DATE:       May 9, 2023
TO:         Mayor and Council Members
FROM:       Public Works Department
SUBJECT:    Stipend Agreement for Inglewood Transit Connector Project

RECOMMENDATION:
It is recommended that the Mayor and Council Members take the following actions:

1. Execute the Stipend Agreements for the Inglewood Transit Connector (ITC) Project, which authorizes payment of up to $3,000,000 to each eligible proposer; and
2. Adopt a resolution amending the Fiscal Year 2022-2023 Budget.

BACKGROUND:
On December 6, 2021, the City of Inglewood (City) issued a request for qualifications for design-build-finance-operate-maintain (DBFOM) services for the ITC Project. On December 6, 2021, the City also issued a request for qualifications (RFQ) for transit technology suppliers for the Project. On May 17, 2022, based on its evaluation of all statements of qualifications received in response to the DBFOM RFQ, the City shortlisted three Proposer teams to participate in the City’s procurement process for the ITC Project, which have since partnered with eligible transit technology suppliers.

On November 22, 2022, the Mayor and Council Members authorized stipends with each bidder, in an amount not to exceed $2.5 million per proposer and $7.5 million collectively. Based on an updated analysis of comparable projects and the unique nature of this procurement in the context of the newly formed Inglewood Transit Connector Joint Powers Authority, staff recommends increasing the stipend so that each proposer would be eligible to receive up to $3 million.

DISCUSSION:
Stipends are used to enhance competition among the design-build teams; help defray a portion of costly proposal development incurred by the teams; signal the intent that owner is serious about carrying the project forward; and encourage proposers to expend the time, money, and resources to provide a more creative and comprehensive solution. The Federal Office of Management and Budget Circular No. A-11 (2006) encourages the use of stipends for these reasons. The Los Angeles Metropolitan Transportation Authority (LA Metro) has routinely issued stipends for major capital projects design-build contracts to be paid to each unsuccessful responsive proposer, including but not limited to the Crenshaw/LAX Project, the Regional Connector Project, and the various segments of the Westside Purple Line Extension Project.
A stipend is proposed to compensate the non-winning teams in exchange for the City inheriting the team’s work product and intellectual property associated with the ITC Project. All teams would also be compensated in the event that the procurement was canceled.

Subject to the terms of the proposed Stipend Agreement, if the procurement process is completed, the Maximum Stipend Amount stipulated below would be paid to the non-winning Proposers in exchange for their Work Product and Transferred Intellectual Property. If the City cancels the procurement, the City will pay the Proposer teams the lesser of the Maximum Stipend Amount described below or the total amount of the actual, reasonable, and documented out-of-pocket development costs incurred and paid by the Proposers or its members.

<table>
<thead>
<tr>
<th>Procurement Cancellation Date</th>
<th>Maximum Stipend Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before the first round of Alternative Technical Concepts (AltTC) Meetings (based on the date provided in Section 2.4 of the ITP).</td>
<td>$0</td>
</tr>
<tr>
<td>On or after the first round of AltTC Meetings (which occurred Oct. 19 &amp; 20, 2022), but prior to 60 days before the Technical Proposal Due Date</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>On or after the date that is 60 days before the Technical Proposal Due Date, but prior to the date that is 30 days before the Technical Proposal Due Date</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>On or after the date that is 30 days before the Technical Proposal Due Date (including any cancellation after selection of the Best Value Proposer and prior to Commercial Close)</td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>

While there is no hard rule for setting the value of stipend payments on public-private partnerships, the amounts proposed above align with industry practices, including stipends previously established by LA Metro and the Los Angeles World Airports.

Based on an updated analysis of comparable projects and the unique nature of this procurement in the context of the newly formed Inglewood Transit Connector Joint Powers Authority, staff recommends increasing the stipend so that each proposer is eligible to receive up to $3 million. LA Metro and ITC JPA leadership have been consulted and support this proposed increase.

