1 AGREEMENT NO.: THIS AGREEMENT is made and entered into this day of 23 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; 4 and the SOUTH BAY CITIES COUNCIL OF GOVERNMENTS (the "SBCCOG"), collectively referred 5 to herein as "Parties" and individually as a "Party." 6 7 RECITALS WHEREAS, the City of Inglewood is a public entity organized and existing pursuant to 8 9 the laws of the State of California; and WHEREAS, the SBCCOG is a joint powers authority organized and existing pursuant to 10 11 the laws of the state of California; and 12 WHEREAS, on February 23, 2018, the SBCCOG responded to a Caltrans' Sustainable Communities grant Request For Proposals ("RFP") and submitted a proposal entitle, 13 14 "Feasibility Study & Implementation Strategy for a South Bay Slow-Speed Network 15 Demonstration," (the "Project"); and 16 WHEREAS, on June 25, 2018, Caltrans approved the SBCCOG Project in the amount of 17 \$435,267 which consists of the grant award of \$385,307, and a local match of \$49,960. The 18 work and deliverables for the grant are attached as Exhibit "A" and the budget/schedule is attached as Exhibit "B;" and 19 20 WHEREAS, on June 25, 2018, the SBCCOG accepted the Caltrans' award with the 21 provision that, the SBCCOG would identify a Lead Agency – since the SBCCOG does not have 22 the financial accounting system to process federal funds; and 23 WHEREAS, on July 26, 2018, the City agreed to become the Lead Agency for the sole 24and express purpose of receiving, dispersing, and accounting for the funds associated with the 25 award to the SBCCOG (the sub-recipient of the award) for the work and deliverables 26 associated with the Caltrans' Grant for the "Feasibility Study & Implementation Strategy for a 27 South Bay Slow-Speed Network Demonstration; and

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WHEREAS, on August 22, 2018, Caltrans issued an "Award Letter" to the City acknowledging the Grant amount, matches, and total project amount. The Award Letter set a deadline of October 19, 2018, for receipt of the City's resolution in favor of and supporting its role as Lead Agency for the Project; and

WHEREAS, the City and SBCCOG desire to enter into an Agreement (the "Agreement") governing the terms and conditions for the City's administration of the Caltrans' Award on behalf of the SBCCOG's role as sub-recipient and primary consultant to complete the work and deliverables associated with the grant.

**NOW THEREFORE,** in consideration of the mutual terms and conditions contained herein, the City and the SBCCOG hereby agree as follows:

## ARTICLE 1 - INCORPORATION OF RECITALS

All of the recitals are incorporated herein by reference.

## ARTICLE 2 – SBCCOG RESPONSIBILITIES

### SBCCOG:

- 1. Agrees to complete the Project as described in the Scope of Work (the "SOW"). The SOW includes a description of the Project, including without limitation, Project tasks, and deliverables. In the event of ambiguity, conflict, or inconsistent language, the order of precedence shall be (in descending order):
  - a. Change orders and Amended Agreements (whichever occurs last);
  - b. This Agreement;
  - c. Exhibit "A;"
  - d. Exhibit "B;"
  - 2. Shall ensure that the tasks identified in the SOW are completed.
- 3. Agree to comply with, and be bound by all applicable federal, state, county, and local laws, rules, and regulations.
- 4. Agrees to complete the SOW in accordance with the budget and schedule identified in Exhibit "B," which is incorporated herein by this reference as if set forth in full.

forward the reimbursement funds to the SBCCOG for an amount not to exceed \$385,307.

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2. Pursuant to the Grants' reimbursement and reporting requirements, the City shall report to Caltrans the required total project local match not to exceed \$49,960; or, 11.47% of any (one) submitted invoice.

- 3. Payments to SBCCOG will be processed by the City within a reasonable time period, but in no event more than sixty (60) calendar days after the receipt of a reimbursement by Caltrans.
- 4. SBCCOG will be subject to, and will comply with, all requirements of the grant Agreement and other applicable requirements of Caltrans and the City as required by the City to fulfill its responsibilities as the grantee under the Grant Program.

