation would not occur beyond native subgrade and project features would be relocated to avoid coinciding with identified resources. Standard conditions would be implemented to avoid impacts to potential cultural resources. To satisfy, NEPA compliance an Environmentally Sensitive Areas Action Plan (ESA-AP) would be incorporated into the project as a Standard Environmental Condition. No structures would be affected by the proposed project. Therefore, no significant adverse impacts to cultural resources would occur as a result of this proposed project.

### **Standard Environmental Conditions**

#### ***Cultural Resources***

**Avoidance and Environmentally Sensitive Areas Action Plan (ESA-AP).** The project corridor along Bayshore Boulevard passes an archaeologically sensitive area but is unlikely to affect it because project activities will not extend beyond the existing road prism (native subgrade) or can be relocated to avoid the resource location. For NEPA, an ESA-AP will be prepared and will contain measures to avoid impacts to cultural resources, and lists parties responsible for protection.

#### ***Biological Resources***

**Avoid Direct Impacts on Potential Aquatic Features.** At one location, the installation of a trailblazer pole would occur in an upland area in a disturbed roadway shoulder that is near a potential aquatic feature. No work is proposed in this potential aquatic feature and AMM's would be implemented to avoid impacts to this resource including fencing to delineate the sensitive areas.

**Designate Potential Aquatic Features as Environmentally Sensitive Areas.** Under the direction of a Caltrans-approved biologist, temporary high-visibility fence (THVF), flagging, or other high-visibility signage would be erected to demarcate the Project boundary along the north side of Lagoon Road. The THVF, flagging, or signage would be installed in such a manner to ensure that Project personnel would be prohibited from entering potentially jurisdictional aquatic features as well as avoiding placement of the THVF, flagging, or signage within the boundaries of the aquatic feature.

**Prepare a Water Pollution Control Plan (WPCP).** A WPCP would be prepared for the Project. The WPCP would specify water quality Best Management Practices (BMP) necessary to avoid discharges of sediment and pollutants into potentially jurisdictional aquatic resources along the north side of Lagoon Road. These BMPs may include but are not limited to temporary drain inlet protection and straw wattles.

**Avoid Removal and Pruning of Trees.** If, during the design phase, there is a potential conflict between the proposed design and locations of existing trees, trail blazer sign, cabinet, pull box, or conduit would be relocated as necessary to avoid tree removal or pruning.

**Avoid the Spread of Invasive Plants.** All earthmoving and excavation equipment would be sanitized and washed prior to use at the Project site and prior to demobilization from the Project site. Unless determined by a biologist to be free of invasive plant material (i.e., seeds, rhizomes, cuttings, etc.), all excess soil resulting from trenching and excavation activities would be disposed in a manner that would not promote the spread of invasive species.

**Perform Pre-construction Botanical Surveys in Grassland, Coastal Scrub, and Ruderal Habitats.** Prior to initiating any ground-disturbing activities in unpaved areas with exposed soils, including roadsides and shoulders, a qualified Caltrans-approved botanist would conduct floristic botanical surveys when special-status plant species would be observable and identifiable.

**Designate Special-status Plants as ESAs.** If any special-status plants are observed during pre-construction botanical surveys, they would be designated as an ESA and surrounded with THVF.

**Avoid Impacts on Special-status Plants.** Project elements, including trail blazer signs, pull boxes, cabinets, and conduit, would be relocated to avoid special-status plants.

**Perform Pre-construction Nesting Raptor Surveys.** Pre-construction surveys for nesting raptors will be conducted by a qualified Caltrans-approved biologist no more than 72 hours prior to commencing construction activities during the nesting season (February 1 to September 30). Surveys will cover any potential raptor nesting substrates, including tall buildings and trees, within 300 feet of proposed trailblazer signs. If an active nest is found during surveys, the qualified Caltrans-approved biologist (who shall be knowledgeable about the behavior of nesting birds) shall consult with CDFW and USFWS regarding appropriate action to comply with State and federal laws. Active nest sites shall be designated as an ESA and protected (while occupied) during Project construction with the installation of a THVF barrier surrounding each nest site or other appropriate markers. A qualified Caltrans-approved biologist shall develop buffer recommendations that are site specific and at an appropriate distance, that protects normal bird behavior to prevent nesting failure or abandonment. The buffer distance recommendation should be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. The qualified Caltrans-approved biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project construction work. Nest monitoring shall continue during construction until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents) as determined by the qualified Caltrans-approved biologist. If it is necessary to prevent birds from nesting at a specific location within the construction area, a nesting bird exclusion plan will be prepared by the Contractor. It will specify what Caltrans-approved exclusion measures can be used under what conditions. The exclusion plan will be approved by Caltrans and/or CDFW and/or USFWS prior to implementation.

**Perform Pre-construction Nesting Songbird Surveys.** Pre-construction surveys for nesting songbirds will be conducted by a qualified Caltrans-approved biologist no more than 72 hours prior to commencing construction activities during the nesting season (February 1 to September 30). Surveys will cover all potential songbird nesting substrates within 50 feet of construction activity, including landscaping, shrubs, trees, and structures. If an active nest is found during surveys, the qualified Caltrans-approved biologist (who shall be knowledgeable about the behavior of nesting birds) shall consult with CDFW and USFWS regarding appropriate action to comply with State and federal laws. Active nest sites shall be designated as ESAs and protected while occupied during Project construction with the installation of a THVF barrier surrounding each nest site or other appropriate markers. A qualified Caltrans-approved biologist shall develop buffer recommendations that are site specific and at an appropriate distance to protect normal bird behavior to prevent nesting failure or abandonment. The buffer distance recommendation should be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. The qualified Caltrans-approved biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project construction work. Nest monitoring shall continue during construction until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents) as determined by the qualified Caltrans-approved biologist. If it is necessary to prevent birds from nesting at a specific location within the construction area, a nesting bird exclusion plan will be prepared by the Contractor. It will specify what Caltrans-approved exclusion measures can be used under what conditions. The exclusion plan will be approved by Caltrans and/or CDFW and/or USFWS prior to implementation.

**Hazardous Materials**

**Summary of RECs and Recommendations**

Description	Evidence of REC Found	Recommended Actions
Agricultural Use	Based on the historical agricultural use of the land - pesticides, metals, and fertilizer may be present adjacent to the Project corridors.	Soil Management Plan (SMP) for worker safety and soil disposal for pesticides and heavy metals.
Aerially-Deposited Lead (ADL)	There is a potential for elevated levels of lead in exposed soil from historical vehicle emissions, since leaded gasoline was used through the 1970s and the shoulders of the roadway may contain ADL.	SMP for worker safety and soil disposal for ADL.
Utility pole-mounted electrical transformers (PCB) and Treated Wood Waste (TWW)	<p>There are potential PCBs in pole-mounted electrical transformers near the Project. As of the date of this ISA, the existence and/or levels of PCBs associated with the pole-mounted electrical transformers, which may be encountered within the planned construction area, have not been determined.</p> <p>Utility Poles are known to be treated with various chemicals including arsenic, chromium, copper, creosote, and pentachlorophenol are known to be toxic or carcinogenic. If utility poles will be removed or relocated, the TWW needs to be managed.</p> <p><b>Health and Safety Code Section 25143.1.5 (AB 1965):</b> exempts TWW such as poles, pilings, fenceposts, support timbers, and other lumber treated with a preservative and used in electric, gas, or telephone service, if it is not a hazardous waste under RCRA and is disposed of in an approved landfill.</p> <p><b>Health and Safety Code, sections 25150.7 and 25150.8 were enacted in 2004 (AB 1353):</b> TWW may be disposed of in a hazardous waste landfill or in a composite-lined portion of a solid waste landfill approved by the RWQCB.</p>	<p>SMP for worker safety and soil disposal for PCBs, metals, creosote, and pentachlorophenol.</p> <p>If utility poles will be moved or replaced, abate transformers prior to construction (PG&amp;E).</p> <p>For TWW:</p> <ul style="list-style-type: none"> <li>• <b>Caltrans SSP 14-11.14 (DOCX) (10/19/2018)</b> - Treated Wood Waste; and</li> <li>• <b>Senate Bill 162 (2015)</b> requires DTSC comply with Alternative Management Standards (AMS). TWW is regulated by CCR, Title 22, Division 4.5, Chapter 34, Section 67386.1 et seq.; see 33 A, and is defined by the regulations as wood waste that meets all of the following: 1. a hazardous waste; 2. a hazardous waste solely due to the presence of a preservative that is registered in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA; 7 U.S.C. §136 et seq.) for use as a wood preservative; and 3. is not subject to regulation under the federal Resource Conservation and Recovery Act (RCRA).</li> </ul>
PG&E Substation – 3150 Geneva Avenue	Electrical substation, potential for elevated levels of heavy metals, SVOCs, PAHs, and PCBs.	SMP for worker safety and soil disposal for heavy metals, SVOCs, PAHs, and PCBs.
The San Francisco Trains State Belt #4 Restoration Site	The former Southern Pacific Railyard is located on Bayshore Boulevard and is an area with a potential for elevated levels of heavy metals, SVOCs, PAHs, and PCBs.	SMP for worker safety and soil disposal for heavy metals, SVOCs, PAHs, and PCBs.