Staff has determined that the stipend is an eligible expense under the City’s Measure R Funding Agreement (No. 9200000000MRINGITC) and Transit and Intercity Rail Capital Grants (Master Agreement No: 64InglewoodMA), which are currently being used to fund the ITC Project.

FINANCIAL/FUNDING ISSUES AND SOURCES:
Upon approval of the budget amendment, funds for this expenditure will be available in the Fiscal Year 2022-23 Budget in the maximum amount of $9,000,000 to be reimbursed from the Measure R Grant to Account Code No. 074.100.P673.44860 (Measure R Grant Reimbursement Fund-Capital Improvement Project-ITC Project-Contract Services).
DESCRIPTION OF ANY ATTACHMENTS:
Attachment No. 1 - Resolution
Attachment No. 2 - Signed Inglewood Transit Connector Project Stipend Agreement (3)

PREPARED BY:
Louis Atwell, Assistant City Manager & Public Works Director

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
RESOLUTION NO. ______

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
INGLEWOOD, CALIFORNIA, AMENDING THE FISCAL YEAR
2022-23 BUDGET

WHEREAS, on September 27, 2022, the Inglewood City Council adopted the Fiscal Year (FY) 2022-2023 Budget; and

WHEREAS, it is an industry best practice to provide a stipend to Proposer teams to cover a portion of costs expended on requests for proposals for Design-Build-Finance-Operate-Maintain (DBFOM) infrastructure and transit projects; and

WHEREAS, the City of Inglewood desires to compensate the non-winning teams in exchange for City ownership of the team’s work product and intellectual property associated with the Inglewood Transit Connector Project; and

WHEREAS, the City of Inglewood desires to compensate all teams in the event that the procurement process is cancelled prior to contract award; and

WHEREAS, currently there is $7,500,000 budgeted for the DBFOM stipends; and

WHEREAS, the FY 2022-2023 Budget needs to be amended to include an additional $1,500,000 in funding for payment of such stipends; and

WHEREAS, funds are available in the Measure R Reimbursable Grant and the Transit and InterCity Rail Capital Grant.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF INGLEWOOD DOES

HEREBY RESOLVE AS FOLLOWS:

Section 1. The FY 2022-2023 Budget is hereby amended to reflect the adjustments shown in Exhibit “A”, attached hereto and incorporated herein by reference.

Section 2. The City Clerk shall certify to the adoption of this resolution and the same shall be in full force and effect immediately upon adoption.

///

///
PASSED, APPROVED, AND ADOPTED this ___ day of ___ 2023.

CITY OF INGLEWOOD:

__________________________________________
James T. Butts Jr.,
Mayor

ATTEST:

__________________________________________
Aisha L. Thompson,
City Clerk
EXHIBIT “A”
EXHIBIT “A”
BUDGET AMENDMENT

<table>
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<tr>
<th>Revenue Code</th>
<th>Revenue Source</th>
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<th>Amended Budget</th>
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<td></td>
</tr>
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</table>

TOTAL $1,500,000
Attachment No. 2
Exhibit 1
CITY OF INGLEWOOD
Inglewood Transit Connector Project

STIPEND AGREEMENT

THIS STIPEND AGREEMENT FOR THE INGLEWOOD TRANSIT CONNECTOR PROJECT, dated [this]
[ “Stipend Agreement”] is made by and between the City of Inglewood (“City”) and Elevate Ingle
[and]
[“Proposer”), with reference to the following facts:

A. On December 6, 2021, City issued a request for qualifications for design-build-finance-operate-
maintain (DBFOM) services (as amended, the “DBFOM RFQ”) for the Inglewood Transit Connector
Project (the “Project”).

B. On December 6, 2021, City also issued a request for qualifications for transit technology eligibility
(as amended, the “TTE RFQ”) for the Project.

C. On May 17, 2022, based on its evaluation of all statements of qualifications received in response
to the DBFOM RFQ, City shortlisted three Proposer teams to participate in City’s procurement
process for the Project (“Procurement Process”).

D. On May 17, 2022, based on its evaluation of all eligibility determination requests received in
response to the TTE RFQ, City prequalified six transit technology suppliers to participate in the
Procurement Process.

