



# CITY OF INGLEWOOD

## OFFICE OF THE CITY MANAGER



**DATE:** October 4, 2022

**TO:** Mayor and Council Members

**FROM:** Public Works Department

**SUBJECT:** Advanced Funding and Reimbursement Agreement for Caltrans Landscape Maintenance Agreement – Westside 405 with Wow Media, Inc.

**RECOMMENDATION:**

It is recommended that the Mayor and Council Members approve the proposed Advanced Funding and Reimbursement Agreement for Caltrans Landscape Maintenance Agreement – Westside 405 (Agreement) between the City of Inglewood (City) and Wow Media, Inc. (Wow).

**BACKGROUND:**

On November 3, 2015, The City of Inglewood (City) and Wow Media, Inc. (Wow) entered into a mutually beneficial Billboard Lease Agreement (Lease) for the erection of certain electronic digital displays within the City of Inglewood. Certain of these billboards are erected along La Cienega Boulevard and an I-405 Freeway perimeter fence. Wow has identified a number of trees in the 1.76 acres CALTRANS landscape area between Arbor Vitae Street and Hillcrest Boulevard, east of La Cienega Boulevard and west of the I-405 Freeway (Landscape Area), that obstruct the view of these billboards from the I-405 Freeway and, correspondingly, impair the maximization of potential and anticipated revenue generated by the billboards for the City and WOW.

To mitigate this problem, the City developed the I-405 Inglewood Gateway Landscape Project (Project) for the removal and replacement of 37 trees with new plant material, additional ground cover, mulch, and new irrigation system in the Landscape Area. CALTRANS approved the plans and specifications and issued an encroachment permit providing for the removal of the trees. Bidding for the performance of the work on the Project first went out on January 20, 2020. However, due to the COVID-19 pandemic, all bids received were rejected by the City Council on July 20, 2021. The Project was rebid and bids were open at the City Clerk's office on May 25, 2022. Staff is currently reviewing all bid proposals and will recommend the lowest responsible bidder to the City Council for approval consideration.

**DISCUSSION:**

At the request of WOW, the City has entered into the Caltrans Landscape Maintenance Agreement, as amended by Amendment No. 1, and the Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program (collectively, the "Caltrans Agreements") on the condition that WOW and the City will enter into the Agreement (which is attached hereto as Attachment No. 1), pursuant to which WOW will do the following: (i) promptly advance to the City all expenses incurred and associated with its performance of the City's

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obligations and responsibilities established in the Landscape Maintenance Agreement, as amended, including, but not limited to, the demolition, installation, and maintenance of all landscaping within the "Right of way Area" (as defined in therein); and (ii) provide the requisite public service announcements as specifically set forth in the Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program.

Both WOW and the City now desire to enter into the proposed Agreement, requiring WOW to advance all costs incurred by the City necessary for it to (A)(i) remove and replace the subject trees; and (A)(ii) perform certain on-going maintenance and landscaping work along and within the Right of Way Area as specifically illustrated and provided in those certain Landscape Architecture Plans prepared by WOW and approved by the City for the Project, more specifically referred to as the "Inglewood Gateway Landscape Project."

The City shall provide all labor and supervision necessary to bid, contract, administer and perform the installation and maintenance of the landscaping work performed in the Landscaped Area. WOW agrees to fund and/or undertake all obligations imposed by CALTRANS as set forth in Exhibit "B" of the Landscape Maintenance Agreement, as amended, and timely provide all advertising messaging time required for the Public Services Announcements described in the Cooperative Agreement for the I-405 Freeway, including, but not limited to, the Amber Alerts and Public Service Announcements as specified therein.

Pursuant to the terms of the proposed Agreement, WOW shall make an advance payment for the entire cost of the bid process and construction work to be performed with regard to the Caltrans Obligations (the Advanced Construction Expenses) no later than ten (10) days prior to the award of the contract providing for said construction work, and the City shall also receive on an annual basis from WOW, advanced payments no later than ten (10) days prior to the scheduled commencement of the annual on-going maintenance of the Inglewood Gateway Landscape Project – Westside 405 landscaped area, as required by the Landscape Maintenance Agreement, as amended (the Advanced Annual Maintenance Payment). The City shall also annually provide the bid amount establishing the cost of such maintenance work and the Advanced Annual Maintenance Cost required of WOW.

