

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREEMENT NO.: _____

THIS AGREEMENT is made and entered into this _____ day of _____, 2018, by and between the CITY OF INGLEWOOD (hereinafter referred to as the “City”), a municipal corporation, located at One Manchester Boulevard, Inglewood, California 90301; and the SOUTH BAY CITIES COUNCIL OF GOVERNMENTS (the “SBCCOG”), collectively referred to herein as “Parties” and individually as a “Party.”

RECITALS

WHEREAS, the City of Inglewood is a public entity organized and existing pursuant to the laws of the State of California; and

WHEREAS, the SBCCOG is a joint powers authority organized and existing pursuant to the laws of the state of California; and

WHEREAS, on February 23, 2018, the SBCCOG responded to a Caltrans’ Sustainable Communities grant Request For Proposals (“RFP”) and submitted a proposal entitle, “Feasibility Study & Implementation Strategy for a South Bay Slow-Speed Network Demonstration,” (the “Project”); and

WHEREAS, on June 25, 2018, Caltrans approved the SBCCOG Project in the amount of \$435,267 which consists of the grant award of \$385,307, and a local match of \$49,960. The work and deliverables for the grant are attached as Exhibit “A” and the budget/schedule is attached as Exhibit “B;” and

WHEREAS, on June 25, 2018, the SBCCOG accepted the Caltrans’ award with the provision that, the SBCCOG would identify a Lead Agency – since the SBCCOG does not have the financial accounting system to process federal funds; and

WHEREAS, on July 26, 2018, the City agreed to become the Lead Agency for the sole and express purpose of receiving, dispersing, and accounting for the funds associated with the award to the SBCCOG (the sub-recipient of the award) for the work and deliverables associated with the Caltrans’ Grant (“Caltrans Award Agreement”) for the “Feasibility Study & Implementation Strategy for a South Bay Slow-Speed Network Demonstration; and

1 notice, to appeal and/or resubmit (pursuant to the Grant Agreement Guidelines) through
2 the City, to Caltrans' for the disallowed or non-reimbursed amount(s).

3 8. SBCCOG shall comply with an ensure that work performed under this
4 Agreement is done in compliance with all applicable provisions of federal, state, and local
5 laws, statues, ordinance, rules, regulations, and procedural requirements, including
6 without limitation, Federal Acquisition Regulations ("FAR") and the applicable
7 requirements and regulations of the City. SBCCOG acknowledges responsibility for
8 obtaining copies of and complying with the terms of the most recent federal, state, and
9 local laws and regulations and City requirements, including any amendments hereto.

10 9. The City shall make all disbursements electronically unless an exception is
11 requested in writing. Disbursements via Automated Clearing House ("ACH") shall be made
12 at no cost to SBCCOG. SBCCOG shall complete the ACH form and submit such to the City.

13 10. All requests for reimbursement shall be transmitted to the City Accounts
14 Payable Department using one of the following two options:

15 a. E-Mail: Ms. Luisana Gomez, Accounting Manager,
16 lgomez@cityofinglewood.org Ref# and/or MOU#

17 b. Standard Mail: City of Inglewood, Attention: Luisana Gomez, Accounting
18 Manager, One West Manchester Boulevard, Inglewood, California 90301 Ref#
19 and/or Mou#. As copy of all Request of Reimbursement submittals shall also
20 be forwarded to David L. Esparza, City of Inglewood, Chief Financial Officer:
21 dlesparza@cityofinglewood.org

22 **ARTICLE 6 – TERM**

23 The term of this Agreement shall commence on December 1, 2018, and terminate on
24 February 28, 2020.

25 **ARTICLE 7 – INDEMNIFICATION**

26 1. SBCCOG shall indemnify, defend, and hold harmless the City and its directors,
27 officers, and employees, from and against any and all claims, demands, liabilities, and
28 reasonable attorneys' fees arising from SBCCOG's performance of this agreement but only in

1 proportion to and to the extent such claims, demands liabilities or attorneys' fees are caused
2 by or result from the negligent or intentional acts or omissions of SBCCOG, its officers, agents,
3 or employees.

4 2. The shall indemnify, defend, and hold harmless SBCCOG and its directors,
5 officers, and employees, from and against any and all claims, demands, liabilities, and
6 reasonable attorneys' fees arising from the City's performance of this Agreement but only in
7 proportion to and to the extent such claims, demands, liabilities or attorneys' fees are caused
8 by or result from the negligent or intentional acts or omissions of the City, its officer, agents,
9 or employees.

