

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 for the “Feasibility Study & Implementation Strategy for a South Bay Slow-Speed Network Demonstration; and

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

- 3 a. The City may terminate this Agreement;
- 4 b. The City may make a determination to make no further disbursements of Grant
5 Program funds to SBCCOG;
- 6 c. The City may recover from SBCCOG any Grant Program funds paid to the
7 SBCCOG; and/or
- 8 d. Any remedies Caltrans may have under the Grant Agreement.

9 2. Effective upon receipt of written notice of termination from the City, SBCCOG
10 shall not undertake any new work or obligation with respect to this Agreement unless so
11 approved by the City in writing.

12 3. Subject to the City's agreement providing prior written notice with a thirty (30)
13 day period to cure the default, the remedies described herein are non-exclusive. The City shall
14 have the right to enforce any and all rights and remedies herein or which may be now or
15 hereafter available at law or in equity.

16 **ARTICLE 10 – TERMINATION**

17 1. If the City terminates this Agreement without cause prior to the end of the
18 completion of the Project, SBCCOG shall take all reasonable measures to prevent further costs
19 to the City under this Agreement. The City shall be responsible for any reasonable and non-
20 cancelable obligations incurred by SBCCOG in the performance of this Agreement prior to the
21 date of the notice to terminate, but only up to the undisbursed balance of funding authorized
22 in this Agreement.

23 2. If SBCCOG fails to complete the Project in accordance with this Agreement or
24 the Grant Agreement, or fails to fulfill any other obligations of this Agreement prior to the
25 termination date, SBCCOG shall be liable for immediate repayment to the City of all amounts
26 disbursed by the City under this Agreement, plus accrued interest and any further costs related
27 to the Project. Caltrans may, at its sole discretion, examine the extent of SBCCOG compliance
28 and not require repayment for work partially completed. This paragraph shall not be deemed

1 to limit any other remedies available to the City for breach of this Agreement.

2 3. Upon termination, SBCCOG shall deliver all records and reports and other
3 deliverables required by this Agreement or the Grant Agreement up to the time of
4 termination.

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

10 **ARTICLE 11 – AUDIT PROVISIONS**

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

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

23 **ARTICLE 12 – DISPUTES**

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

26 **ARTICLE 13 – COPYRIGHTS**

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

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 14 – OTHER TERMS AND CONDITIONS

1. 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.

2. SBCCOG shall expend Grant Program funds in the manner described in the SOW and the Caltrans Award Agreement. Should the total dollars of a line-item included in the budget 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.

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 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:

CITY:
Yvonne Horton,
City Clerk
City of Inglewood
One Manchester Boulevard
Inglewood, California 90301-1750

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

WITH COPY TO:
???????
One Manchester Boulevard
Inglewood, California 90301

1 Ref# and/or MOU#
2 xxx@cityofinglewood.org

3
4 **ARTICLE 16 – PROHIBITED INTERESTS**

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

7 **ARTICLE 17 – EQUAL EMPLOYMENT**

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

12 **ARTICLE 18 – CHANGES, AMENDMENTS AND MODIFICATIONS**

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

15 **ARTICLE 19 – SEVERABILITY**

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

23 **ARTICLE 20 – WAIVER**

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

1 waiver of any of the provisions of this Agreement.

2 **ARTICLE 21 – ENTIRE AGREEMENT**

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

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

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

17 **ARTICLE 23 – MISCELLANEOUS**

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

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

27 3. Article titles, paragraph titles or captions contained herein are inserted as a
28 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.

2

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

5 **CITY OF INGLEWOOD**

**SOUTH BAY CITIES COUNCIL OF
6 GOVERNMENTS**

6

7

8

9 _____
James T. Butts, Jr.,
Mayor

_____ **Jacki Bacharach,**
Executive Director

10

11

12 **ATTEST:**

13

14

_____ **Yvonne Horton,**
City Clerk

15

16

17 **APPROVED AS TO FORM:**

18

19

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

20

21

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

22

23

24

25

26

27

28