Fifty percent (50%) of all expenses incurred by WOW under this Agreement, including all exhibits, shall constitute Actual Costs (as defined in the Lease) pursuant to the terms of the Lease and may be deducted from Lessee's Gross Revenue (as defined in the Lease) beginning two (2) years after the Rent Commencement Date (as defined in the Lease) for each of the Freeway Faces (as defined in the Lease). Additionally, any and all access to advertising messaging time that WOW may be required to provide to CALTRANS pursuant to the Cooperative Agreement on the I-405 Freeway billboard faces, including, but not limited to, Amber Alerts and Public Service Announcements of any kind shall be a credit against the City's ten percent (10%) allotment of advertising messaging time as provided in the Lease. In the event that the CALTRANS advertising messaging time request exceeds the City's 10% allotment, the parties will meet and confer to address such excess advertising messaging time.



**FINANCIAL/FUNDING ISSUES AND SOURCES:**

None.

**DESCRIPTION OF ANY ATTACHMENTS:**

Attachment No. 1- Agreement

**PREPARED BY:**

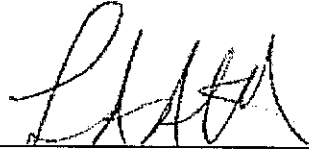
Boytrese Osias, City of Inglewood - Capital Improvement Projects Manager   
Rae Aldridge, Staff Assistant 

**COUNCIL PRESENTER:**

Louis Atwell, Assistant City Manager / Public Works Director

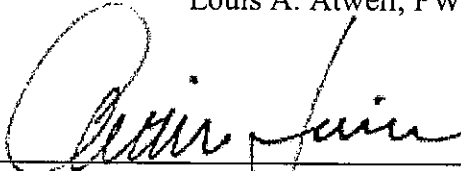
**APPROVAL VERIFICATION SHEET**

**DEPARTMENT HEAD/  
ASSISTANT CITY MANAGER APPROVAL:**



Louis A. Atwell, PW Director/Asst. City Mgr.

**CITY MANAGER APPROVAL:**



Artie Fields, City Manager

# **ATTACHMENT NO. 1**

RECORDING REQUESTED BY  
AND WHEN RECORDED  
RETURN TO:

City of Inglewood  
One Manchester Blvd.  
Los Angeles, CA 90312  
Attn: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt From Recording Fee Pursuant to Government Code § 6103 & 27383

**ADVANCED FUNDING AND REIMBURSEMENT AGREEMENT  
FOR CALTRANS LANDSCAPE MAINTENANCE AGREEMENT – WESTSIDE 405**

This Advanced Funding and Reimbursement Agreement ("Agreement") is made and entered into this \_\_\_\_ day of October \_\_\_\_, 2022, by and between the City of Inglewood, a California municipal corporation and charter city ("City") and WOW Media, Inc., a California corporation ("WOW"). The parties may, from time to time, be referenced individually as "Party," and collectively as "Parties".

**RECITALS**

WHEREAS, the Parties entered into that certain mutually beneficial Billboard Lease Agreement dated, November 3, 2015 and referred to as No. 16-035, as amended, for the erection of certain electronic digital displays ("Advertising Displays" in and about the City of Inglewood ("Lease");

WHEREAS, the Parties have a vested interest to ensure the marketability of the Advertising Displays;

WHEREAS, WOW has identified a number of trees within the State of California Department of Transportation ("Caltrans") Highway 405 Right-of-Way which create view obstructions that impair the maximization of potential and anticipated revenue for the Parties to be produced by the Advertising Displays;

WHEREAS, WOW has expressed to the City its desire and need to have certain trees removed along and within that portion of the Caltrans 405 Highway Right-of-Way from post mile mark 22.588 to post mile mark 23.330 ("Right of Way Area") which will impair the view of the Advertising Displays;

WHEREAS, Caltrans stipulates that any re-landscaping of State Rights-of-Way requires the local agency to enter into a certain standard form agreement entitled "Landscape Maintenance Agreement," attached hereto as Exhibit "B" and incorporated herein by reference, and a certain Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program, attached hereto as Exhibit "C" and incorporated herein by reference; pursuant to which, the local agency must agree to

perform certain on-going maintenance and care of replacement landscaping, and all other related obligations as set forth in both the Landscape Maintenance Agreement and the Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program;