E. The shortlisted DBFOM teams thereafter formed or will form, with City’s approval, integrated
proposer teams with prequalified transit technology suppliers.

F. City has issued or will issue a draft Request for Proposals for the Project (as amended, the “RFP”),
which includes or will include draft Instructions to Proposers (the “ITP”).

G. Proposer is one of the integrated proposer teams eligible to submit a Proposal for the Project.

H. As a condition to the Proposer’s eligibility to receive a stipend with respect to the RFP, Proposer
is required to execute and deliver to City a Stipend Agreement by not later than December 19,
2022.

NOW, THEREFORE, City and the Proposer hereby agree as follows:

Section 1. DEFINITIONS

1.1 Capitalized terms used but not otherwise defined in this Stipend Agreement shall have the meanings
ascribed in the ITP.

1.2 The following terms have the following meanings.

“ATS Operating System Foreground Intellectual Property” means all Intellectual Property embodied in
the ATS Operating System authored, created, invented, or first put into practice for the purposes of
Proposer’s Proposal or during the Procurement Process.

“Background Intellectual Property” means all Intellectual Property authored, created, invented, or first
put into practice prior to, independent of, and not for the purposes of Proposer’s Proposal or the Procurement Process.

“Background Work Product” means all material and items as described in the definition of Work Product that, rather than generated or developed in connection with Proposer’s Proposal or the Procurement Process, are authored, created, invented, or first put into practice prior to, independent of, and not for the purposes of Proposer’s Proposal or the Procurement Process.

“Commercially Available Off-the-Shelf Software (COTS)” means Software that is (a) sold in substantial quantities, (b) readily available to the City without Proposer or third party participation, (c) provided without modification in the same form in which it is sold in the commercial marketplace, and (d) for which there are at least two readily available alternative solutions or items with the same or substantially similar design, use or function as the proposed COTS. For the avoidance of doubt, COTS does not include so-called open source software or sole-source software.

“Indemnified Parties” means the JPA, City, any and all of JPA’s Boards and City’s Boards, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

“Intellectual Property” means all current and future legal and/or equitable rights and interests in know-how (including processes, methodologies, trade secrets and confidential business information which have been recorded in or on any media), patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade dress, trade secrets, trade secret rights, designs (registered and unregistered), other design rights, logos, utility models, database rights, software, business methods, circuit layouts, plant varieties, business and domain names (including fictitious business names), inventions (patentable or not), solutions embodied in technology, other intellectual activity, and all analogous rights in other jurisdictions and applications (drafted or pending), and applications of or for any of the foregoing, subsisting in or incorporated into the Work Product.

“Third Party” means, when capitalized, any individual, public entity, or private entity, other than the Indemnified Parties, except that a “Third Party” includes any Indemnified Party’s employee, agent, or contractor who asserts a claim that is: (i) against an Indemnified Party; (ii) within the scope of the indemnities; and (iii) not covered by the Indemnified Party’s worker’s compensation program.

“Transferred Intellectual Property” means Intellectual Property which is authored, created, invented, or first put into practice for the purposes of Proposer’s Proposal or during the Procurement Process, except Background Intellectual Property and ATS Operating System Foreground Intellectual Property.

“Work Product” means, collectively, all work product (including all written and electronic material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, studies, surveys, plans, specifications, exhibits, photographs, information, documents, data, and other graphic and visual aids) generated or developed by or on behalf of Proposer or any of its team members during the Procurement Process in connection with the Project, including Alternative Technical Concepts (AltTCs), aesthetic design concepts, interim design submittals, and all other items generated or developed in any medium, media, or format by or on behalf of Proposer in connection with Proposer’s Proposal, and including data and information gathered and reports prepared from any surveys or site investigations by or on behalf of Proposer. “Work Product” excludes Intellectual Property subsisting in or incorporated into any of the foregoing.

Section 2. OWNERSHIP AND TRANSFER OF WORK PRODUCT
2.1 Except for Background Work Product, Proposer agrees that all Work Product, whether it includes Intellectual Property or not, is deemed to be owned by City and will not be returned to Proposer.