### **ARTICLE 5 - INVOICE**

- 1. SBOCCG will prepare and submit to the City a certified and original request for reimbursement for allowable project costs incurred and paid for by SBCCOG consistent with the SOW and the Grant Agreement. Invoices will include percentage of local cash match of (.05735%) along with In-Kind Match Fund contribution reports. Advance payments by the City are not allowed. The Request for Reimbursement submitted by SBCCOG shall be signed by an authorized agent who can duly certify the accuracy of the included information.
- 2. Not more frequently than once a month, but at least quarterly, SBCCOG will prepare and submit an invoice to the City for actual allowable Project costs incurred and paid for by SBCCOG consistent with the SOW and the grant Agreement. Each Request for Reimbursement will report the total of eligible expenditures consistent with the SOW and the Grant Agreement. The Request for Reimbursement will be accompanied by a status update in terms of the progress completed or not completed in relation to the SOW tasks and a detailed invoice describing all invoiced work completed.
  - 3. Eligible costs are described in the Grant Agreement.
  - 4. The Request for Reimbursement must be submitted on SBCCOG letterhead.
- 5. SBCCOG should consult with Caltrans for questions regarding non-reimbursable expenses.

- 6. SBCCOG shall provide written notification to the City and the Caltrans' Project manager regarding any changes to the SBCCOG's Project management team.
- 7. If any amounts paid to SBCCOG are disallowed or not reimbursed by Caltrans, for any reason, SBCCOG shall have the right, within 30 days from receipt of the City's notice, to appeal and/or resubmit (pursuant to the Grant Agreement Guidelines) through the City, to Caltrans' for the disallowed or non-reimbursed amount(s).
- 8. SBCCOG shall comply with an ensure that work performed under this Agreement is done in compliance with all applicable provisions of federal, state, and local laws, statues, ordinance, rules, regulations, and procedural requirements, including without limitation, Federal Acquisition Regulations ("FAR") and the applicable requirements and regulations of the City. SBCCOG acknowledges responsibility for obtaining copies of and complying with the terms of the most recent federal, state, and local laws and regulations and City requirements, including any amendments hereto.
- 9. The City shall make all disbursements electronically unless an exception is requested in writing. Disbursements via Automated Clearing House ("ACH") shall be made at no cost to SBCCOG. SBCCOG shall complete the ACH form and submit such to the City.
- 10. All requests for reimbursement shall be transmitted to the City Accounts Payable Department using one of the following two options:
  - a. E-Mail: xxx@cityofinglewood.org Ref# and/or MOU#
  - b. Standard Mail: City of Inglewood, Attention: Dept/Person, One West Manchester Boulevard, Inglewood, California 90301 Ref# and/or Mou#. As copy of all Request of Reimbursement submittals shall also be forwarded to David L. Esparza, City of Inglewood, Chief Financial Officer: <a href="mailto:dlesparza@cityofinglewood.org">dlesparza@cityofinglewood.org</a>

### ARTICLE 6 – TERM

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

### **ARTICLE 7 – INDEMNIFICATION**

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

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

# **ARTICLE 8 – DEFAULT**

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

### **ARTICLE 9 – REMEDIES**

1. In the event of a default by SBCCOG (as defined in Section 8), the City shall provide written notice of such default to the SBCCOG with a thirty (30) day period to cure the default. In the event SBCCOG fails to cure the default, or commit to cure the default and

commence (the same within such thirty [30] day period), to the satisfaction of the City, the following remedies shall be available to the City:

- a. The City may terminate this Agreement;
- The City may make a determination to make no further disbursements of Grant
   Program funds to SBCCOG;
- c. The City may recover from SBCCOG any Grant Program funds paid to the SBCCOG; and/or
- d. Any remedies Caltrans may have under the Grant Agreement.
- 2. Effective upon receipt of written notice of termination from the City, SBCCOG shall not undertake any new work or obligation with respect to this Agreement unless so approved by the City in writing.
- 3. Subject to the City's agreement providing prior written notice with a thirty (30) day period to cure the default, the remedies described herein are non-exclusive. The City shall have the right to enforce any and all rights and remedies herein or which may be now or hereafter available at law or in equity.