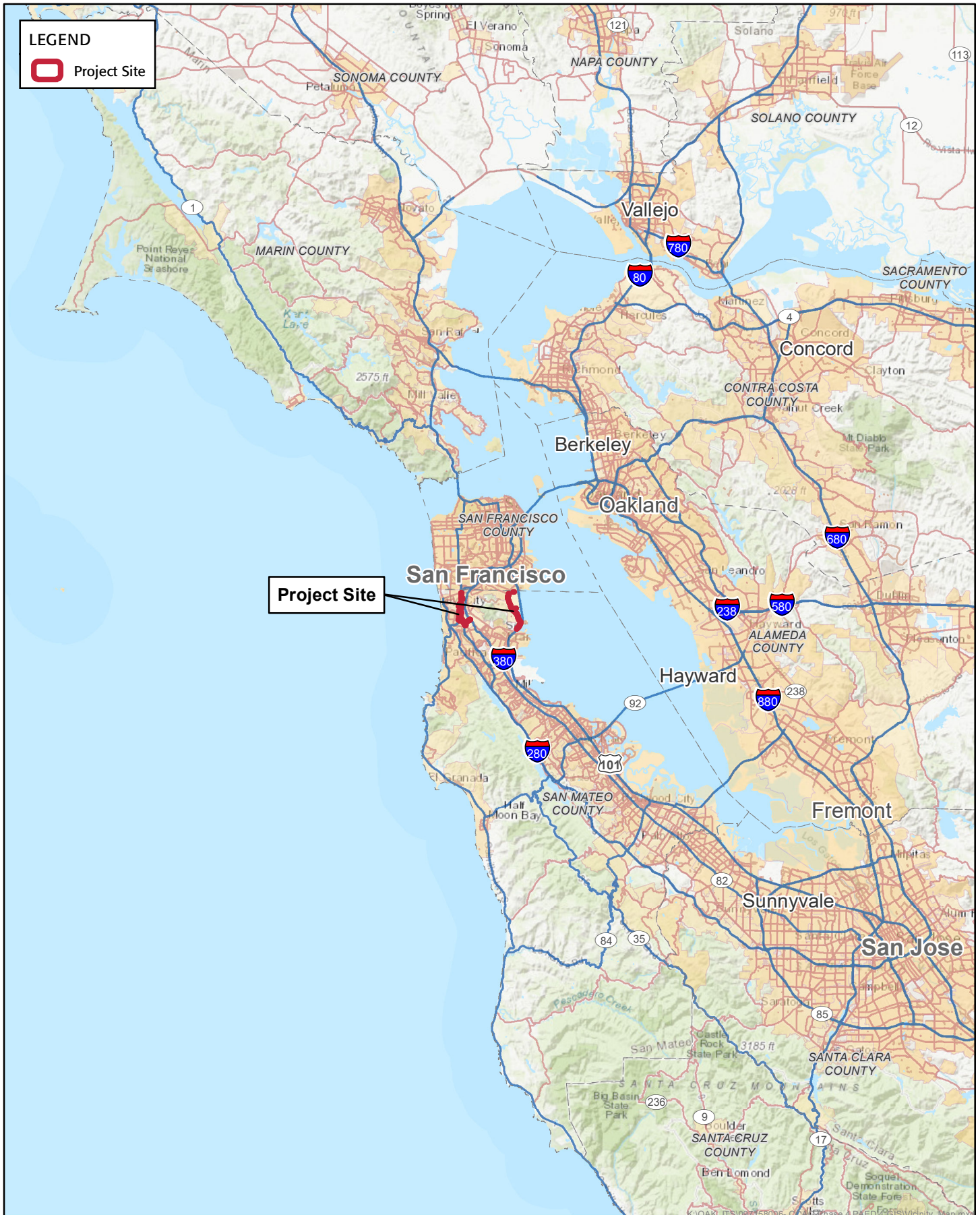


Kinder Morgan Brisbane Fuel Terminal – 950 Tunnel Road	A 25-acre Fuel Terminal contains 20 refined petroleum products tanks (total storage capacity of 618,000 barrels) and delivery through 12” and 10” pipelines (biodiesel, oxygenated gasoline, jet fuel, and ethanol);	SMP for worker safety and soil disposal for gasoline, diesel, and jet fuel.
Traffic Roadway Striping (LBP)	<p>Potential lead and heavy metals associated with pavement striping. Implementation of improvements may require the removal and disposal of yellow traffic striping and pavement marking materials (paint, thermoplastic, permanent tape, and temporary tape).</p> <p>Yellow paints made prior to 1995 may exceed hazardous waste criteria under Title 22, California Code of Regulations, and require disposal in a Class I disposal site.</p>	<p>Abate striping prior to demolition.</p> <ul style="list-style-type: none"> <li>• <b>Caltrans SSP 14-11.12 (DOCX)</b> (10/19/2018) - Remove Yellow Traffic Stripe and Pavement Marking with Hazardous Waste Residue - Requires proper management of hazardous waste residue and a lead compliance plan.</li> <li>• <b>Caltrans SSP 36-4 (DOCX)</b> (10/19/2018) - Containing Lead from Paint and Thermoplastic - Requires a lead compliance plan for removal when residue is definitely non-hazardous.</li> <li>• <b>Caltrans SSP 84-9.03C (DOCX)</b> (10/19/2018) - Remove Traffic Stripes and Pavement Markings Containing Lead - Requires a lead compliance plan for removal when residue is definitely non-hazardous. Used for new yellow paints and all other colors of paint.</li> </ul>
LUST cleanup sites and Drycleaner sites	Potential gasoline and diesel fuel from LUST cleanup sites, and VOCs from Drycleaner cleanup sites along the Project corridors, as identified in the ISA.	SMP for worker safety and soil disposal for gasoline, diesel, and VOCs.

**Conclusion**

The proposed project would improve traffic operations on several roadways located along the US 101 and I-280 during major incidents on those freeways, as well as non-incident situations, through the implementation of ITS strategies. In addition, the proposed project is needed to integrate Daly City, Colma, and Brisbane with the rest of the Smart Corridor cities and enable the Smart Corridor deployment to extend to the San Francisco County line. The proposed project would provide the municipalities and Caltrans the tools to proactively manage the traffic on local streets, by clearly designating routes that traffic can follow to bypass a freeway incident, as well as non-incident situations.