2.2 In consideration for City's payment to Proposer pursuant to this Stipend Agreement, Proposer grants to City all rights, title, and interest in and to the Transferred Intellectual Property, free of all intellectual property rights and claims, without further action on City's part, and without restriction or limitation on their use, exploitation, exercise of rights, or transferability.

2.3 City grants to Proposer and members of Proposer's team an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license, without incremental charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Work Product and Transferred Intellectual Property.

2.4 Except as provided below and subject to Proposer's receipt of the stipend provided by this Stipend Agreement, Proposer grants to City an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license, without incremental charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property solely in connection with the Project. This right and license shall not cover:

(a) Proposer's or any Proposer team member's name, logo, and other branding elements;

(b) any Background Intellectual Property or Background Work Product related to the ATS Operating System; or

(c) Background Intellectual Property or ATS Operating System Foreground Intellectual Property that is Commercially Available Off-the-Shelf Software.

The license terms shall survive expiration or earlier termination of this Stipend Agreement.

2.5 If City cancels the procurement prior to the submission of the Technical Proposal by Proposer, all Work Product and Transferred Intellectual Property developed by Proposer at any time through the cancellation date will become property of and owned by City and shall be promptly submitted to City as a condition precedent to payment under this Stipend Agreement.

2.6 Proposer agrees that the Work Product and Transferred Intellectual Property have been specially ordered and commissioned by City, and that Transferred Intellectual Property shall be considered "work-made-for-hire," as that term is defined in Section 101 of Title 17 of the U.S. Code ("Copyright Law"). To the extent that the Transferred Intellectual Property is determined by a court of competent jurisdiction, or the U.S. Copyright Office, not to be work-made-for-hire, Proposer hereby agrees to assign to City all right, title, and interest in and to all Transferred Intellectual Property. Neither Proposer nor any of its team members shall claim, retain, apply for, and/or register any U.S. or international Intellectual Property rights in the Transferred Intellectual Property including copyright or patent rights.

2.7 Proposer agrees that City shall be entitled to use, exploit, and exercise all rights in the Transferred Intellectual Property and Work Product, Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property, in whole or in part, to the extent described in this Stipend Agreement (subject to Section 2.4 regarding Background Intellectual Property, Background Work Product and ATS Operating System Foreground
Intellectual Property). Starting after City’s issuance of the Selection Notice, City will have the right to inform the Best Value Proposer regarding the contents of Proposer’s Work Product and Transferred Intellectual Property as well as the Background Work Product, Background Intellectual Property and ATS Operating System Foreground Intellectual Property covered by City’s right and license, and incorporate such Work Product, Transferred Intellectual Property, Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property or concepts based thereon into the Agreement; provided such Best Value Proposer agrees to use such Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property solely for the Project and for no other purpose, and further agrees to keep such Background Intellectual Property, Background Work Product, ATS Operating System Foreground Intellectual Property confidential and not to disclose it to third parties except as otherwise required in connection with the Project.

2.8 Use of the Work Product under this Stipend Agreement, whether in connection with the Project or otherwise, and use of the Background Work Product in connection with the Project, by City or any other person or entity acting through or on behalf of City is at City’s and such other person’s or entity’s sole risk and discretion, and shall in no way be deemed to confer liability on Proposer. Further, Proposer makes no warranties, express or implied, as to the conduct, completeness, success or particular results of the Work Product or Background Work Product, or the condition, merchantability, or fitness for a particular purpose of the Work Product or Background Work Product.

Section 3. COMPENSATION AND PAYMENT

3.1 By executing this Stipend Agreement, Proposer has irrevocably elected to accept, as full compensation for the rights, titles, interests and licenses granted to City under this Stipend Agreement, payment of a stipend subject to the terms hereof.

3.2 Proposer shall not be entitled to reimbursement for any of its costs in connection with participating in the Procurement Process or responding to the RFP, except as specified in this Stipend Agreement.

