



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 7, 2023  
**From:** Director of Public Works/City Engineer  
**Subject:** Consider Language for Funding Agreement with C/CAG

### **Community Goal/Result**

Safe Community

### **Purpose**

To consider alternative language proposed by the City/County Association of Governments of San Mateo County (C/CAG) to be included in a funding agreement between C/CAG and the City for the initial installation of conduit and fiber optic lines in Bayshore Boulevard

### **Recommendation**

Receive presentation by C/CAG staff and consider authorizing the City Manager to sign a funding agreement.

### **Background**

At its 6/29/23 regularly scheduled meeting, Council received a presentation from staff requesting authority for the City Manager to sign a funding agreement with C/CAG for installation of conduits and fiber optics, and to also sign a bill of sale agreement with a contractor for the installation of these items.

As noted by staff, the intent of the funding agreement was for C/CAG to pay the full installed cost of the conduit and fiber install, with the expectation of future installation of components of an intelligent transportation system (ITS) to guide overflow traffic winding through Brisbane during freeway closures. The Smart Corridor Project would include wayfinding changeable message signs (CMS) located at critical decision points for drivers.

Council expressed significant concerns over the placement and operating scenarios of the CMS and directed the City Attorney to place language in the funding agreement that clarified the city had no duty to allow the future installation of the CMS.

### **Discussion**

To comply with City Council direction, the City Attorney proposed this language to C/CAG:

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4. → **Trailblazer/arterial Dynamic Message Signs.** The installation of the fiber in the conduits will facilitate the installation of trailblazer/arterial dynamic message signs (“Message Signs” within the City limits of Brisbane. Prior to the installation of any Message Signs, City shall in its sole discretion determine if such Message Signs are to be installed within the City limits and, if so, their location, size, and all operating features. Nothing in this Agreement shall require the City to allow the Message Signs to be installed within the City limits. ¶

As the eventual installation of CMS is integral to the Smart Corridor project, and to the purpose of the funding source from which the grant money for the installation of conduit and fiber is obtained, C/CAG staff proposed the following language:

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4. → **Trailblazer/arterial Dynamic Message Signs.** The installation of the fiber in the conduits will facilitate the installation of trailblazer/arterial dynamic message signs (“Message Signs” within the City limits of Brisbane. The parties acknowledge the primary purposes of the message signs are to display information about traffic conditions, assist with incident management, and broadcast safety and emergency messages. The signs are an integral component of the Project. The parties will coordinate regarding the installation of signs, their locations, sizes, and all operating features. ¶

C/CAG will present to Council the current plan for future locations of CMS, the available sizes of CMS that might be installed as part of the ITS, and their understanding of the additional benefits to the City of Brisbane and its residents as a result of obtaining filled fiber optic conduit the entire length of Bayshore at no cost to the City.

### **Fiscal Impact**

Under the Funding Agreement between the City and C/CAG concerning the Smart Corridor Extension Project, C/CAG is the source of the funds (through Local Measure M funds) for the purchase of conduit and fiber and the installation of fiber in the conduit, with C/CAG reimbursing the City as the City receives and C/CAG approves invoices from the contractor (Intermountain Infrastructure Group). In the proposed Funding Agreement Council reviewed on 6/29/23, unless the Funding Agreement was amended to provide a larger number, C/CAG’s funding commitment to the City was capped. Council was concerned that because contractors on these types of projects may encounter differing site conditions, supply chain issues, or construction delays—all of which could lead to claims for additional money—the City was at risk of being solely responsible for such costs over the capped amount. Accordingly, Council directed staff to propose revisions to that portion of the Agreement to eliminate or reduce that risk to the City.

Just as the City does not want to be solely responsible for costs above the capped amount, C/CAG understandably does not want to agree that, regardless of the reasons, it will be responsible for costs above the capped amount. Staff proposes to resolve this conundrum as follows.