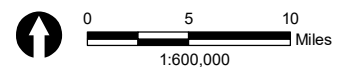
The proposed project and its elements meet the criteria for Class 1 and 4 categorical exemptions under CEQA. These exemptions are defined in Article 19 Sections 15301 and 15304, respectively. After review of available information and technical findings, the project does not appear to have exceptions to the Categorical Exemptions under CEQA. Implementation of Standard Conditions and Avoidance and Minimization Measures identified in technical studies would avoid impacts. No significant adverse impacts to resources would occur as a result of this project.

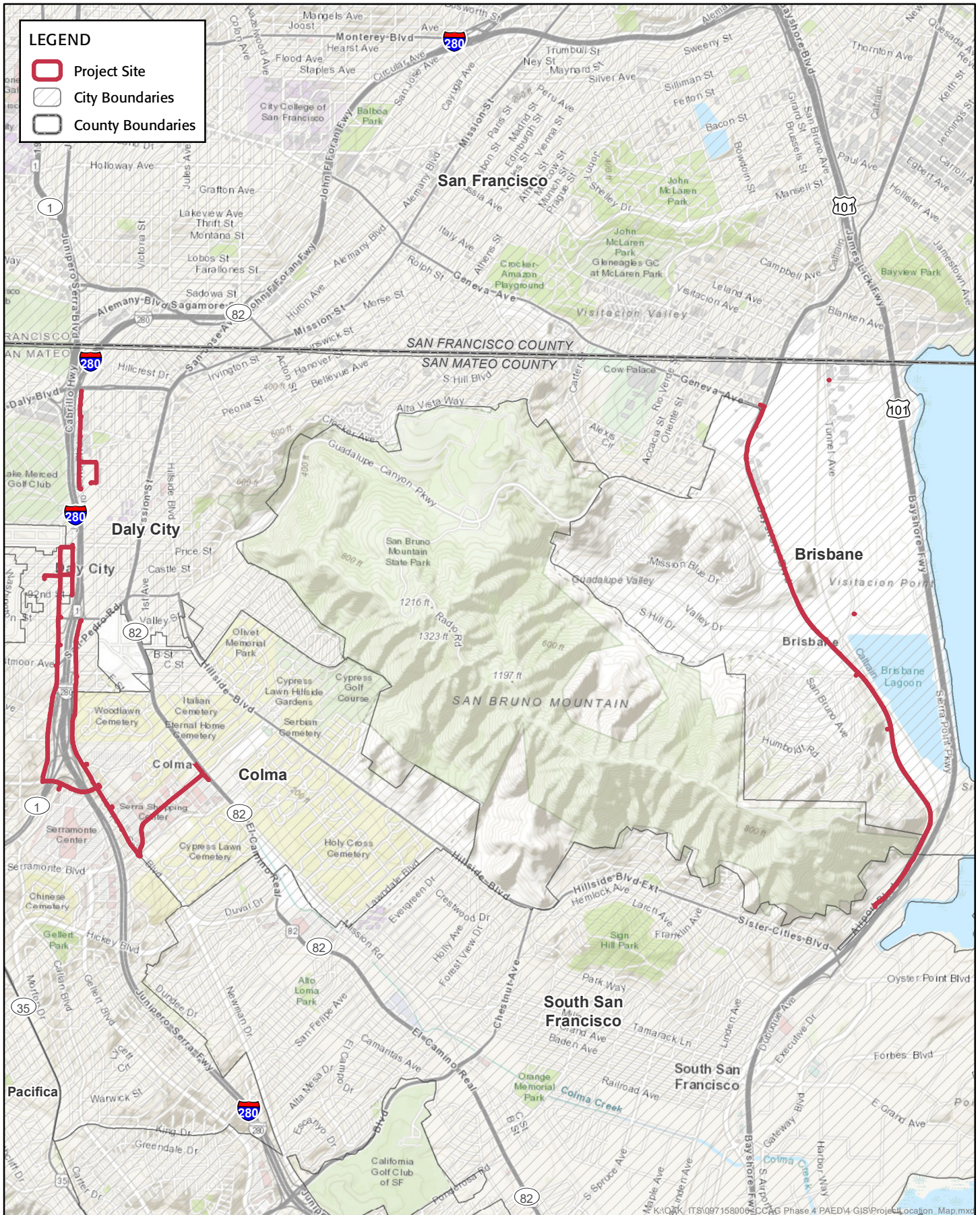


Sources: Kimley-Horn & Associates, Inc., ESRI

**FIGURE 1: Vicinity Map**

*San Mateo County Smart Corridor Project -- Phase IV*





Sources: Kimley-Horn & Associates, Inc., ESRI

**FIGURE 2: Site Location Map**

San Mateo County Smart Corridor Project -- Phase IV



Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044
County Clerk
County of: San Mateo
555 County Center
Redwood City, CA 94063

From: (Public Agency):
City/County Association of Governments of San Mateo County (C/CAG)
555 County Center, 5th Floor Redwood City, CA 94063
(Address)

Project Title: San Mateo County Smart Corridor Project - Phase IV

Project Applicant: City/County Association of Governments of San Mateo County (C/CAG)

Project Location - Specific:

The project corridor consists of several roadways located along the US 101 and I-280.

Project Location - City: Daly City, Brisbane, and Colma. Project Location - County: San Mateo County

Description of Nature, Purpose and Beneficiaries of Project:

The purpose of this project is to expand the San Mateo County Smart Corridor from its current northern terminus of I-380 further north to the San Francisco County line, encompassing arterials along US 101 and I-280. The proposed project is needed to integrate Daly City, Colma, and Brisbane with the rest of the Smart Corridor cities and enable the Smart Corridor deployment to extend to the San Francisco County line. The project would improve traffic operations on local streets during major incidents on the freeways, as well as non-incident situations, through the implementation of ITS strategies and infrastructure that provide improved coordinated operation of the freeway and arterial systems in San Mateo County.

Name of Public Agency Approving Project: City/County Association of Governments of San Mateo County (C/CAG)

Name of Person or Agency Carrying Out Project: N/A

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
Declared Emergency (Sec. 21080(b)(3); 15269(a));
Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
Categorical Exemption. State type and section number: Class 1, Section 15301 and Class 4, Section 15304
Statutory Exemptions. State code number:

Reasons why project is exempt:

See Attachment A for detailed exemption discussion.

Lead Agency Contact Person: Kaki Cheung Area Code/Telephone/Extension: 6503634105

If filed by applicant:

- 1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: Kaki Cheung Date: 5/8/2020 Title: Program Director

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR:

Governor's Office of Planning & Research

MAY 15 2020

STATE CLEARINGHOUSE





# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Stuart Schillinger, Interim Administrative Services Director  
 VIA: Dan Barros, City Manager  
 MEETING DATE: February 28, 2024  
 SUBJECT: Pension Funding Update

## RECOMMENDATION

Staff recommends that the City Council:

RECEIVE A PRESENTATION FROM THE CITY'S PENSION CONSULTANT GOVINVEST ON THE IMPACT OF MAKING ADDITIONAL INVESTMENTS INTO PERS AND OUR 115 TRUST TO REDUCE THE CITY'S UNFUNDED LIABILITY.

## EXECUTIVE SUMMARY

In fiscal year 22/23 the city made an additional contribution of \$1,000,000 into the CalPERS Classic Safety Plan. The city also made an \$800,00 contribution into the City's 115 Trust. This reduced the unfunded liability in this plan from \$9,680,000 to \$8,660,000. The additional \$800,000 to the 115 Trust increased its assets to approximately \$3,600,000. With the trust the City is approximately 85% funded.