WHEREAS, at the request of WOW, the City has entered into the Caltrans Landscape Maintenance Agreement, as amended by Amendment Number 1 to Landscape Maintenance Agreement, and the Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program (collectively, the "Caltrans Agreements") on the condition that WOW will: (i) promptly advance to the City all expenses incurred and associated with its performance of the obligations and responsibilities established in the Landscape Maintenance Agreement including, but not limited to, the demolition, installation, and maintenance of all landscaping within the Right of way Area; and (ii) provide the requisite public service announcements as specifically set forth in the Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program;

WHEREAS, pursuant to the terms and requirements of this Agreement, WOW desires to advance all costs of the City necessary for it to: (A)(i) remove and replace the subject trees; and (A)(ii) perform certain on-going maintenance and landscaping work along and within the Right of Way Area as specifically illustrated and provided in those certain Landscape Architecture Plans prepared by WOW and approved by the City (hereinafter referred to as the ("Inglewood Gateway Project – Westside 405 Plans")), attached hereto as Exhibit "A" and fully incorporated herein by this reference; (B) provide the requisite public service announcements as specifically set forth in the Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program; and (C) advance all costs to the City necessary to carry out or perform any and all additional work required by Caltrans as described in this Agreement and the Caltrans Agreement (collectively, the Caltrans Obligations");

WHEREAS, after the City entered into the Caltrans Agreements but prior to the Parties coming to a written accord as to WOW's responsibilities and obligations to the City as presently with respect to the Caltrans Agreements as established in and by this Agreement, the region was beset by the global Covid-19 pandemic ("Pandemic") requiring the suspension and delay in the performance of many social and commercial activities, including WOW's assumption and performance of the Caltrans Obligations; and

WHEREAS, the effect of the Pandemic has receded to the point that most social and commercial activities have now resumed, and the Parties now desire to enter into this Agreement to set forth and reaffirm WOW's responsibilities with respect to the Caltrans Obligations.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

## TERMS

1. Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.
2. Term. This Agreement shall become effective on the date first written above and shall remain in effect unless and until the Caltrans Agreements are terminated by Caltrans, or a default by WOW with respect to its obligations established by this Agreement and/or the Lease that is not cured within thirty (30) days following written notice from the City ("Uncured Default"). However, notwithstanding the foregoing, any rights WOW accrues under Section 4 of this Agreement shall survive any such termination provided such termination is not due to an Uncured Default. Absent an Uncured Default and except as provided Section 4.2, City agrees not to terminate the Caltrans Agreements.
3. Scope of Work. City shall provide all labor and supervision necessary to bid, contract, administer and perform the installation and maintenance of the landscaping work performed in the Landscaped Area. WOW agrees to undertake all obligations imposed by the State as set forth in Exhibit "B" of the Landscape Maintenance Agreement (including without limitation tree removal) and also timely provide all advertising time required for the Public Services Announcements described in the Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program, including, but not limited to, Amber Alerts and Public Service Announcements of any kind. City agrees that it will take all reasonable measures to abate or help facilitate the abatement of homeless encampments and destructive vagrancy within the Landscaped Area. The Public Services Announcements and Amber Alerts required to be provided hereunder shall comply with the requirements of WOW Billboard Permits OF07-3512 and OF07-3513 (i.e., the billboard location at 9111 S. La Cienega Boulevard), and WOW Bill Permits S07-3517 and SO7W-3518 (i.e., the billboard location at 9909 S. La Cienega Boulevard), as more specifically set forth in the "Digital Air Time Donation" attached to the Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program, as "Attachment I, and attached hereto as **Exhibit No. 1** and fully incorporated herein by this reference. All such Public Services Announcements and Amber Alerts messaging times (collectively, the PSA-Alerts") shall apply towards the 10% screen time WOW is obligated to provide City in the Lease.
4. Advanced Payment Schedule. The City shall receive an advance payment for the entire cost of the construction work to be performed with regard to the Caltrans Obligations from WOW (the "Advanced Construction Expenses") no later than the sooner of: (a) ten (10) days prior to the award of the contract providing for said construction work; or (b) ten (10) days after receiving the final bid amount from City. The City shall also annually (or in other intervals as referenced in Section 4.2



below) receive advanced payments no later than ten (10) days prior to the applicable payments or scheduled commencement of the annual on-going maintenance of the Inglewood Gateway Project – Westside 405 landscaped area with regard to the Caltrans Obligation (the “Advanced Annual Maintenance Payment”). In the case of Advanced Construction Expenses paid by WOW and the City elects not to proceed with the applicable bid or work, or the work is not in progress and substantially completed by June 1, 2023, City shall make a full refund of all Advanced Construction Expenses, subject to WOW making future requests as/if provided under this Agreement,

4.1 Advanced Construction Expenses. The City shall provide the final bid amount from the selected contractor to WOW within ten (10) business days of its approval of the final bid reflecting the Advanced Construction Expenses and prior to its award of the contract. The City shall require the selected contractor to provide detailed monthly progress invoices; pursuant to which, City shall review and approve only reasonable costs, in its sole discretion, and thereafter forward the invoices to WOW prior to the City’s payment of the applicable monthly progress invoice.