Neither party will authorize the contractor to purchase and install fiber in the conduit the cost of which exceeds the capped amount (\$1,156,949) unless a funding source for that purpose is secured and the Funding Agreement amended. If either party does provide such authorization without the other party's agreement, then if a funding source cannot be secured, the authorizing party will be responsible for the additional costs.

If the contractor without authorization purchases and/or installs fiber in the conduit the cost of which exceeds the capped amount, files a claim for the additional cost that the parties contest, and prevails through arbitration or other legal proceedings, C/CAG will use its best efforts to secure additional funding to satisfy the claim. If those efforts are not successful, however, the City and C/CAG will meet and confer in good faith to determine how to allocate the additional costs between them.

Assuming the City itself has not authorized the contractor to incur additional costs without an additional funding source identified, these revisions do not eliminate entirely the possibility that the City may have some financial responsibility for costs above the capped amount but substantially reduce the risk. Moreover, the revisions make clear that if additional funding is needed to satisfy a claim, C/CAG will use its best efforts to secure such funding.

The complete revised language regarding funding and payment is attached to this report. Staff is satisfied that these revisions sufficiently address Council's concerns about this portion of the Funding Agreement and recommend that the attached language be incorporated into the Agreement. C/CAG has approved these revisions and joins in the recommendation.

**Measure of Success** - Unchanged from 6/29/23 report.

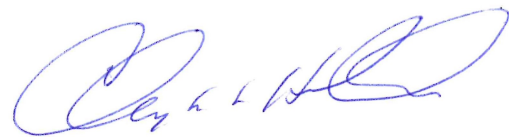
#### **Attachments**

1. C/CAG Provision of Funding and Method of Payment language
2. 6/29/23 staff report to Brisbane City Council

*R.L. Breault*

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Randy Breault, Public Works Director



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Clay Holstine, City Manager

***C/CAG Provision of Funding and Method of Payment.*** *C/CAG shall reimburse the City for the purchase of conduits and for the installation of fiber in those conduits. At the time of the execution of this Agreement, the purchase price of the conduits and the installation of fiber in those conduits is \$1,156,949. The parties recognize that due to a variety of factors including, but not limited to, differing site conditions, supply chain issues and construction delays, the cost to purchase and/or install fiber in the conduits may exceed \$1,156,949. Except as provided in this section, in no event shall C/CAG's total funding commitment under this Agreement exceed \$1,156,949 without an amendment to this Agreement as provided in Section 13.*

*The City shall submit an invoice reflecting the purchase price of the conduits, accompanied by documentation showing the boring and trenching footages, as well as the locations of the conduits. Upon receipt and approval of the invoices and accompanying documentation, which approval shall not be unreasonably withheld, C/CAG shall pay the amount claimed under invoice, up to the maximum amount available under this Agreement, within 30 days of C/CAG's approval of the invoice. Neither City nor C/CAG shall authorize Intermountain to purchase conduit or install fiber in the conduits, the cost of which exceeds \$1,156,949, without first entering into an amendment to this Agreement that includes additional funding. If either party becomes aware that Intermountain intends to make, or has made, a request to purchase conduit and/or install fiber in the conduits, the cost of which will exceed \$1,156,949, that party will notify the other party within five business days. If either party becomes aware that without both parties' authorization Intermountain has purchased conduit and/or installed fiber in the conduits, the cost of which exceeds \$1,156,949, that party will notify the other party within five business days. If either party, without the other party's authorization, has authorized Intermountain to purchase conduit and/or install fiber in the conduits, the cost of which exceeds \$1,156,949, that authorizing party shall be responsible for such costs. If Intermountain's costs to purchase conduit and/or install fiber in the conduits exceed \$1,156,949, and the parties have not entered into an amendment to this Agreement that includes additional funding but, through arbitration or other legal proceedings, Intermountain's claim for costs in excess of \$1,156,949 is upheld, C/CAG shall use its best efforts to secure additional funding for such costs. If C/CAG is not successful in securing such additional funding, City and C/CAG shall meet and confer in good faith to determine how to allocate such costs between them.*



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** June 29, 2023  
**From:** Director of Public Works/City Engineer  
**Subject:** Authorize City Manager to Sign Agreements for Funding and for Purchase and Installation of Fiber Optic Facilities

### **Community Goal/Result - Safe Community**

#### **Purpose**

The purpose of the recommended action is to grant the City Manager authority to execute a funding agreement for C/CAG to pay for fiber optic facilities, and a purchase and installation agreement for fiber optic facilities.