## FISCAL IMPACT

There is no current fiscal impact since these payments were made in the previous year. The future impact is the City may become fully funded approximately 6 years earlier than previously projected if the PERS is able to make all of its actuarial assumed returns over that period of time. Instead of reaching 100% in 2041 the City is projected to in 2036.

## BACKGROUND

The city is in 6 Pension Pools at PERS. They are Miscellaneous, Miscellaneous Second Tier, PEPR Miscellaneuous, Safety Classic, Safety Second Tier, and PEPR Safety Police. Each of these pools are accounted for separately at PERS. Each pool has its own assets and required payments. The City may put additional money into any of these pools to reduce the amount of unfunded pension liability it has. Last fiscal year the City placed \$1,00,000 into its Police Classic to reduce its unfunded liability. An unfunded liability is the difference between the amount of money available to pay out all of it required benefits compared to the amount available.

The difference usually results from the investment portfolio not matching the expected rate of return but there may be other reasons.

Colma made an additional decision to start funding a 115 Trust. The 115 Trust can only be used to pay for pension obligations of the City. However, the Trust can be used to make any Pension payment either to pay for unfunded liabilities or normal costs. Also, the 115 can be used to pay for the pension liability of any of its 6 pension tiers. Therefore, it is more flexible than just putting money into one tier in PERS to reduce that tier's unfunded liability.

## **ANALYSIS**

### **Reasons For the Recommended Action/Findings**

Update the City Council on the progress towards funding its pension obligations.

### **Council Adopted Values**

Periodic review of the Town's financial condition aligns with the City Council adopted *responsibility* value. It exemplifies financial accountability and ensures reasonable use of public funds. Additionally, publishing the accepted report on the Town's website promotes meaningful public involvement and thereby aligns with the City Council adopted *fairness* value.

## **CONCLUSION**

Staff is requesting that the City Council receive and file the report.





# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Dan Barros, City Manager  
 Christopher J. Diaz, City Attorney  
 MEETING DATE: February 28, 2024  
 SUBJECT: Creekside Villas Rental Policy Review

## RECOMMENDATION

None. This item is a study session. Council is being asked to provide staff with comments, questions, and feedback.

## EXECUTIVE SUMMARY

At the December 13, 2023 City Council meeting, a councilmember inquired about the City Council revisiting the eligibility requirements for former councilmembers who may want to rent a unit at Creekside Villas. Creekside Villas is Town owned senior housing complex located at 1180 El Camino Real. The policy indicating who is eligible to rent at Creekside Villas is contained at Colma Administrative Code (CAC) Subchapter 2.02 and a copy is included with this agenda item. The policy currently indicates that former Town employees and officials are ineligible to become tenants at Creekside Villas, if for one year prior to the date of application of tenancy, the employee or official had policy-making authority or influence over implementation of the housing program.

## FISCAL IMPACT

The City Council's discussion of the Creekside Villas housing policy and/or its direction to make any changes would have a minimal financial impact primarily related to Town staff time in drafting any changes. No other expenses are associated with the discussion of this policy.

## BACKGROUND

At the March 10, 2021 City Council meeting, the City Council held a study session to discuss the existing Creekside Villas housing complex policy contained at CAC Subchapter 2.02 and analyzed whether to make any adjustments to the eligibility rules contained at CAC Section 2.02.040. In particular, the City Council studied whether to modify the existing one year prohibition for all former Town employees and officials to be eligible to rent at Creekside Villas if for one year prior to the date of application for tenancy, the employee or official had policy making authority or influence over implementation of the housing program.

At a recent December 13<sup>th</sup> City Council meeting, a councilmember asked the City Manager to agendaize another study session so the City Council can further study the eligibility requirements for former councilmembers who may want to rent a unit at Creekside Villas.

## **ANALYSIS**

### ***The Senior Housing Complex Policy and Disqualified Persons***

CAC Section 2.02.040 indicates the following individuals are disqualified or ineligible to rent at the Creekside Villas senior housing complex:

1. All employees and officials of the Town who, by virtue of their position, have policy making authority or influence over the implementation of the housing program;
2. All former employees and officials of the Town who, by virtue of their position or relationship, for one year prior to the date of application for tenancy, had policy-making authority or influence over the implementation of the housing program;
3. The spouse or dependents of any employee or official described in the two preceding paragraphs.

When this matter was discussed before the City Council on March 10, 2021, staff and the City Council understood item 2 above to mean that former employees and officials of the Town are prohibited from becoming a tenant at Creekside Villas during the one year period after leaving the City Council or Town employment if they had *potential* policy making authority or *potential* influence over the implementation of the housing program, even if they did not exercise that authority. However, in re-reviewing the language, there may be an alternative interpretation more closely tied to the law.

An interpretation of the policy that would be more closely tied to existing state law would be that the one year prohibition applies, but only if those former employees and officials *actually* exercised their policy making authority (e.g., by voting to make changes to the Creekside Villas housing policy) or *actually* influenced the implementation of the housing program. In this latter scenario, if a Town employee or councilmember did not engage in any actions that would constitute changes to the policy, or otherwise influence the housing program during their final year in office, then the one year prohibition would not apply.

### ***The Political Reform Act and Government Code Section 1090 – Advice from the Fair Political Practices Commission***

In order to determine whether the City Council could modify the one year prohibition contained above, the City Attorney's office sought advice from the Fair Political Practices Commission (the "FPPC") in Sacramento. The FPPC is the state entity charged with enforcing state conflict of interest laws.

There are two statutory areas of conflict of interest law applicable to public officials and employees:

1. The Political Reform Act contained at Government Code Section 81000, *et seq.*; and

## 2. Government Code Section 1090

### The Political Reform Act

The Political Reform Act (the "Act") prohibits a public official at any level of state or local government from making, participating in making, or attempting to use the official's position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest. An official has a "financial interest" if it is reasonably foreseeable that a governmental decision will have a material financial effect on one or more of the official's existing financial interests. In determining whether a governmental decision will impact an official's financial interest, the FPPC Regulations use a 12 month time period to determine if an impact will occur. In other words, if the governmental decision at issue will impact an official's financial interest in a certain manner during a 12 month time period from the date of the governmental decision, then that would constitute a conflict of interest.

The disqualification provisions noted above were likely included in the Creekside Villas housing policy in an attempt to address the 12 month time period noted above in the FPPC regulations. In other words, if a Town employee or official engaged in actual policy making authority over the program or actually influenced the implementation of the housing program, then the disqualification language was likely designed to address the potential conflict that could result if the Town employee or official changed the program rules in their final year of office and then left Town employment or the Council and sought to benefit by those change in the rules by applying to be a tenant at the complex within that same 12 month time period.

In seeking the FPPC's advice, the FPPC found no law that exists that would prohibit a former employee or official from renting at Creekside Villas during the one year period after leaving the City Council or Town employment. However, the 12 month rule noted above does exist within the FPPC Regulations and is the likely basis for the disqualification provisions in the Town's existing policy.

### Government Code Section 1090

Government Code Section 1090 prohibits an officer, employee, or agency from participating in making government contracts in which the official or employee within the agency has a financial interest in that contract.

In order for Government Code Section 1090 to apply to a governmental decision, there must be a contract at issue. Staff asked the FPPC for guidance on any basis for the one year prohibition in Government Code Section 1090 primarily because any former employee or official would be entering into a contract with the Town for the rental of the unit (i.e.: a lease agreement). In response, the FPPC noted that even if Government Code Section 1090 applies, there are existing exceptions in the law to allow for a former employee or official to rent at Creekside Villas within the one year period currently prohibited by the existing policy. In particular, the FPPC cited to the receipt of government services exception. This exception specifies that it is not a conflict of interest under Government Code Section 1090 (prohibiting the agency from entering into an agreement in which an official or employee within that agency is financially interested) so long as the contract at issue involves the receipt of government services and the former official or employee is benefitting solely as a constituent of the city and the benefits are broadly available to all other similarly situated.