# **ARTICLE 10 – TERMINATION**

- 1. If the City terminates this Agreement without cause prior to the end of the completion of the Project, SBCCOG shall take all reasonable measures to prevent further costs to the City under this Agreement. The City shall be responsible for any reasonable and non-cancelable obligations incurred by SBCCOG in the performance of this Agreement prior to the date of the notice to terminate, but only up to the undisbursed balance of funding authorized in this Agreement.
- 2. If SBCCOG fails to complete the Project in accordance with this Agreement or the Grant Agreement, or fails to fulfill any other obligations of this Agreement prior to the termination date, SBCCOG shall be liable for immediate repayment to the City of all amounts disbursed by the City under this Agreement, plus accrued interest and any further costs related to the Project. Caltrans may, at its sole discretion, examine the extent of SBCCOG compliance and not require repayment for work partially completed. This paragraph shall not be deemed

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

## **ARTICLE 11 – AUDIT PROVISIONS**

- 1. The City, in order to fulfill its responsibility, shall have the right to conduct audits of the Project at its own expense, as needed, such as financial and compliance audits and performance audits. SBCCOG shall establish and maintain proper accounting procedures and cash management records and documents in accordance with generally accepted accounting principles ("GAAP") as applied to governmental agencies. SBCCOG shall reimburse the City for any expenditure not in compliance with the SOW or other terms and conditions of this Agreement, or other applicable requirements of the City. The City shall use the Federal Acquisition Regulations ("FAR") standards in determining the reasonableness of costs incurred. The City shall have the right to conduct a final audit using an outside auditing firm. The findings of that City audit will be final
- 2. SBCCOG shall retain all original records and documents related to the Project for a period of three (3) years after final payment.

## **ARTICLE 12 – DISPUTES**

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

# **ARTICLE 13 – COPYRIGHTS**

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

### ARTICLE 14 – OTHER TERMS AND CONDITIONS

- This Agreement, including any documents herein attached and incorporated into this agreement, the Caltrans Award Agreement, the RFP and the Proposal constitute the entire understanding between the City and SBCCOG, with respect to the subject matter herein. The Agreement shall not be amended, nor any provision or breach hereof waived, except in writing.
- SBCCOG shall expend Grant Program funds in the manner described in the SOW 2. and the Caltrans Award Agreement. Should the total dollars of a line-item included in the budge contained within the Caltrans Award Agreement need or be required to change (increased or decreased) the SBCCOG shall notify Caltrans and the City in writing for permission(s) to do so. Any subsequent revisions to the SOW, budget, or schedule will be revised by the SBCCOG and submitted to Caltrans and the City for approval. Any adjustments may not exceed the limits for the total Project Awards and Match Funds associated with the Project.
- Article titles, paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

## ARTICLE 15 - NOTICE

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

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Yvonne Horton, 23

City Clerk

24City of Inglewood

One Manchester Boulevard

Inglewood, California 90301-1750

# WITH COPY TO:

#### 27**???????**

One Manchester Boulevard Inglewood, California 90301

## SBCCOG:

Jacki Bacharach, **Executive Director** 20285 Western Avenue Suite 100 Torrance, California 90501

jacki@southbaycities.org

# **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

### ARTICLE 21 - ENTIRE AGREEMENT

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

# ARTICLE 22 – GOVERNING LAW; VENUE

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

# ARTICLE 23 – MISCELLANEOUS

- 1. The Parties waive any benefits from the principle of *contra proferentum* and interpreting ambiguities against drafters. No party shall be deemed to be the drafter of this Agreement, or of any particular provision or provisions, and no part of this Agreement shall be construed against any party on the basis that the particular party is the drafter of any part of this Agreement.
- 2. This Agreement may be executed in counterparts, and when each party hereto has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with the other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties hereto.
- 3. Article titles, paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the

1	scope of this Agreement or any provision hereof.	
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3	IN WITNESS WHEREOF, the Parties hereto have	e executed this Agreement as of the date and
4	year first above written.	
5	CITY OF INGLEWOOD	SOUTH BAY CITIES COUNCIL OF
6		GOVERNMENTS
7		A 0
8	James T. Butts, Jr.,	Jacki Bacharach,
9	Mayor	Executive Director
10		AO
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12	ATTEST:	<b>A</b>
13		
14	Yvonne Horton,	
15	City Clerk	
16		
17	APPROVED AS TO FORM:	
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19	Vonnath B. Comp	
20	Kenneth R. Campos, City Attorney	
21	N:\AGREEMENTS\South Bay Cities Council of Governments Feasibility Study Agreement 10.18.doc	c
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