4.2 On-Going Annual Maintenance Expenses. The City shall use its best efforts to secure the most cost-effective bids for maintenance work, including exploring multi-year maintenance service agreements to the extent feasible and available. The City shall annually (or in the applicable renewal/termination cycle) provide the bid amount establishing the cost of such maintenance work and the Advanced Annual Maintenance Cost required of WOW. WOW shall have five (5) business days from receipt of the bid to approve or disapprove the bid amount, which approval shall not to be unreasonably withheld, delayed or conditioned; however, WOW may disapprove any bid over \$50,000 in its unfettered and sole discretion. In the event of any such WOW disapproval, and notwithstanding any contained in this Agreement to the contrary, the City shall have a right to terminate this Agreement and the Caltrans Agreements. The failure of WOW to timely approve or disapprove the bid amount shall be deemed an approval of the bid amount. Upon such approval, the amount of the requisite bid amount shall be advanced to the City by WOW pursuant to the terms of this Agreement and in accordance with the below schedule. The Advanced Annual Maintenance Payment shall be allocated and paid by the City in four quarterly payments. For purposes of this Agreement the fiscal year for the Advanced Annual Maintenance Payment shall be July 1 to June 30 with the first fiscal year subject to adjustment to reflect a partial fiscal year contract for the performance of such on-going maintenance work and a corresponding adjustment of the Advanced Annual Maintenance Payment obligation of WOW to reflect the performance of such work during a partial fiscal year. The City’s quarterly payments to the contractor during a complete fiscal year shall be June 20, September 21, December 21, and February 20. For purposes of clarity, the parties hereto acknowledge and agree that the maintenance obligations of this Agreement shall be limited to those set forth in the Landscape Maintenance Agreement, as amended.

4.3 Late Advance Payment. Any advance payment or portion thereof shall be considered late if received later than 10 days of its due date and written notice to WOW. A one-time late charge for any such delinquent amount shall be assessed in the amount of 2% of the delinquent amount and shall be due and payable in full no later than ten (10) calendar days following assessment and written notice to WOW.

4.4. WOW Reimbursement of Actual Costs. Initially capitalized terms in quotations used in this Section 4.4 shall be as defined in the Lease, as amended. Fifty percent (50%) of all expenses incurred by WOW under this Agreement, including all exhibits and including without limitation costs incurred under Section 5.2 and other reasonable and necessary third-party costs incurred in the process of complying with this Agreement, shall be a credit in WOW's favor against "Percentage Rent" due and payable to the City under the Lease in relation to the "Freeway Faces" from time to time. The credits provided in this Section 4.4 shall operate as if each credit dollar was a dollar paid to City by WOW for percentage rent. For example: in the event WOW owed Percentage Rent to City in a given period of \$1,000,000 and had, during the same period (or prior to such period and not previously credited) incurred \$600,000 in expenses under this Agreement, WOW would receive a credit against Percentage Rent due in the amount of \$300,000 and would owe the net amount of \$700,000. The full execution of this Agreement shall constitute a binding amendment and modification of the Lease, pursuant to Section 2,m,ix of the Lease.

5. Termination.

5.1 This Agreement may be terminated by the City, in its sole discretion, in the event of an Uncured Default and WOW's disapproval of an ongoing annual maintenance bid amount pursuant to Section 4.2.

5.2 However, notwithstanding anything herein to the contrary, this Agreement shall be terminated automatically upon the termination of both the Landscape Maintenance Agreement and the Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program, between the City and the State. WOW may request that City terminate its Landscape Maintenance Agreement and Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program, with the State by furnishing a written request to City no less than sixty (60) days from the desired date of termination. Upon receipt of the written request to terminate, City shall request that its Landscape Maintenance Agreement and Cooperative Agreement for the 405 Freeway Amber Alerts and Public Service Announcements Pilot Program, with the State be terminated. The Parties understand and agree that the termination of the City's Landscape Maintenance Agreement and Cooperative Agreement for the 405 Freeway

Amber Alerts and Public Service Announcements Pilot Program, with the State is subject to mutual agreement between the City and the State. Any rights WOW accrues under Section 3 of this Agreement shall survive any such termination.