Based on the above, the FPPC found no basis for the one year prohibition in Government Code Section 1090 and even noted an exception that would apply in the event a former official sought to rent a unit at Creekside Villas within the one year period after leaving office.

However, it should be noted that the FPPC cited to the receipt of government services exception primarily because the existing Creekside Villas housing policy indicates anyone who is a Town resident and otherwise meets the age and other basic requirements can rent at Creekside Villas and that benefit is offered broadly to all without any particular unique preference given to the City Council or staff. For the same reason noted above under the Political Reform Act discussion, if a councilmember sought to change the Creekside Villas housing policy within their final year of office, and that change resulted in the policy giving preference to councilmembers or former councilmembers, then the receipt of government services exception would not apply as it requires that benefits be broadly available to all without any preference or favoritism to officials or former officials.

### ***Options for the City Council to Consider***

Based on the above, the City Council has the following potential options to consider:

1. The City Council could interpret the policy as staff and the Council interpreted the policy in 2021. Under this option, the policy would be interpreted to mean that any former councilmember or Town employee who had *potential* policy making authority or *potential* influence over the implementation of the housing program would be required to wait a full year after leaving the City Council or Town employment prior to being eligible to rent a unit at Creekside Villas, even if they did not exercise that authority or actually influence the program.
2. The City Council could interpret the policy in a manner more closely tied to the law. Under this option, the policy would be interpreted to mean that only former councilmembers or Town employees who *actually exercised* policy making authority or *actually influenced* the implementation of the housing program would be required to wait a full year after leaving the City Council or Town employment prior to being eligible to rent a unit at Creekside Villas. As noted previously, this interpretation is more closely aligned with state law as noted above based on the 12 month rule included within the FPPC Regulations, and the fact that the receipt of government services exception under Government Code Section 1090 may not apply if the rules are changed.
3. The City Council could opt to change the policy entirely.

### ***Conclusion***

To sum up, the City Council should discuss and provide any direction on the existing policy. As noted, Option 2 is more aligned with the law, but the City Council can always self-impose more restrictive policies on itself and opt to interpret the policy under Option 1.

If the City Council opts to interpret the policy under Option 2, this would be with the understanding that a councilmember is only prohibited from applying for tenancy at Creekside Villas during the one year period after leaving office, if in the prior 12 month period, the councilmember *actually* exercised policy making authority (e.g., by voting to make changes to

the Creekside Villas housing policy) or *actually* influenced the implementation of the housing program. If the councilmember in their final year of office did not engage in either, then they would be free to apply for tenancy at Creekside Villas during the one year time period after leaving office. Similarly, under this interpretation, only Town employees who actually exercised policy making authority or actually influenced the implementation of the housing program would be required to wait a full year after leaving Town employment prior to being eligible to rent a unit at Creekside Villas.

### **Council Adopted Values**

The City Council's discussion of the policy is consistent with the value of *Fairness* and *Responsibility* as it is fair to reevaluate past policies to determine if they should continue or be modified and it is also responsible to understand the legal background associated with this policy.

### **Alternatives**

The City Council could choose not to discuss the policy. However, this discussion was specifically requested by a councilmember.

### **ENVIRONMENTAL**

The City Council's discussion of the Creekside Villas housing policy and/or its direction to make any changes to the policy is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline 15378 as it would constitute organizational or administrative that do not result in direct or indirect changes in the environment.

### **CONCLUSION**

The City Council should discuss the existing policy, the various options, and provide any direction.

### **ATTACHMENTS**

- A. Colma Administrative Code Subchapter 2.02
- B. Question and Answer Document
- C. Advice Letter from Fair Political Practices Commission



## CHAPTER 2. COMMUNITY PROGRAMS

### Subchapter 2.02 - Senior Housing Complex

**2.02.010. Goals.** These policies and procedures are intended to enhance the quality of life for senior residents and give a limited preference to Colma residents for residency at the Colma Senior Housing Complex.

**2.02.020. Rental Policy.** It is the policy of the Town of Colma to rent, lease, or permit occupancy of an apartment at the Senior Housing Complex only to Eligible Persons, as defined herein, at the rent specified herein.

**2.02.030. Eligible Persons.**

(a) Only persons who meet all of the following criteria are eligible to occupy an apartment at the Colma Senior Housing Complex, 1180 El Camino Real, Colma, California:

(i) He or she must be 62 years or older at the commencement of the tenancy;

(ii) He or she must be able to care for himself or herself, without assistance from others, must not have a recurring need for supportive care and must not require the availability of continuous skilled nursing care; and

(iii) He or she must be financially able to pay the rent or must have established eligibility for financial assistance from the county.

(b) Not more than two persons may occupy an apartment.

(c) No person shall be discriminated against because of race, religion, color, creed, national origin, sex, sexual orientation, marital status, or any sensory, mental or physical disabilities unless such disability requires the recurring need for supportive care and requires the availability of continuous skilled nursing care.

(d) The City Manager may waive the age requirement, or the priority for residents set forth below, for a tenant who is employed by the Property Manager to provide substantial maintenance and management services for the Complex.

**2.02.040. Disqualified Persons.**

(a) The following individuals, by virtue of their position or relationship, are ineligible to become a tenant in the Senior Housing Complex:

(i) All employees and officials of the TOWN who, by virtue of their position, have policy-making authority or influence over the implementation of the housing program;

(ii) All former employees and officials of the Town who, by virtue of their position or relationship, for one year prior to the date of application for tenancy, had policy-making authority or influence over the implementation of the housing program;

(iii) The spouse or dependents of any employee or official described in the two preceding paragraphs.

(b) A person who was not disqualified under the foregoing at the time he or she first became a tenant in the Senior Housing Complex shall not thereafter become disqualified as a tenant solely by virtue of the subsequent relationship or position of such person, his or her spouse, or his or her dependent, as a Town employee or official.

### **2.02.050. Application and Priority Process.**

(a) Whenever the Property Manager receives notice that an apartment is about to become vacant, the Property Manager, shall first notify any existing tenant who has requested such notification of the availability of the apartment. An existing tenant shall have first priority to take occupancy of the apartment provided that he or she enters into a lease agreement for the apartment within ten days after receipt of the notice. The apartment then left vacant by the tenant shall be let in accordance with this section.

(b) The Property Manager, after consulting with the City Manager, shall establish a beginning date for accepting applications to rent the apartment, which shall be after the first publications of notices described in the next paragraph. The Application Period shall last from the beginning date to the date when a lease for the apartment is executed.

(c) The Property Manager shall publish a notice of availability at least once in the *LiveWire* publication and at least once in two newspapers widely circulated in the cities of Colma, South San Francisco, and Daly City, including at least one newspaper that reaches non-English-speaking communities. Examples of appropriate newspapers include the San Mateo Times and the San Mateo Independent News. Town shall submit proof of publication to the City Planner. The Property Manager shall maintain a list of applicants in order of the date that the applicant submitted a complete application during the Application Period. A complete application means an application from an eligible person which contains all information requested by the Property Manager in the application form. An application from an ineligible person shall not be deemed complete until the date that the person becomes eligible under the terms of this resolution. Applications received before the beginning of an Application Period shall be considered to have been received as of the first day of the Application Period.

(d) Subject to the provisions of subparagraph (a) above, during the first sixty days after an apartment has become vacant, the first eligible person with more than two years residency in the Town of Colma who submits a complete application shall be given priority over all other applicants, except that if two or more such eligible persons submitted a complete application on the same day, priority among those persons shall be determined by lot.

