



CITY OF INGLEWOOD

OFFICE OF THE CITY MANAGER



DATE: May 2, 2023

TO: Mayor and Council Members

FROM: Finance Department

SUBJECT: Ordinance No. 23-11 - Section 2-196.1 of Article 5 of Chapter 2 (Purchasing) of the Inglewood Municipal Code

RECOMMENDATION:

It is recommended that the Mayor and Council Members adopt Ordinance No. 23-11, amending Section 2-196.1, Inglewood Transit Connector Procurements, of Article 5 of Chapter 2 (Purchasing) of the Inglewood Municipal Code.

BACKGROUND:

The Inglewood Transit Connector (“ITC”) Project is a 1.6 mile, fully elevated and automated dual-lane transit system that will connect the LA Metro K line with three new transit stations in the City of Inglewood (“City”). The ITC Project will significantly increase transit connectivity, reduce traffic congestion, and increase economic prosperity for the City.

The City and the preferred proposer to be selected through the ongoing procurement process will enter into a design-build-finance-operate-maintain agreement (“DBFOM Agreement”) in connection with the ITC Project. The DBFOM Agreement will contain the City’s and developer’s rights, interest and obligations in connection with the ITC Project, and some of such terms and conditions may potentially conflict with California state (“State”) laws in the Public Contract Code. This proposed amendment to Section 2-196.1 of Article 5 of Chapter 2 (Purchasing) of the Municipal Code will resolve these potential conflicts.

DISCUSSION:

The ITC Project team has identified certain contractual terms and conditions contained in the DBFOM Agreement that are considered to be in the best interests of the City and the ITC Project but potentially conflict with the following State laws:

Public Contract Code	Requirement/Limitation
§4100 <u>et seq.</u>	Requires public agency to specify in the solicitation that proposers must list each subcontractor and detail the work to be completed by each subcontractor
§7107	Requires retainage to be released within 60 days after completion and imposes 2% penalty for improper withholding; requires contractor to pay retention from subcontractors within 7 days of receipt of retention from owner

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§9203	Requires withholding at least 5% from progress payments until 50% completion
§20104.50(b)	Imposes a legal rate of 10% interest on late payments
§20104.50(c)	Requires the owner to review payment requests no later than 7 days of receipt and pay undisputed amount of payment requests within 30 days of receipt
§22300	Allows substitution of securities for retention and payment of retention into escrow

A reason these conflicts arise is that these State laws are not entirely compatible with the method of alternative project delivery, payment, and financing contemplated in the DBFOM Agreement.

The City is a charter city within the meaning of Article XI, §5 of the California Constitution. Article XI, §5 provides that through a city charter, a city may “make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters.” The City charters adopted pursuant to Article XI, §5 supersede any existing charter, and with respect to municipal affairs supersede all laws inconsistent with such City charters. In addition, Public Contract Code section 1100.7 states: “With regard to charter cities, this code applies in the absence of an express exemption or a city charter provision or ordinance that conflicts with the relevant provision of this code.”

Accordingly, the City’s ordinances in the realm of its municipal affairs, such as the ITC Project, prevail over conflicting State laws and, in particular, conflicting provisions in the Public Contract Code. The specific State laws that potentially conflict with intended provisions of the City’s procurement documents for the ITC Project are all in the Public Contract Code.

At its meeting on March 21, 2023, the City Council set the public hearing for April 25, 2023, to consider introduction of the attached ordinance. In order for the City to ensure validity and enforceability of the conflicting terms and conditions, the City must pass and adopt updates to Article 5 of Chapter 2 (Purchasing) of the Municipal Code, as reflected in the attached Ordinance.

On April 25, 2023, the City Council conducted a public hearing on the matter and Ordinance No. 23-11 was introduced.

FINANCIAL/FUNDING ISSUES AND SOURCES:

There are no Financial /Funding issues related to the adoption of Ordinance.

DESCRIPTION OF ATTACHMENTS:

Attachment No. 1 – Ordinance No. 23-11

PREPARED BY:

Bianca Plascencia, Procurement and Contract Services Manager *BP*

COUNCIL PRESENTER:

Bianca Plascencia, Procurement and Contract Services Manager

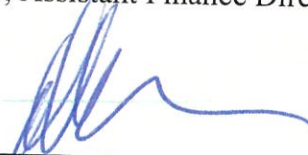
APPROVAL VERIFICATION SHEET

DEPARTMENT HEAD APPROVAL:



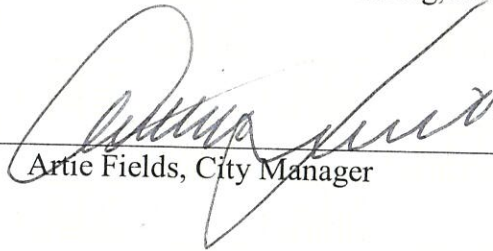
Sharon Koike, Assistant Finance Director

ASSISTANT CITY MANAGER APPROVAL:



Mark F. Weinberg, Assistant City Manager

CITY MANAGER APPROVAL:



Artie Fields, City Manager

ATTACHMENT NO. 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
INGLEWOOD, CALIFORNIA, AMENDING SECTION 2-196.1,
INGLEWOOD TRANSIT CONNECTOR PROCUREMENTS, OF
ARTICLE 5 OF CHAPTER 2 (PURCHASING) OF THE
INGLEWOOD MUNICIPAL CODE.