3.3 Subject to the terms of this Section 2 and the RFP, City agrees to pay Proposer for the rights, titles, interests and licenses granted to City under this Stipend Agreement a lump sum stipend equal to the following:

(a) if the procurement is cancelled prior to the Technical Proposal Due Date, the lesser of:
   (i) the Maximum Stipend Amount stipulated in Section 3.4; and
   (ii) the full amount of the actual, reasonable and documented out-of-pocket development costs actually incurred and paid by Proposer or its Members with respect to preparing Proposer’s Technical Proposal (which costs City acknowledges are a reasonable measure of the value of the Work Product received), provided that costs paid by Proposer or its Members (A) may include payments to an affiliate of the Proposer or any of its Members, as the case may be, and the term “affiliate” shall mean any entity which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the Proposer or any of its Members, and (B) may not include costs incurred or paid with respect to Background Work Product or
Background Intellectual Property; or

(b) if the procurement is not cancelled prior to the Technical Proposal Due Date, the Maximum Stipend Amount stipulated in Section 3.4.

3.4 The Maximum Stipend Amount is $3,000,000, provided that, if City cancels the procurement, then the Maximum Stipend Amount shall be deemed to equal whichever of the following is applicable:

<table>
<thead>
<tr>
<th>Procurement Cancellation Date</th>
<th>Maximum Stipend Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to the first round of AltTC Meetings (based on the October 19/20, 2022 dates provided in Section 2.4 of the ITP).</td>
<td>$0</td>
</tr>
<tr>
<td>On or after the first round of AltTC Meetings, but prior to 60 days before the Technical Proposal Due Date</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>On or after the date that is 60 days before the Technical Proposal Due Date, but prior to the date that is 30 days before the Technical Proposal Due Date</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>On or after the date that is 30 days before the Technical Proposal Due Date (including any cancellation after selection of the Best Value Proposer and prior to Commercial Close)</td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>

3.5 Cancellation of the procurement will be deemed to occur only if City issues notice of cancellation to Proposer.

3.6 As a condition to Proposer’s entitlement to this stipend, Proposer shall deliver to City all Work Product, including all of Proposer’s AltTCs. City shall be under no obligation to make this payment if Proposer withholding Work Product that is not otherwise exempt from submittal under this Stipend Agreement or the RFP.

3.7 City will make payment within 30 days after City receives the following within the applicable time frame set forth in Section 3.8:

(a) a proper invoice, in the form of Attachment 1 to the Stipend Agreement;

(b) if Section 3.3(a) applies, supporting documentation of Proposer’s claimed costs;

(c) an executed Stipend Agreement Certification, in the form of Attachment 2 to the Stipend Agreement; and

(d) the Work Product, including all AltTCs.

3.8 Proposer may submit the materials identified in Section 3.7 only within the following applicable time frames:

(a) If City cancels the procurement prior to or following the Technical Proposal Due Date, then no earlier than the date of notice of cancellation and no later than 120 days after the date of the notice of cancellation; or
(b) If City does not cancel the procurement, then no earlier than the date City notifies Proposer of Commercial Close or 120 days after City issues the Selection Notice, whichever occurs first, and no later than 120 days thereafter.

3.9 If City withholds payment on grounds that Proposer’s submission is incomplete or erroneous, City shall provide notice to Proposer identifying the incomplete or erroneous materials and provide Proposer at least ten days grace period from the date of notice to deliver the required materials.

