

**FUNDING AGREEMENT BETWEEN THE CITY/COUNTY ASSOCIATION OF
GOVERNMENTS OF SAN MATEO COUNTY AND THE CITY OF SOUTH SAN
FRANCISCO 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 _____, 2021, 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 , 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 Smart Corridor concept north into the City of South San Francisco, and on the following arterial streets: Airport Boulevard, Oyster Point Road, Gateway Boulevard and Grant Avenue. The Project 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” or “South San Francisco expansion”); and

WHEREAS, the Project’s intelligent transportation system elements are illustrated on Exhibit A, Proposed Engineering Features and Route Locations; and

WHEREAS, the South San Francisco expansion 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 and the City entered into an agreement on December 11, 2019, designating the City as the lead agency for the design and construction phases of the Project, and providing the City a total of \$360,000 in funding from C/CAG to cover consultant fees associated with preparation of the Plans, Specifications and Estimate package, City staff time and contingency; and

WHEREAS, C/CAG and the City entered into a subsequent separate agreement executed

on October 28, 2020, whereby C/CAG has agreed to fund the City's purchase of the conduits for the portion of the public right of way (ROW) covered by Intermountain Infrastructure Group, LLC ("Intermountain")'s proposal that aligns with the Smart Corridor; and

WHEREAS, the City completed the Project's Plans, Specifications and Estimate phase in November of 2020, and will serve as the implementing agency for the construction phase of the Project, including contract administration, construction inspection and project reporting to the various grantors; and

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

1. **City Performance.** 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. Due to the nature of the Project, the construction phase will also include system integration activities and development of incident response timing plans.

Prior to the advertisement of activities related to the construction phase, the City shall provide document(s) that describe its procurement policies and its proposed bid documents to the C/CAG Program Director for review and approval. 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 and the California Labor Code. 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.

The City shall ensure that contractors perform regular safety briefings and that contractors adhere to site and job specific OSHA safety requirements.

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

The City shall provide and maintain accurate field data on a red-lined set of Project Plans, which are to be kept current and submitted to C/CAG as complete at the conclusion of the construction. These record Plans will be used as documentation for the preparation of "as-

built” Plans. The City shall provide C/CAG a set of the “as-built” plans within a month from notice of completion.

2. **Time of Performance.** The term of this Agreement shall commence on the date first written above and end on June 30, 2022, unless further extended by an amendment to this Agreement, or sooner terminated as hereinafter provided. Either Party may terminate the Agreement without cause by providing sixty (60) days’ advance written notice to the other.
3. **Funding.** In addition to C/CAG local funds committed by this Agreement, the City will receive State Transportation Improvement Program (STIP), Traffic Light Synchronization Program (TLSP) from Caltrans pursuant to a separate agreement(s), for the Project’s construction phase. As the funding recipient, the City shall comply with all applicable federal and state laws and statutory regulations, Cost Principles, and any other requirements related to administering federal-aid projects. The City is also responsible for and will comply with all audit and reporting requirements.

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 the Exhibit B, *Funding Summary*, in its entirety. Such amendments will be executed by a legally authorized representative of the respective Parties.

C/CAG will not reimburse the City for costs beyond the amount of “Other Local Funds” identified in Exhibit B, *Funding Summary*, and obligated in this Agreement. 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 that are specifically excluded from the funds obligated in this Agreement are to be paid by the Party incurring the costs from funds that are independent of this Agreement.

4. **Contract Change Orders.** The City shall respond to Requests for Information and negotiate contract change orders, if necessary. When contractor(s) requests a change order, the Project Design Engineer of record (“Designer”) shall determine 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 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 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 the C/CAG Executive Director will decide whether to approve the non-essential change order.