10 Neither Party hereto shall be considered in default in the performance of its obligation
11 hereunder to the extent that the performance of any such obligation is prevented or delayed
12 by unforeseen causes including acts of God, acts of a public enemy, and government acts
13 beyond the control and without fault of negligence of the affected Party. Each Party hereto
14 shall give notice promptly to the other of the nature and extent of any such circumstances
15 claimed to delay, hinder, or prevent performance of any obligation under this Agreement.

16 **ARTICLE 8 – DEFAULT**

17 Default under this Agreement is defined as one or more of the following: (i) SBCCOG
18 fails to comply with the terms and conditions contained in this Agreement or the Grant
19 Agreement; (ii) SBCCOG fails to perform satisfactorily or to make sufficient progress toward
20 Project completion; (III) SBCCOG makes a material change to the SOW or Budget contained in
21 the grant Agreement without prior written consent or approval by Caltrans and the City.

22 **ARTICLE 9 – REMEDIES**

23 1. In the event of a default by SBCCOG (as defined in Section 8), the City shall
24 provide written notice of such default to the SBCCOG with a thirty (30) day period to cure the
25 default. In the event SBCCOG fails to cure the default, or commit to cure the default and
26 commence (the same within such thirty [30] day period), to the satisfaction of the City, the
27 following remedies shall be available to the City:

28 a. The City may terminate this Agreement;

1 termination.

2 4. Either Party shall have the right to terminate this Grant Agreement at any time
3 upon thirty (30) days written notice to the other. In the case of such “early” or “discretionary”
4 termination by SBCCOG, defined as termination occurring before full performance of all
5 objectives and activities and authorized funding herein, the City shall be entitled to seek full
6 reimbursement for all costs and payments made on this Agreement.

7 **ARTICLE 11 – AUDIT PROVISIONS**

8 1. The City, in order to fulfill its responsibility, shall have the right to conduct
9 audits of the Project at its own expense, as needed, such as financial and compliance audits
10 and performance audits. SBCCOG shall establish and maintain proper accounting procedures
11 and cash management records and documents in accordance with generally accepted
12 accounting principles (“GAAP”) as applied to governmental agencies. SBCCOG shall reimburse
13 the City for any expenditure not in compliance with the SOW or other terms and conditions of
14 this Agreement, or other applicable requirements of the City. The City shall use the Federal
15 Acquisition Regulations (“FAR”) standards in determining the reasonableness of costs incurred.
16 The City shall have the right to conduct a final audit using an outside auditing firm. The
17 findings of that City audit will be final

18 2. SBCCOG shall retain all original records and documents related to the Project
19 for a period of three (3) years after final payment.

20 **ARTICLE 12 – DISPUTES**

21 Unless otherwise directed by the City, SBCCOG shall continue performance under this
22 Agreement while matters in dispute are being resolved.

23 **ARTICLE 13 – COPYRIGHTS**

24 SBCCOG reserves the right to protect by copyright original works developed under this
25 Agreement.

26 **ARTICLE 14 – OTHER TERMS AND CONDITIONS**

27 1. This Agreement, including any documents herein attached and incorporated
28 into this agreement, the Caltrans Award Agreement, the RFP and the Proposal constitute the

1 entire understanding between the City and SBCCOG, with respect to the subject matter herein.
2 The Agreement shall not be amended, nor any provision or breach hereof waived, except in
3 writing.

4 2. SBCCOG shall expend Grant Program funds in the manner described in the SOW
5 and the Caltrans Award Agreement. Should the total dollars of a line-item included in the
6 budget contained within the Caltrans Award agreement need or be required to change
7 (increased or decreased) the SBCCOG shall notify Caltrans and the City in writing for
8 permission(s) to do so. Any subsequent revisions to the SOW, budget, or schedule will be
9 revised by the SBCCOG and submitted to Caltrans and the City for approval. Any adjustments
10 may not exceed the limits for the total Project Awards and Match Funds associated with the
11 Project.

12 3. Article titles, paragraph titles or captions contained herein are inserted as a
13 matter of convenience and for reference, and in no way define, limit, extend, or describe the
14 scope of this Agreement or any provision hereof.