Section 4. ELIGIBILITY

Notwithstanding the foregoing, no stipend shall be payable to Proposer in any of the following circumstances:

4.1 If Proposer withdraws from the Procurement Process at any time prior to the Financial Proposal Due Date or fails to submit a Technical Proposal or Financial Proposal, unless due to City’s cancellation of the Procurement Process;

4.2 If Proposer effectively withdraws from the Procurement Process by ceasing to actively engage in the Procurement Process prior to cancellation of the procurement;

4.3 If Proposer’s Technical Proposal is submitted after the Technical Proposal Due Date or is submitted by the Technical Proposal Due Date but determined by City in its good faith discretion to be non-responsive pursuant to the ITP and/or to not achieve a passing score on any of the pass/fail criteria in the ITP;

4.4 If Proposer’s Financial Proposal is submitted after the Financial Proposal Due Date or is submitted by the Financial Proposal Due Date but determined by City in its good faith discretion to be non-responsive pursuant to the ITP and/or to not achieve a passing score on any of the pass/fail criteria in the ITP, provided that a Price Proposal that exceeds one or more affordability limits stated in the ITP shall not in itself bar entitlement to payment of the stipend;

4.5 If Proposer has not fully complied with the terms and conditions of the RFP, including any circumstance that under the terms and conditions of the RFP entitles City to draw on Proposer’s Proposal Security;

4.6 If Proposer has not fully complied with the terms and conditions set forth in this Stipend Agreement, including delivery to City of the materials identified in Section 3.7;

4.7 If Proposer has filed a protest of any aspect of the Procurement Process, including any protest of rankings, award, or cancellation of the procurement; or

4.8 If Proposer is selected as the Best Value Proposer and:

(a) City proceeds with award as described in the RFP; or

(b) Proposer refuses or is unable to perform all of the acts or furnish all of the documents required from Developer for Commercial Close as provided in the ITP by the Developer Commercial Close Deadline, or should refuse or be unable to enter into the Agreement for any reason (including failure to negotiate in good faith), unless such failure is directly attributable to: (i) City’s cancellation of the procurement or decision not to execute the
Agreement with Proposer; or (ii) City’s failure to provide any deliverable City is required to deliver to Proposer or satisfy any other condition to Commercial Close, where such failure is not caused in whole or part by the acts, omissions, negligence, fault, recklessness, or willful misconduct of Proposer.

Section 5. INDEMNITIES; DISCLAIMERS

5.1 Proposer agrees that it will indemnify, defend, protect, and hold harmless the Indemnified Parties from any claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including attorneys’ fees and costs) asserted, incurred, suffered, or awarded as a result of or that relate to any Third Party demands, suits, actions, allegations, or proceedings to the extent arising out of or caused by any acts, actions, negligence, omissions, fault, willful misconduct, violation of law, or breach of this Agreement by Proposer, its Equity Members, Major Participants, any other Members, or their respective agents, employees, or representatives arising out of or relating to the Work Product or Transferred Intellectual Property, whether direct or indirect. The foregoing indemnity shall expressly apply to and include all Third Party claims, suits, actions, or allegations of infringement, confidential information, domestic or foreign patent rights, copyrights, intellectual property rights, moral rights, trade secrets, proprietary rights, licensing rights, and unauthorized use. Notwithstanding the foregoing:

(a) the indemnity is subject to, and limited by, Section 2.8;

(b) the indemnity shall not extend to any liability attributable to modifications or updates to the Work Product; and

(c) Proposer shall not be liable for damages arising out of injury or damage to persons or property to the extent directly caused by or resulting from the active negligence, willful misconduct, violation of law, or breach of this Stipend Agreement by any of the Indemnified Parties or any Third Parties.

5.2 Proposer’s obligation to indemnify, defend, protect, and pay for the defense or, at any Indemnified Party’s option, to participate and associate with the Indemnified Party in defense of any claim and any related settlement negotiations, shall be triggered by (a) tender of payment of the stipend to Proposer and (b) the Indemnified Party’s notice of claim for indemnification to Proposer. Except to the extent that California Civil Code section 2782.8 may apply and provide otherwise, if a final and non-appealable order or judgment specifically finds that injury or damage to a Third Party or its property was caused in part by or in part resulted from the negligence, willful misconduct or violation of law of any of the Indemnified Parties, then Proposer’s liability shall be limited to the portion of the injury or damage not caused by such negligence, willful misconduct or violation of law. Proposer shall pay all reasonable costs and fees related to this obligation and its enforcement by any Indemnified Party.