- 5.3 Upon termination of this Agreement, WOW shall fund all costs required for the removal of all plants, shrubbery, and improvements from the Landscaped Area and to restore the Landscaped Area to its original or a safe operable condition at the written request of the City, or if the State directs the City to do so pursuant to the City's Landscape Maintenance Agreement with the State.

6. Miscellaneous Terms.

6.1 Entire Agreement; Assignment. This Agreement constitutes the entire agreement between the Parties.. WOW shall have the right to assign its interests under this Agreement without the consent of City; provided however, any such assignee specifically assumes in advance and in writing WOW's obligations hereunder and such assignee is comparably qualified and financially suitable to perform the obligations under this Agreement. City shall make and enter into such documents as may be necessary for such an assignment so long as there is no increase in liability to City or decrease in the obligations of the assignee resulting from the assignment. No waiver of any term or condition of this Agreement shall be deemed a continuing waiver hereof.

6.2 Amendments. Any alterations, variations, modifications, or waivers of provisions of the Agreement, unless otherwise and specifically allowed by this Agreement shall only be valid once they have been reduced to writing, duly signed and approved by authorized representatives of both parties as an amendment to this Agreement. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.

6.3 Attorneys' Fees. If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover its reasonable attorneys' fees and all other costs of such action.

6.4 Governing Law; Venue. The interpretation and enforcement of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California without regard to conflict of law principals. In the event of litigation between the Parties, venue in state trial court 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.

6.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.6 Captions. The headings or captions contained in this Agreement are for identification purposes only and shall have no effect upon the construction or interpretation of this Agreement.

6.7 Ambiguities. The Parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. No ambiguity shall be presumed to be construed against either Party.

6.8 Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address or at such other address as the respective Parties may provide in writing for this purpose:

To City:

City of Inglewood  
Attn: City Manager  
One Manchester Blvd., 9<sup>th</sup> FL  
Inglewood, CA 90312

With copies to:

Kenneth R. Campos  
City Attorney  
One Manchester Blvd., 9<sup>th</sup> FL  
Inglewood, CA 90312

Royce K. Jones  
Kane, Ballmer & Berkman  
515 S. Figueroa Street, Suite 780  
Los Angeles, CA 90071

To WOW:

Scott Krantz  
WOW Media, Inc.  
18375 Ventura Blvd., #112  
Tarzana, CA 91356

With copy to:

Anthony Dimonte, Esq.  
Polsinelli LLP  
2049 Century Park East, Suite 2900  
Los Angeles, CA 90067

6.9 Successors and Assigns. This Agreement shall be binding on successors and assigns of the Parties.

**[Signatures on following page.]**

IN WITNESS WHEREOF, the Parties executed this Agreement as of the effective date.

**CITY OF INGLEWOOD**

**WOW MEDIA, INC.**

By: \_\_\_\_\_  
James T. Butts, Jr.  
Mayor

By: \_\_\_\_\_  
Scott Krantz  
C.E.O.

**APPROVED AS TO FORM:**

**APPROVED:**

By: \_\_\_\_\_  
Kenneth R. Campos  
City Attorney

By: \_\_\_\_\_  
Royce K. Jones  
Kane, Ballmer & Berkman  
City Special Counsel

**ATTEST:**

By: \_\_\_\_\_  
Aisha L. Thompson  
City Clerk

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

# EXHIBIT NO. 1

## ATTACHMENT I Digital AirTime Donation

The CITY shall provide to CALTRANS air time on its MESSAGE CENTER identification numbers WOW101N and WOW102S (Permit OF07-3512 & OF07-3513) and Static Billboard WOW103N & WOW104S (Permit S07-3517 & S07-3518) for Amber Alerts and Public Service Announcements as follows:

<b>MESSAGE CENTER Billboard at 9111 S. La Cienega Blvd.</b>	<b>Static Billboard at 9909 S. La Cienega Blvd.</b>
WOW101N – 32 seconds every hour	WOW103N – 2 minutes every 4 hours
WOW102S – 32 seconds every hour	WOW104S – 2 minutes every 4 hours