15 **ARTICLE 15 – NOTICE**

16 If notice to either Party is given, it shall be by personal delivery thereof or by
17 depositing same in United States Mail, enclosed in a sealed envelope postage prepaid and
18 return receipt requested and addressed as follows:

19 **CITY:**
20 **Yvonne Horton,**
City Clerk
21 City of Inglewood
One Manchester Boulevard
22 Inglewood, California 90301-1750

SBCCOG:
Jacki Bacharach,
Executive Director
20285 Western Avenue
Suite 100
Torrance, California 90501
jacki@southbaycities.org

23 **WITH COPY TO:**
24 **David L. Esparza, Chief Financial Officer**
25 One Manchester Boulevard
Inglewood, California 90301
26 Ref# and/or MOU#
27 dlesparza@cityofinglewood.org
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARTICLE 16 – PROHIBITED INTERESTS

No official, employee, or agent of the City, or the SBCCOG nor any member of their immediate families, shall have any direct or indirect interest in the contract.

ARTICLE 17 – EQUAL EMPLOYMENT

SBCCOG agrees that during the performance of this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status.

ARTICLE 18 – CHANGES, AMENDMENTS AND MODIFICATIONS

No change, amendment, or modification to this Agreement shall be effective unless in writing and signed by the Parties hereto.

ARTICLE 19 – SEVERABILITY

In the event that any condition or covenant herein is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of the Agreement and shall in no way affect any other covenant or condition herein contained as long as the invalid provision does not render the Agreement meaningless with regard to a material term in which event the entire Agreement shall be void. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent the scope or breadth is permitted by law.

ARTICLE 20 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by the City of any work or services by SBCCOG shall not constitute a waiver of any of the provisions of this Agreement.

ARTICLE 21 – ENTIRE AGREEMENT

1 This Agreement, including all Exhibits is the entire, complete, final and exclusive
2 expression of the Parties with respect to the matters addressed therein and supersedes all
3 other Agreements or understandings, whether oral or written, entered into between the
4 SBCCOG and the City prior to the execution of this Agreement. No statements,
5 representations or other Agreements, whether oral or written, made by any party which are
6 not embodied herein shall be valid and binding unless in writing and duly executed by the
7 Parties of their authorized representatives.

8 **ARTICLE 22 – GOVERNING LAW; VENUE**

9 This Agreement shall be interpreted, construed, and governed according to the laws of
10 the State of California. In the event of litigation between the Parties, venue in state trial courts
11 shall lie exclusively in the County of Los Angeles, Superior Court, Southwest District, located at
12 825 Maple Avenue, Torrance, California 90503-5058. In the event of litigation in the United
13 States District Court, venue shall lie exclusively in the Central District of California, in Los
14 Angeles.

15 **ARTICLE 23 – MISCELLANEOUS**

16 1. The Parties waive any benefits from the principle of *contra proferentum* and
17 interpreting ambiguities against drafters. No party shall be deemed to be the drafter of this
18 Agreement, or of any particular provision or provisions, and no part of this Agreement shall be
19 construed against any party on the basis that the particular party is the drafter of any part of
20 this Agreement.

21 2. This Agreement may be executed in counterparts, and when each party hereto
22 has signed and delivered at least one such counterpart, each counterpart shall be deemed an
23 original and, when taken together with the other signed counterparts, shall constitute one
24 Agreement, which shall be binding upon and effective as to all parties hereto.

25 3. Article titles, paragraph titles or captions contained herein are inserted as a
26 matter of convenience and for reference, and in no way define, limit, extend, or describe the
27 scope of this Agreement or any provision hereof.

28

1 **IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date and
2 year first above written.

3 **CITY OF INGLEWOOD**

**SOUTH BAY CITIES COUNCIL OF
GOVERNMENTS**

4
5

6

7 **James T. Butts, Jr.,**
Mayor

Jacki Bacharach,
Executive Director

8

9

10 **ATTEST:**

11

12

13 **Yvonne Horton,**
City Clerk

14

15 **APPROVED AS TO FORM:**

16

17

18 **Kenneth R. Campos,**
City Attorney

19

N:\AGREEMENTS\South Bay Cities Council of Governments Feasibility Study Agreement 10.18.doc

20

21

22

23

24

25

26

27

28