

**FUNDING AGREEMENT BETWEEN THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY AND THE CITY OF DALY CITY FOR FIBER SPLICING AND FIBER CABLE TERMINATION OF THE SMART CORRIDOR PROJECT**

THIS FUNDING AGREEMENT FOR THE FIBER SPLICING AND TERMINATION OF THE SMART CORRIDOR 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, 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 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 Caltrans desire to extend the Smart Corridor concept north into 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 (the “Project”); and

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

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

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

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

WHEREAS, C/CAG and the City desire to enter into a funding agreement to install fiber, add fiber cable terminations and conduit connections; splice the fiber; purchase of fiber switches and connect pull boxes for the future deployment of the Smart Corridor system; and

WHEREAS, C/CAG and the City will enter into separate memorandum of understanding and funding agreements regarding obligations and responsibilities for the upcoming construction phase of the Project, as well as ongoing ownership, operations and maintenance commitments; and

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

1. **City Performance.** The City of Daly City (the “City”) shall be responsible for managing scope, cost, schedule, and quality of the work activities and products listed in Exhibit B, Summary of Smart Corridor Equipment and Connection. Further, the City shall perform inspection service of the completed work and the work products to certify that they meet the appropriate specifications and standards required for the Smart Corridor Project. The City agrees to follow all applicable laws and statutory regulations when performing these obligations.
2. **Time of Performance.** The term of this Agreement shall commence on the date first written above and end on June 30, 2026, unless further extended by an amendment to this Agreement, or sooner terminated by mutual consent of the Parties.
3. **C/CAG Provision of Funding and Method of Payment.** C/CAG agrees to reimburse the City up to six hundred seventy-two thousand and five hundred dollars (\$672,500) for installing fiber; adding fiber cable terminations and conduit connections; splicing the fiber; purchasing fiber switches and connecting pull boxes. The work activities and products eligible for reimbursement are identified in Exhibit B, Summary of Smart Corridor Equipment and Connection. The City shall submit a detailed invoice accompanied by supporting documentation. 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. The City shall submit invoices to C/CAG at least once every six months for the duration of this agreement.

It is expressly understood and agreed that in no event will C/CAG’s total funding commitment under this Agreement exceed \$672,500, unless revised in writing by an amendment approved by C/CAG and the City. Eligible expenses include design, construction, consultant costs, reasonable City staff time, and all other expenditures required to complete City Performance. Parties acknowledge that the work described in Exhibit B may cost less than \$672,500 in total, and that individual line items may cost more or less than the estimated amount in Exhibit B for that particular line item. Cost overruns on a particular line item are eligible for reimbursement under this Agreement so long as the maximum total reimbursement amount is not exceeded. The City further agrees that in the event C/CAG’s payment of the invoice or sum of invoices submitted for completion of items 1 to 6 in Exhibit B is less than \$672,500, the City may submit a reimbursement request for item 7 in Exhibit B for an amount up to \$150,000. See Exhibit B for additional details.

4. **Claims.** As the implementing agency, the City may accept, reject, compromise, settle, or litigate claims arising from construction activities. The City shall notify C/CAG within five (5) business days when a claim has been filed against the Project. The City is responsible for covering the cost of such claims. Work costs are to be allocated for payment pursuant to the requirements and procedures of Section 3 above, unless such claims arose due to negligence of the City. C/CAG will not reimburse the City for claims that 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 total reimbursable amount, such costs shall be borne solely by the City.
5. **Termination.** 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 and any eligible close out costs within forty-five (45) days of termination.
6. **Accounting and Audits.** The City will maintain and ensure that any Project subconsultant or subcontractor will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred Project costs and billings.

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

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

7. **Compliance with All Laws.** The City shall at all times comply with all applicable federal, state, San Mateo County, and municipal laws, ordinances, and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973. In the event of a conflict between the terms of this Agreement and any applicable state, federal, San Mateo County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement. The City will timely and accurately complete, sign, and submit all necessary documentation of compliance.