In the event City receives change order requests that will exceed the amount specified in Exhibit B, *Funding Summary*, 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 directly to Caltrans for the State Transportation Improvement Program (STIP) and Traffic Light Synchronization Program (TLSP) programs. 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. The construction component includes activities that will, when complete, enable C/CAG, Caltrans, and the City to observe CCTV inputs, operate and modify trailblazer sign messages, and monitor and control traffic signal operations. The City shall submit an invoice reflecting Project expenditures, accompanied by supporting documentation. Upon receipt and approval of the invoices and accompanying documentation, C/CAG shall reimburse the amount claimed under the invoice, up to the maximum amount available pursuant to this Agreement, within thirty (30) calendar days.
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.** As the implementing agency, the City is responsible for all coordinating, obtaining, implementing, renewing and amending Project permits, encroachment permits, agreements, and approvals necessary to construct the Project, whether they are identified in the Project scope of work or become necessary in the course of completing the Project. Failure to do so will result in the forfeit of any right to reimbursement under this Agreement.
8. **Claims.** As the implementing agency, the City may accept, reject, compromise, settle, or litigate claims arising from the Project construction activities. The City shall notify C/CAG within five (5) business days when a claim has been filed against the Project. Pursuant to Section 17 of this Agreement, the 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.

The City is responsible for covering the cost of such claims. Work costs, except those that are specifically excluded in this Agreement, are to be paid from the funds obligated in Exhibit B, *Funding Summary*, 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.

9. **Reporting.** The City shall provide a bi-weekly Resident Engineer’s report to C/CAG. In

addition, the City shall provide a weekly statement of working days, update the schedule on a monthly basis, and maintain current information regarding critical and near-critical activities, milestones, progress and outstanding issues affecting the schedule.

10. **Construction Meetings.** The City and C/CAG will participate in biweekly Project coordination meetings with contractor to keep apprised of Project progress.
11. **Accounting and Audits.** The City will maintain, and will ensure that any Project subconsultant or subcontractor will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred Project costs and billings.

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

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

12. **Compliance with All Laws.** City shall at all times comply with all applicable federal, state, San Mateo County, and municipal laws, ordinances, and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973. In the event of a conflict between the terms of this Agreement and any applicable state, federal, San Mateo County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement. City will timely and accurately complete, sign, and submit all necessary documentation of compliance.
13. **Prevailing Wages.** The City shall comply with applicable sections of the California Labor Code and regulations promulgated thereunder (including without limitation, Labor Code Section 1720 *et seq.* and Title 8 of the California Code of Regulations Section 16000 *et seq.*) governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations, in regards to all work performed under this Agreement. The City will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts. If the Project work is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, the City will conform to the provisions of the Davis-Bacon and Related Acts.

14. **Non-discrimination.** City and any subconsultants or subcontractors performing the services on behalf of City shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.
15. **Disclosures.** If a Party receives a public records request pertaining to the Project, that Party will notify the other Party within five (5) working days of receipt and make the other Party aware of any public records disclosed.
16. **Ownership, Operations and Maintenance.** Upon completion of the construction phase, C/CAG and the City agree to negotiate in good faith to develop and execute a new agreement regarding ownership, operations, and maintenance of the equipment.
17. **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.
18. **Insurance.**
- a. *General Requirements.* City or its subconsultants or subcontractors performing the Project or City's obligations under this Agreement 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, with a general aggregate liability of not less than \$2,000,000, unless another amount is specified below and shows approval by C/CAG Staff.
- d. *Umbrella Insurance:* The City shall take out an umbrella insurance in the amount of \$5,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
- e. *Insurance Limits; Insured Entities; Breach.* Required insurance shall include:

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

5. Umbrella Insurance \$5,000,000 _____

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 have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

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

19. **No Partnership; Independent Contractor.** The terms of this Agreement shall in no way be construed to create a partnership, joint venture or any other joint relationship between C/CAG and the City. 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: Sandy Wong, Executive Director

City: 400 Grand Avenue
South San Francisco, CA 94080
Attention: Eunejune Kim, Public Works Director

21. **Merger Clause; Amendments.** This Agreement, including Exhibit A 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 Chair and an authorized representative of the City. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibit A 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 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

Melissa Andrikopoulos
Legal Counsel for C/CAG

Exhibit A Proposed Project Engineering Features and Route Locations



**Exhibit B
Funding Summary**

	Project Cost	STIP Funds	Other Local Funds (i.e. Measure M Vehicle Registration Fees)	TLSP Funds	Funding Total
Component	In thousands of dollars (\$1,000)				
Construction	\$6,559	\$2,044	\$917	\$3,598	\$6,559
Total	\$6,559	\$2,044	\$917	\$3,598	\$6,559

DRAFT