(e) Sixty days after an apartment has become vacant, any eligible person may rent the apartment, without regard to his or her prior residency, and the first eligible person, without regard to the place of his or her prior residency, who submits a complete application shall be given priority over all other applicants, except that:

(i) All applications by persons in this category submitted prior to the sixtieth day after shall be deemed to have been submitted on the sixty-first day after the vacancy occurs; and



(ii) If two or more such eligible persons submit a complete application on the same day, priority among those persons shall be determined by lot.

(iii) The Property Manager shall not be required to maintain a list of applicants after the advertised apartment is rented.

#### **2.02.060. Policies for Establishing Rents.**

(a) The rent for tenants who have occupied an apartment since before February 9, 2005 shall be \$791.00 per month, adjusted for inflation on August 1 of each year beginning August 1, 2011, or as soon thereafter as the City Manager can calculate the adjustment and provide at least 60 days' notice of the rent increase to each tenant at the Senior Housing Complex.

(b) The rent for tenants who have occupied an apartment from and after February 9, 2005, but before December 1, 2021, shall be \$902.00 per month, adjusted for inflation on August 1 of each year beginning August 1, 2011, or as soon thereafter as the City Manager can calculate the adjustment and provide at least 60 days' notice of the rent increase to each tenant at the Senior Housing Complex.

(c) The rent for tenants who have occupied an apartment from and after December 1, 2021, shall be \$1050.00 per month, adjusted for inflation on August 1 of each year beginning August 1, 2023, or as soon thereafter as the City Manager can calculate the adjustment and provide at least 60 days' notice of the rent increase to each tenant at the Senior Housing Complex.

(d) "Adjusted for Inflation" means an adjustment made according to the following formula, where "Consumer Price Index" or "CPI" means the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index entitled "Consumers Price Index of All Urban Consumers, San Jose-Oakland-San Francisco Area, Housing (Rent of Primary Residence), 1982-84=100 [Series ID CUURA422SEHA]": if the CPI for June of any year following 2004 exceeds the index for June 2004 (the Base Index), the amount subject to adjustment for inflation (Base Amount) shall be multiplied by the last previous CPI Index and divided by the Base CPI Index to obtain the Adjusted Amount, which shall be rounded to the nearest dollar; otherwise, there shall be no adjustment." Notwithstanding the foregoing, the adjustment shall not exceed five percent (5%).

[History: Res. 2011-28, 9/14/11, 2021-36, 10/27/21]

#### **2.02.070. Restrictions on Use.**

*Residential Use Only.* An apartment in the Senior Housing Complex shall be used for residential purposes only except that it may be used for a home office provided that the home office use is incidental to use of the apartment as a residence and that the tenant shall have first obtained a Use Permit from the Town.

*No Subleasing.* A tenant occupying a Senior Housing apartment may not sublet or rent the apartment or assign the lease.

*No Violations.* No person may use or permit the Affordable Unit or any portion of the Affordable Unit to be used or occupied in any manner or for any purpose that is in any way in violation of

any valid law, ordinance, or regulation of any federal, state, county, or local governmental authority, body, or entity, or in violation of any Covenants, Conditions and Restrictions applicable to the unit. No person may maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Affordable Unit or any part of the Affordable Unit.

**2.02.080. Rules and Regulations.** The City Manager may establish reasonable rules and regulations governing the use and occupancy of the premises including but not limited to rules and regulations governing the form of the application and supporting documentation, parking, use of the common areas, pets, overnight visitors, noise, and trash disposal.

**2.02.090. Right to Inspect.** Town may inspect any apartment at the Senior housing Complex, subject to tenant's privacy rights and upon reasonable advance notice, to determine compliance with this resolution.

## **SECTION 2. ONE-TIME EXCEPTION.**

(a) The City Council finds that:

(i) Since on or before December 8, 2004, there have been two vacant apartments at the Senior Housing Complex;

(ii) Prior to December 8, 2004, the Property Manager was maintaining a list of prospective applicants for the Senior Housing Complex pending clarification of the Town's policies;

(iii) On December 8, 2004, the City Council declared a moratorium on renting any vacant units in the Senior Housing Complex pending its review of the Town's rental policies;

(iv) Since December 8, 2004, other persons have expressed interest in renting an apartment at the Complex; and

(v) It is necessary and proper to adopt a one-time exception to the policies set forth hereinabove to handle the applications on hand for the two vacant apartments.

(b) Notwithstanding the foregoing, there shall be a one-time exception to the policies set forth hereinabove, as set forth in an Order in the Minutes of the meeting of February 9, 2005.

## **Various Questions and Answers Related to the Creekside Villas Housing Policy**

### **1. Do Any Existing Councilmembers Have Conflicts of Interests Prohibiting their Participation in this Agenda Item?**

As there would be no contract at issue in any study session deciding how to interpret the policy, only the Political Reform Act discussed above would apply. Under the Political Reform Act, a conflict of interest can exist if a governmental decision would impact the personal finances of a councilmember, or their immediate family defined as a spouse or dependent children, in an amount of \$500, either positively or negatively, within 12 months of the governmental decision. See, FPPC Regulation 18702.5.

For purposes of the Political Reform Act, it does not appear that any councilmember would have a conflict of interest in interpreting the policy even if a councilmember had some desire to live at Creekside Villas. This is because even if a councilmember wanted to live at Creekside Villas (which could benefit them financially) and provided input on how the policy should be interpreted, that decision to provide input would not lead to a councilmember automatically being able to rent at Creekside Villas. As the City Council may be aware, in order for an individual to be successfully selected as a new tenant at Creekside Villas, there are a number of factors at play. First, an available unit must open up for tenancy. Second, if more than one potential tenant applies for any open unit, the Town contracts with an outside provider who conducts a lottery to determine who is the successful potential tenant. Former councilmembers do not receive any priority in the process and must apply and be placed in the lottery as any other potential tenant. Under the FPPC Regulations, if the occurrence of the financial effect is contingent on intervening events not controlled by the agency, then it is not a conflict of interest. See, FPPC Regulation 18701(b)(1).

It also does not appear that any councilmember would have a conflict of interest in interpreting the policy if they have non-dependent relatives living at Creekside Villas. Town staff understands that certain councilmembers have non-immediate family member relatives living at Creekside Villas. However, Town staff also understands that any councilmember who has relatives living at Creekside Villas does not have any financial connection and there is no financial dependency between the councilmember and the relatives. On that basis, any interpretation or direction on the policy would not financially impact a councilmember based on their relatives that reside at Creekside Villas as conflict of interest rules are only concerned about immediate dependent family. See, FPPC Regulation 18702.5.

In short, there would be no conflict of interest for any existing councilmember to participate in discussions to interpret the policy or provide direction on the policy. However, please keep in mind that if the City Council opts to actually change the policy, that would trigger the one year prohibition under either Option 1 or 2 noted in the staff report.

**2. Do Any Councilmembers Have Conflicts of Interest Prohibiting them from Adjusting the Rents in the Future at Creekside Villas?**

If the City Council was asked to take action to adjust the rents, that action does not involve a contract, so only the Political Reform Act would apply. For the same reasons noted above, including the fact that any councilmember who has relatives living at Creekside Villas does not have any financial connection and there is no financial dependency between the councilmember and the relatives, there is no financial impact that would result to the councilmember for voting to adjust the rents, even if the decision would impact their non-dependent relatives financially.