#### **Recommendation**

Authorize the City Manager to sign two agreements on the city's behalf:

1. A funding agreement between the City/County Association of Governments of San Mateo County and the City of Brisbane for conduit purchase and fiber installation for the smart corridor extension project.
2. A bill of sale agreement between Intermountain Infrastructure Group and the City of Brisbane for purchase and installation of fiber optic conduits and dark fiber.

A condition precedent to the City Manager executing these agreements is the City Attorney's review and approval of same.

#### **Background**

The City/County Association of Governments of San Mateo County has been leading the effort on a County Smart Corridor project that is designed to improve the mobility of local arterial streets by installing Intelligent Transportation System (ITS) equipment, such as an interconnected traffic signal system, close circuit television (CCTV) cameras, dynamic message signs, and vehicle detection system, on predefined designated local streets and state routes. The ITS infrastructure will provide local cities and Caltrans with day-to-day traffic management capabilities in addressing recurring and non-recurring traffic congestion.

A key aspect of this project is the installation of fiber optic (FO) lines to provide the telecommunication conduit backbone for the described ITS components. The Smart Corridor project is mostly complete in south and central San Mateo County, and the project that started in South San Francisco in 2021 is also complete.

To complete the northern portion of San Mateo County ITS, C/CAG engaged an engineering firm to design the fiber optic conduit and the ITS components for Daly City, Colma, and Brisbane.

Somewhat in parallel with C/CAG's efforts on the Smart Corridor, Intermountain Infrastructure Group (IIG) has been processing an encroachment permit application with Brisbane to run a new bank of fiber optic conduits in Bayshore Boulevard from the northern city limits to the southern city limits.

C/CAG recognized the advantage in "piggybacking" off IIG's proposed project, and IIG willingly entered into 3-party negotiations as part of an effort to minimize the number of excavations in a single street for telecommunications facilities. While Brisbane does not have a "dig once" policy in effect, the mutually agreed upon negotiations generally follow the practices recommended by the Federal Highway Administration (FHWA).

Assuming these negotiations, the final agreements, and construction all come to fruition, at the end of this effort C/CAG and Brisbane will each own a fiber optic conduit with "dark fiber" in the new bank of FO conduits proposed to be installed in Bayshore by IIG.

### **Discussion**

Staff and the City Attorney have reviewed and generally approved plans, specifications and the two agreements that are the subject of this staff report. The one issue that has delayed finalizing these agreements has been the tenuous nature of the public funds from which C/CAG hoped to fund its portion of the project. In early June, C/CAG was able to convince the California Transportation Commission to approve its requested allocation.

At this point in time, staff believes that final funding approval from C/CAG and final approval of IIG's plans will occur during Council's summer recess. IIG's permit from the City is anticipated to be issued in the next 30-60 days; if Brisbane and C/CAG are to have their FO conduit and dark fiber installed by IIG, these two agreements must be finalized prior to August.

### **Fiscal Impact**

The funding agreement with C/CAG will provide that C/CAG pays for 100% of the cost of installation, including any amendments found necessary during construction. The current cost estimate for the install of C/CAG's and Brisbane's "filled" FO conduit is \$831,924.


The city's only contribution to this project is engineering and field inspection staffing to oversee the work in our jurisdiction.

### **Measure of Success**

A backbone FO system installed at no cost to the city in Bayshore Boulevard and ready for connection to ITS network components.



Randy Breault, Public Works Director



Clay Holstine, City Manager