8. **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.
9. **Non-discrimination.** The City and any subconsultants or subcontractors performing the services on behalf of the City shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.
10. **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.
11. **Indemnity and Hold Harmless.**
  - a. 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, 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.

12. **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 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.

13. **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.
14. **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
15. **Merger Clause; Amendments.** This Agreement, including Exhibit A and B attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties and obligations of each Party as of the document's date. Any prior agreement, promises, negotiations or representations between the Parties not expressly stated in this Agreement are not binding. All subsequent amendments shall be in writing and signed by the C/CAG Executive Director and authorized representatives of the City. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibits A and B attached hereto, the terms, conditions or specifications set forth herein shall prevail.
16. **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**

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

Approved as to Form:

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

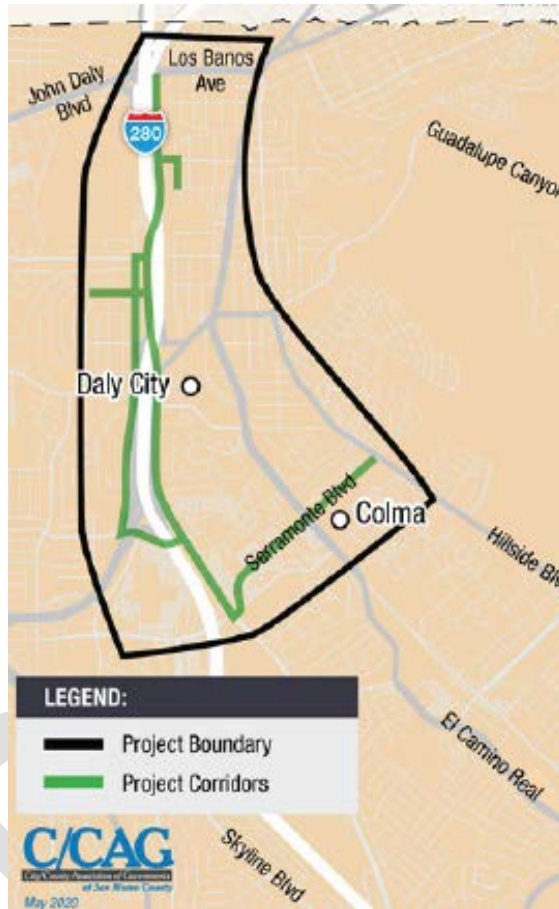
**CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY**

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

### Summary of Smart Corridor Equipment and Connection

Item No.	Description	Quantity	Maximum Reimbursement Amount
1.	Replace signal interconnect cable with fiber optics cable on the San Pedro Rd bridge, install conduit, pull box, 96 strands of fiber and fiber infrastructure <sup>1</sup>	1	\$230,000
2.	Reimbursement for termination of fiber cable at each cabinet	10	\$50,000
3.	Reimbursement for conduit connection to City Hall	1	\$216,700
4.	Reimbursement for splicing and fiber termination costs	1	\$103,800
5.	Reimbursement for fiber switches	11	\$22,000
6.	Reimbursement for connection between IIG and City's pull boxes	10	\$50,000
7.	Reimbursement for video systems and traffic monitoring at City Hall or the Corporation Yard	N/A	<p>\$0 initial allowance. This item is eligible for reimbursement only if the total actual reimbursement to the City for the completion of items 1 to 6 is below the maximum reimbursement stated. If the City elects to pursue work in line item 7, the City has up to 1.5 years to finish the activities and file for reimbursement request. The City may request and receive reimbursement up to \$150,000 for this activity.</p>
	Maximum Potential Reimbursement Amount	33	<b>\$672,500<sup>2</sup></b>

<sup>1</sup> Replacement of signal interconnect cable with fiber optic cables on the San Pedro Road Bridge: C/CAG agrees to reimburse the cost of replacing the signal interconnect cable if that work is completed before the selected civil contractor procures the wireless radios. Once the wireless radios are purchased for the Project, the cost related to fiber optic cable installation on the bridge will no longer be eligible for reimbursement under this Agreement.

<sup>2</sup> Note that Maximum Potential Reimbursement Amount is limited by the provisions of Section 3 of the Agreement.