

**FUNDING AGREEMENT BETWEEN THE CITY/COUNTY ASSOCIATION OF
GOVERNMENTS OF SAN MATEO COUNTY AND THE CITY OF SOUTH SAN
FRANCISCO FOR CONDUIT PURCHASE AND INSTALLATION FOR THE
PURPOSES OF THE SMART CORRIDOR EXTENSION PROJECT**

THIS FUNDING AGREEMENT FOR CONDUIT PURCHASE AND INSTALLATION FOR THE SMART CORRIDOR EXTENSION PROJECT (“Agreement”) is entered into and effective as of the ____ day of _____, 2020, by and between the City/County Association of Governments of San Mateo County (“C/CAG”) and the City of South San Francisco, a municipal corporation (“City”) (each a “Party” and collectively the “Parties”).

RECITALS:

WHEREAS, C/CAG is sponsoring the San Mateo County Smart Corridor Project (“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

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, City, and Caltrans desire to extend the Project’s Smart Corridor into the City of South San Francisco along El Camino Real (SR-82) and San Bruno Avenue, which includes the installation of fiber optic communication network as well as deployment of an interconnected traffic signal system, closed circuit video cameras, trailblazer/arterial dynamic message signs, and vehicle detection systems (the “Project extension”); and

WHEREAS, the Project extension into South San Francisco 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, the City serves as the lead agency for the design and construction phases of the Project within South San Francisco, including contract administration, construction inspection and project reporting to the various grantors, while C/CAG provides funding in State Transportation Improvement Program (STIP), Traffic Light Synchronization Program (TLSP), and local funds to the City; and

WHEREAS, in 2018, the City adopted its Open Trench Ordinance under South San Francisco Municipal Code Chapter 13.40, and subsequently adopted a “Dig Once” policy (collectively “Open Trench Rules”); and

WHEREAS, the Open Trench Rules require certain qualifying applicants proposing to

excavate in the public right of way (“ROW”) to provide an Open Trench Notice and coordinate with any interested third parties for the co-location of telecommunications facilities including fiber optic cables and conduits in the ROW to avoid repeated excavation and trenching in City streets and roadways; and

WHEREAS, the City may also respond to an Open Trench notice issued by an applicant and negotiate for the co-location of its facilities, fibers and conduits in the ROW; and

WHEREAS, Intermountain Infrastructure Group, LLC (“Intermountain”) has applied to the City for permits to excavate and install privately-owned conduits in various locations in the ROW throughout South San Francisco, and has issued an Open Trench Notice; and

WHEREAS, portions of the routes in the Intermountain installation proposal overlap with the Project’s Smart Corridor alignment, which are described more particularly in Exhibit A, attached and incorporated herein by this reference; and

WHEREAS, in response to Intermountain’s Open Trench Notice, the City is currently negotiating with that entity for the purchase and co-location of conduits in parts of the ROW covered by Intermountain’s proposal, including routes that overlap with the Smart Corridor alignments where City will allocate conduits for the Project’s use; and

WHEREAS, upon request by the City, C/CAG has agreed to fund the purchase of the conduits for the portion of the ROW covered by Intermountain’s proposal that aligns with the Smart Corridor, as depicted in Exhibit A; and

WHEREAS, C/CAG and the City desire to enter into a funding agreement to specify each party’s obligations for implementing and funding the conduit purchases.

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

1. **City Performance.** The City shall engage in negotiations with Intermountain for the co-location of City conduits along portions of the Project’s Smart Corridor as described in Exhibit A. As the lead agency for the project design and construction, the City shall review and verify Intermountain’s conduit design plans to confirm that the proposed deployment aligns with the Smart Corridor routes depicted in Exhibit A. C/CAG is available to assist City with its determination that the proposed deployment aligns with the Smart Corridor Routes in Exhibit A, but such determination shall be made by the City. The City shall be responsible for negotiating and coordinating with Intermountain for the co-location of conduits and the deployment of such conduits along the routes in Exhibit A. The City shall allocate such conduits for the Project’s use serving the Smart Corridor routes depicted in Exhibit A. Further, the City shall inspect the conduits once the trenching and/or boring process has been completed to certify that the conduits are up to the appropriate specifications and standards required for the Smart Corridor project. The City shall notify C/CAG of any deviations in the conduit alignment due to changes required in the field in a timely manner. The City agrees to follow all applicable laws and statutory regulations.

2. **C/CAG Provision of Funding and Method of Payment.** C/CAG agrees to reimburse the City up to \$300,000 for the purchase of the conduits. The City shall submit an invoice reflecting the purchase price of the conduits, accompanied by documentation showing the bore and trench footages as well as the proposed deployment locations of the conduits. Upon receipt and approval of the invoices and accompanying documentation, C/CAG shall pay the amount claimed under the invoice, up to the maximum amount available pursuant to this Agreement, within thirty (30) days of C/CAG's receipt and approval of the invoice. It is expressly understood and agreed that in no event will C/CAG's total funding commitment under this Agreement exceed \$300,000, unless revised in writing by an amendment approved by C/CAG and the City. In the event C/CAG's payment of the invoice is less than \$300,000, the remaining balance will be applied towards the South San Francisco segment of the Smart Corridor construction project pursuant to a subsequent, separate agreement.
3. **Time of Performance.** The term of this Agreement shall commence on the date first written above and end on June 30, 2021, unless further extended or sooner terminated as hereinafter provided. Either Party may terminate the Agreement without cause by providing thirty (30) days' advance written notice to the other.
4. **Indemnity and Hold Harmless.**
 - a. City shall indemnify and save harmless C/CAG and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of City under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including City or its employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from City's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of C/CAG and/or its officers, agents, employees, or servants. However, City's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which C/CAG has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct. The duty of City to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
 - b. This indemnification provision will survive termination or expiration of this Agreement.
5. **Insurance.**
 - a. *General Requirements.* City or its consultants performing the services on behalf of City shall not commence work under this Agreement until all insurance

required under this section has been obtained. City shall use diligence to obtain such insurance. City shall furnish C/CAG with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending City's coverage to include the contractual liability assumed by City pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to C/CAG of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.

- b. *Workers' Compensation and Employer Liability Insurance.* City shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, City certifies, 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.* City shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect City, its employees, officers and agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage that may arise from City's operations under this Agreement, whether such operations be by City or by any consultant or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than \$1,000,000 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 \$ 1,000,000 |
|------------------------------------|--------------------|--|
| 1. Comprehensive General Liability | \$ 1,000,000 | _____ |
| 2. Workers' Compensation | \$ Statutory | _____ |
| 3. Professional Liability | \$1,000,000 | _____ |
| 4. Motor Vehicle Liability | \$1,000,000 | _____ |

C/CAG and its officers, agents, employees and servants 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, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if C/CAG, or its officers, agents, employees, and servants

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

CITY OF SOUTH SAN FRANCISCO

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

By: _____
Mike Futrell
City Manager

By: _____
Marie Chuang
Chair

Approved as to Form:

Approved as to Form:

City Attorney

Legal Counsel for C/CAG

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