**3. If the City Council Selects Option 2 and Interprets the Existing Policy to Only Apply Where a Councilmember Actually Exercises Authority or Actually Influences the Program, Would Voting to Approve Warrants/Payments to a Contractor or Vendor Doing Work At Creekside Villas Trigger the One Year Prohibition After Leaving Office?**

If the City Council selects Option 2, the policy will be interpreted to only trigger the one year prohibition if a councilmember actually exercised policy making authority or otherwise actually influenced the implementation of the housing program. If the City Council is not aware, in approving the consent calendar, the City Council sometimes approves payments to a contractor or vendor for the repainting of Creekside Villas, or other basic improvements and maintenance of the housing complex. However, voting to approve warrants or payments to a vendor doing work at Creekside Villas is not the same as exercising policy making authority or otherwise influencing the implementation of the housing program.

Further, under the Political Reform Act, simply approving payments to a vendor doing work at Creekside Villas would not cause any financial impact on any councilmember even if a councilmember wanted to live at Creekside Villas after leaving office. This is because of the intervening rule noted above in FPPC Regulation 18701(b)(1). There are many factors at play and there is no guarantee that any councilmember could reside at Creekside Villas absent a unit opening up, the councilmember being eligible, and the councilmember winning the lottery. Because of these intervening events, merely approving a payment to a vendor is not enough to constitute a conflict of interest as there would be no guaranteed financial impact on a councilmember.

Based on the intervening event rule, some councilmembers may be wondering why the one year prohibition in the existing policy should exist at all especially because no councilmember is guaranteed any open unit that may become available even if they actually influenced the process. The one year prohibition should still be in place under Option 2 noted in the staff report primarily because a councilmember could vote to do away with the lottery or vote to give councilmembers priority for any open unit. If those changes were to be made to the policy, no intervening events would exist. As such, the one year prohibition should still apply under Option 2 noted in the staff report if a councilmember engaged in any discussions or actions that would constitute changes to the policy, or otherwise influenced changes to the housing program.

**4. If the City Council Selects an Interpretation Applicable to the Policy on Former Employees and Officials, Does That Have Any Implications on the Policy Applicable to Current Employees and Officials from Being Able to Rent at Creekside Villas?**

The current Creekside Villas housing policy indicates the following individuals are ineligible to rent at Creekside Villas:

1. All employees and officials of the Town who, by virtue of their position, have policy making authority or influence over the implementation of the housing program;
2. All former employees and officials of the Town who, by virtue of their position or relationship, for one year prior to the date of application for tenancy, had policy-making authority or influence over the implementation of the housing program;
3. The spouse or dependents of any employee or official described in the two preceding paragraphs.

Does the City Council wants its interpretation for item 2 above to apply equally to item 1 above? As an example, if the City Council opts to interpret number 2 above to require a former official or employee to actually exercise policy making authority or actually influence the housing program for the one year prohibition to apply, should Town staff interpret number 1 above to mean the same (i.e.: only current employees or officials who actually exercise policy making authority or actually influence the housing program are prohibited from renting at Creekside Villas)?

Under the current language, some employees could be eligible to rent at Creekside Villas if they do not have any role to play in the housing program and otherwise meet the eligibility rules. The Town's current policy in other words, does not prohibit all current employees or officials from renting at Creekside Villas. It could, however, prohibit certain employees from renting at Creekside Villas if those employees have policy making authority over the housing program. The Council has the following options with regard to current officials and employees similar to the three options on page 4 of the staff report applicable to former officials and employees:

1. The Council could opt to interpret item 1 above to mean that current employees and officials are prohibited from renting at Creekside Villas if they have potential policy making authority or could potentially influence the housing program.
2. The City Council could opt to interpret item 1 above to mean that current employees and officials are prohibited from renting at Creekside Villas if they actually exercised policy making authority or actually influenced the implementation of the housing program.
3. The City Council could opt to change the policy. One option is the City Council could just impose a strict prohibition on all current employees or officials from renting at Creekside Villas while in office or in Town employment.





STATE OF CALIFORNIA  
 FAIR POLITICAL PRACTICES COMMISSION  
 1102 Q Street • Suite 3000 • Sacramento, CA 95811  
 (916) 322-5660 • Fax (916) 322-0886

November 19, 2020

Christopher J. Diaz  
 BEST BEST & KRIEGER LLP  
 City Attorney  
 Town of Colma  
 2001 N. Main Street 390, Walnut Creek, CA 94596

Re: Your Request for Advice  
**Our File No. A-20-080**

Dear Mr. Diaz:

This letter responds to your request for advice regarding Government Code Section 1090, et seq.<sup>1</sup> Please note that we are only providing advice under Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest, including Public Contract Code.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the San Mateo County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

### QUESTIONS

1. Are there any provisions of the Act that would apply in determining whether a member of the Colma City Council is prohibited from becoming a tenant in the Town-owned Creekside Villas (the "Complex") within one year after leaving office?
2. Assuming former members of the City Council have a prohibitory financial interest under Section 1090 in a lease for the Complex, would Section 1091.5(a)(3) nonetheless apply to allow them to become tenants in the Complex?

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<sup>1</sup> All statutory references are to the Government Code, unless otherwise indicated.

## CONCLUSIONS

1. No. There are no provisions under the Act that would prohibit a member of the Colma City Council from becoming a tenant in the Complex within one year after leaving office.

2. Yes. As explained below, assuming former members of the City Council have a prohibitory financial interest under Section 1090 in a lease for the Complex, Section 1091.5(a)(3) would apply to allow them to become tenants in the Complex.

## FACTS AS PRESENTED BY REQUESTER

Your law firm serves as City Attorney to the Town of Colma and you seek advice on behalf of the Colma City Council. Colma is a general law City located in San Mateo County. Colma owns a senior housing complex, known as Creekside Villas (the “Complex”). In 2005, the Colma City Council adopted certain rental policies “to enhance the quality of life for senior residents and give a limited preference to Colma residents for residency at [the Complex].” (Colma Administrative Code (“CAC”), § 2.02.010.)

The policies include eligibility rules and restrictions governing Colma’s ability to rent, lease, or permit occupancy of a unit at the Complex. A person applying for tenancy in the Complex must be 62 years or older at the commencement of the tenancy, must not have a recurring need for supportive care and must not require the availability of continuous skilled nursing care, and must be financially able to pay the rent. (CAC, § 2.02.030(a).) There are also procedures for determining priority for residents based on prior residency and when a rental application is completed. (CAC, § 2.02.050.)

The City Manager has some decision-making authority to waive the age requirement or the priority for residents for a tenant who is employed by the Complex’s property manager to provide substantial maintenance and management services for the Complex. (CAC, § 2.02.030(d).) The policies further provide that the following individuals, by virtue of their position or relationship, are ineligible to become a tenant in the Complex:

- All employees and officials of the Town who, by virtue of their position, have policy-making authority or influence over the implementation of the housing program;

- All former employees and officials of the Town who, by virtue of their position or relationship, for one year prior to the date of application for tenancy, had policy-making authority or influence over the implementation of the housing program.

In addition, the Town’s policies require an annual rent adjustment for inflation using a formula based on changes in the consumer price index. (CAC, § 2.02.060.) From time to time, the City Council makes decisions regarding the annual rent adjustment for the Complex, which includes suspending or increasing rent.

You provided a document titled “Hildebrand Real Estate Group Application Process for Creekside Villas Colma,” which states there is a Town policy requiring that any vacancy must be kept for interested residents of the Town of Colma for 60 days after becoming available. If multiple



Town residents express interest within the 60-day period, the names of each interested resident are drawn via lottery at the 60th day and applications are accepted in the order of the lottery draw. There is no pre-qualification of applicants prior to the lottery. If the first applicant does not qualify, then the next name drawn in the lottery submits their application and this continues until a qualified applicant has been selected. If no Town residents express interest, then individuals residing outside the Town may be considered.