WHEREAS, the Inglewood Transit Connector (“ITC”) Project is a 1.6 mile, fully elevated and automated dual-lane transit system that will connect the LA Metro K line with three new transit stations in the City of Inglewood (“City”); and

WHEREAS, the ITC Project will significantly increase transit connectivity, reduce traffic congestion, and increase economic prosperity for the City; and

WHEREAS, the City and the preferred proposer to be selected through the ongoing procurement process will enter into a design-build-finance-operate-maintain agreement (“DBFOM Agreement”) in connection with the ITC Project; and

WHEREAS, the DBFOM Agreement will contain the City’s and developer’s rights, interest and obligations in connection with the ITC Project, and some of such terms and conditions may potentially conflict with California state laws in the Public Contract Code; and

WHEREAS, this proposed amendment to Section 2-196.1 of Article 5 of Chapter 2 (Purchasing) of the Inglewood Municipal Code will resolve these potential conflicts; and

WHEREAS, on April 13, 2021, the Inglewood City Council adopted ordinance No. 21-07 which added Section 2-196.1, Inglewood Transit Connector Procurements, to Chapter 2 (Administration), Article 5 (Purchasing) which authorize the use of alternative project delivery methods and establish certain requirements for procurements and contracts related to the proposed Inglewood Transit Connector Project; and

WHEREAS, on March 21, 2023, the City Council scheduled a public hearing for amending Section 2-196.1, Article 5 of Chapter 2 of the Inglewood Municipal Code; and

WHEREAS, notice of the time and place of the hearing was given as required by law; and

1 **WHEREAS**, on April 25, 2023, the ordinance was introduced and a public hearing held
2 where the City Council afforded all persons interested in the matter of the proposed
3 amendment to the Inglewood Municipal Code, or in any matter or subject related thereto, an
4 opportunity to address the City Council and be heard and to submit any testimony or evidence
5 in favor or against the proposed Code amendment; and

6 **WHEREAS**, after taking public testimony and considering the issues, the City Council
7 determined that certain changes specified herein, should be made to the text of Section 2-
8 196.1, Article 5 of Chapter 2 of the Inglewood Municipal Code.

9 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INGLEWOOD, CALIFORNIA,**
10 **DOES ORDAIN AS FOLLOWS:**

11 **SECTION 1.**

12 Section 2-196.1(b)(12) is hereby added to Article 5 of Chapter 2 of the Inglewood
13 Municipal Code to read as follows:

14 (12) The City may allow the proposers to submit subcontractor information and details
15 of work to be subcontracted after contract execution.

16 **SECTION 2.**

17 Section 2-196.1(b)(13) is hereby added to Article 5 of Chapter 2 of the Inglewood
18 Municipal Code to read as follows:

19 (13) The City may allow the proposers to propose and arrange more than one
20 subcontractor for each portion of subcontracted work.

21 **SECTION 3.**

22 Section 2-196.1(c)(13) is hereby added to Article 5 of Chapter 2 of the Inglewood
23 Municipal Code to read as follows:

24 (13) Provisions specifying no withholdings and retainages or specifying withholding and
25 retainages in amounts, percentages and frequency the City deems appropriate, and the terms
26 and timing of release.

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1 **SECTION 4.**

2 Section 2-196.1(c)(14) is hereby added to Article 5 of Chapter 2 of the Inglewood
3 Municipal Code to read as follows:

4 (14) Provisions specifying the terms and timing for making payments to the contract.

5 **SECTION 5.**

6 Section 2-196.1(c)(15) is hereby added to Article 5 of Chapter 2 of the Inglewood
7 Municipal Code to read as follows:

8 (15) Provisions specifying the rate of interest on late payment to the contractor.

9 **SECTION 6.**

10 Section 2-196.1(c)(16) is hereby added to Article 5 of Chapter 2 of the Inglewood
11 Municipal Code to read as follows:

12 (16) Provisions allowing or precluding securities as substitution for retention or
13 payment of retention into an escrow.

14 **SECTION 7.**

15 The City Clerk shall certify to the passage and adoption of this ordinance and to its
16 approval by the City Council and shall cause the same to be published in accordance with the
17 City Charter and thirty days from the final passage and adoption, this ordinance shall be in full
18 force and effect.

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Introduced at a regular meeting of the Inglewood City Council, this 25th day of April, 2023.

Passed and Adopted at a regular meeting of the Inglewood City Council, this 2nd day of May, 2023.

APPROVED:

James T. Butts, Jr.,
Mayor

ATTEST:

Aisha L. Thompson,
City Clerk

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