The Application Process document then explains the qualifying process:

Qualifications: Hildebrand Real Estate Group confirms the Town of Colma resident by verifying their residency either with the resident card or driver's license along with verifying that the applicant(s) meet the age requirement. A credit check is run on the applicant(s). Generally, the applicant(s) should gross 2 ½ to 3 times the monthly rent. For instance, if the rent is \$902.00, the applicant should gross at least \$2,255.00. If the applicant(s) has a credit score of less than 700 and/or negative credit and/or insufficient income, then a co-signer may be required. The co-signer must submit an application and their credit is checked. The same credit criteria are required of the co-signer and the co-signer must show sufficient income to assist the tenant in paying rent if the tenant becomes unable to pay. Hildebrand Real Estate Group considers any negative credit on the credit check and may overlook negative credit due to medical bills. The same income and credit check qualification method is used for all of Hildebrand Real Estate Group tenant applicants for all properties managed or owned by Hildebrand Real Estate Group.

According to the property manager (Hildebrand Real Estate Group), they do not have authority to change any of the lease terms – the Town makes use of the standard California Association of Realtor form lease agreements that are fairly standard with set terms.

## ANALYSIS

### The Act

Specified local governmental officials, including city councilmembers, who leave governmental service are subject to the Act's one-year ban for local officials in Section 87406.3, also known as the local "one-year ban."

The local "one-year ban" prohibits certain former local officials from communicating with their former agencies, for compensation and in representation of another person, for the purpose of influencing any legislative or administrative actions, including quasi-legislative and quasi-judicial actions, or any discretionary actions involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property. (Section 87406.3.)

The local one-year ban would not apply to a former councilmember seeking to become a tenant in the Complex within one year of leaving office because the councilmember would not be

communicating with his or her former agency, for compensation and in representation of another person. Accordingly, no provisions of the Act would apply to prohibit a former councilmember from becoming a tenant in the Complex within one year of leaving office.<sup>2</sup>

### Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) When an officer with a proscribed financial interest is a member of the governing body of a public entity, the prohibition of Section 1090 also extends to the entire body, and it applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

As mentioned, the Town has already established that officials (including councilmembers), under the circumstances described, are prohibited from becoming a tenant at the Complex. Your request centers on whether Section 1090 would prohibit a councilmember, after leaving office, from becoming a tenant where the councilmember: 1) participated in both the establishment of the housing program and decisions regarding the annual rent adjustment for the Complex; or 2) did not participate in the establishment of the housing program, but participated in decisions regarding the annual rent adjustment for the Complex. Assuming Section 1090 potentially applies to a former councilmember under these circumstances, the determinative issue is whether any exception to Section 1090’s prohibition would nonetheless permit a councilmember to apply for tenancy after leaving office.

The Legislature has expressly defined certain financial interests as “remote” or “noninterest” exceptions to Section 1090’s general prohibition. Where a remote interest is present, the contract may be lawfully executed provided (1) the officer discloses his or her financial interest in the contract to the public agency; (2) the interest is noted in the public body’s official records; and (3) the officer completely abstains from any participation in the making of the contract. (Section 1091.) Where a noninterest is present, the contract may be executed without the abstention. (Section 1091.5.)

Relevant to the present situation is the noninterest exception set forth in Section 1091.5(a)(3) for “public services generally provided.” That exception provides that an officer or employee “shall not be deemed to be interested” in a public contract if his or her interest in that

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<sup>2</sup> As your letter suggests, Section 87406.3(c) does not preclude a local governmental agency from adopting its own ordinance or policy restricting the activities of former agency officials so long as the ordinance or policy is more restrictive than Section 87406.3.

contract is “[t]hat of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board.”

The California Supreme Court considered the application of this noninterest exception and read the exception to establish the following rule:

If the financial interest arises in the context of the affected official’s or employee’s role as a constituent of his or her public agency and recipient of its services, there is no conflict so long as the services are broadly available to all others similarly situated, rather than narrowly tailored to specially favor any official or group of officials, and are provided on substantially the same terms as for any other constituent.

(*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1092.)

With respect to an agency’s permissible exercise of discretion in providing a public service generally provided under the exception, the Supreme Court stated:

The presence of discretion in the formation of a contract that section 1091.5(a)(3) purportedly permits is not fatal, unless the discretion can be exercised to permit the special tailoring of benefits to advantage one or more board members over their constituency as a whole. Absent such a risk of favoritism, discretion is unproblematic.

(*Id.* at p. 1100.)

Thus, the noninterest exception set forth in Section 1091.5(a)(3) applies if: (1) the interest arises in the context of the affected official’s or employee’s role as a constituent of the public agency and recipient of its services; (2) the service at issue is broadly available to all those whom are similarly situated and is not narrowly tailored to specially favor an official or group of officials; and (3) the service at issue is provided on substantially the same terms as for any other constituent.

In the *Hentschke* Advice Letter, No. A-14-187, the Commission analyzed whether the exception applied to a turf replacement program generally available to all retail water customers of any of the San Diego Water Authority’s member public agencies. The program, which provided monetary incentives to retail water customers who replace existing turf with water efficient landscaping, was available on a first-come, first-served basis. Each applicant was required to participate in a training course, replace existing turf with qualifying plants, and fill out the standard application form and agree to program terms. Even though the program administrator had some decision-making authority to determine that the replacement met all the program requirements (such as the amount of turf replaced and whether qualifying plants are used), the Commission concluded that the exception applied because the determination did not involve discretion to pick and choose among applicants or to vary benefits from one applicant to the next.

Here, if a former councilmember were to submit an application for tenancy at the Complex, his or her interest in the lease would arise in the context of the former councilmember being a Town constituent and a recipient of Town services. In addition, leasing a residence in the Complex is broadly available to all Town residents 62 years of age or older,<sup>3</sup> and not narrowly tailored to specially favor an official or group of officials. Similar to the situation in *Hentschke*, to avoid favoritism where multiple residents are interested, the names of each interested resident are drawn via lottery and applications are accepted in the order of the lottery draw. And although the property manager does have some decision-making authority to determine if an applicant qualifies (generally ensuring rent-to-income ratio and credit score meets specified level), those determinations appear relatively ministerial in nature and do not involve discretion to pick and choose among applicants. Finally, the terms of any lease for a former councilmember would be provided on substantially the same terms as for any other constituent because the property manager does not have authority to change any terms of the lease, which is based on the standard California Association of Realtor form lease agreements that are fairly standard with set terms.<sup>4</sup>

Accordingly, assuming a former councilmember has a prohibitory financial interest in a lease for the Complex under Section 1090, the noninterest exception under Section 1091.5(a)(3) applies to permit the councilmember to lease a residence at the Complex.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

By: *Jack Woodside*  
Jack Woodside  
Senior Counsel, Legal Division

JW:aja

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<sup>3</sup> The exception is still applicable even where program services are available to a relatively small number of applicants because “[p]ublic agencies provide many kinds of ‘public services’ that only a limited portion of the public needs or can use.” (92 Ops.Cal.Atty.Gen. 67, 70 (2009).)

<sup>4</sup> The present matter is different from those matters where the exception has been found not to apply because administering officials were required to exercise judgment or discretion in scrutinizing applications. (See *Hodge Advice Letter*, No. C-14-012 [exception does not permit a city councilmember to enter into a Mills Act contract with the city where officials are required to negotiate the terms of each contract, engage in the continued enforcement through periodic inspections to determine compliance with the contract terms, and make determinations concerning contract renewal and imposition of penalties]; see also 92 Ops.Cal.Atty.Gen. 67, 70 (2009) [grants for the purchase or retrofit of certain engines and equipment awarded only after each application individually scrutinized to determine its statutory compliance, and weighed according to such factors as emissions performance, cost-effectiveness and considerations of whether the engine is cleaner than required under the applicable air quality laws. In addition, the evaluation may include a determination that an application is made in good faith and credible].)