Section 6. WAIVER OF CONSEQUENTIAL AND INDIRECT DAMAGES

In no event shall City or Proposer be liable to one another under this Stipend Agreement, whether by way of breach of statutory duty, contract, tort, or under any other legal theory for any lost profits, loss of use, cost of capital, loss of goodwill, lost revenues, loss of profit, loss of contracts, or special, exemplary, indirect, or consequential losses or damages, even if such party has been advised of the possibility of such damages, and each party hereby releases the other from any such liability; provided that this waiver of liability does not extend to any liability to a Third Party for which Indemnified Parties are entitled to
indemnification under Section 5.

Section 7. ASSIGNMENT

7.1 Proposer shall not assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement without City's prior written consent, in its sole discretion; provided that Proposer may assign this Stipend Agreement to the special purpose vehicle formed by Proposer for the purposes of acting as Developer for the Project without the prior written consent of City, but upon written notice to City. Any assignment of this Stipend Agreement without the required written consent of City shall be null and void.

7.2 City may assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement and all rights, titles, licenses and interests hereunder: (a) without Proposer's consent, to: (i) the JPA upon or before Financial Close, and (ii) any Person that succeeds to the governmental powers and authority of City; and (b) to others with the prior written consent of Proposer, which shall not be unreasonably withheld. In addition, if the JPA is an assignee or transferee of this Stipend Agreement, the JPA may assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement and all rights, titles, licenses and interests hereunder (A) without Proposer's consent to any Person that succeeds to the governmental powers and authority of the JPA; and (B) to others with the prior written consent of Proposer, which shall not be unreasonably withheld. Where Proposer's consent is required but not given, any assignment of this Stipend Agreement shall be null and void.

Section 8. MISCELLANEOUS

8.1 Proposer and City agree that Proposer and its Equity Members, Major Participants, and other Members, and their respective employees, are not agents or representatives of, or joint venture members with, City as a result of this Stipend Agreement.

8.2 All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular.

8.3 Unless otherwise indicated, all references to Sections in this Stipend Agreement are to the Section numbers of this Stipend Agreement.

8.4 This Stipend Agreement, together with the RFP, embody the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Stipend Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto with respect to the subject matter hereof.

8.5 It is understood and agreed by the parties hereto that if any part, term, or provision of this Stipend Agreement is by the courts held to be illegal or in conflict with any applicable law: (a) the parties shall promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties; and (b) the validity of the remaining portions or provisions shall not be affected.

8.6 This Stipend Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the parties in state court, venue 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 between the parties in the United States District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

8.7 This instrument 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.

[Signature page immediately follows]
IN WITNESS WHEREOF, this Stipend Agreement has been executed and delivered as of the day and year first above written.

CITY OF INGLEWOOD

By: _________________________________
    James T. Butts, Jr., Mayor

Date: ________________________________

ATTEST:

By: _________________________________
    Aisha L. Thompson, City Clerk

APPROVAL AS TO FORM:

KENNETH R. CAMPOS
City Attorney

Eliot Jamison

Eliot

By: _________________________________
    Jamison

Name, Title

Date: ________________________________
Attachment 1 to Stipend Agreement

FORM OF INVOICE FOR STIPEND

Reference is made to that Request for Proposals issued on [_____] (as amended, the "RFP") by the City of Inglewood ("City") for the Inglewood Transit Connector Project.

Reference is also made to that certain Stipend Agreement (the "Stipend Agreement") dated as of [_____] by and between City and __________________ ("Proposer").

Capitalized terms used but not otherwise defined in this invoice shall have the meanings ascribed in the Stipend Agreement or, if not defined in the Stipend Agreement, the RFP.

1. Pursuant to the RFP and the Stipend Agreement, Proposer hereby requests payment of _________ U.S. dollars ($_________), reflecting the amount to which Proposer is entitled under Section 3.3 of the Stipend Agreement.

2. Attached to this invoice are an executed Stipend Agreement Certification, in the form of Attachment 2 to the Stipend Agreement [and supporting documentation for the allowable costs under Section 3.3(a)(ii) of the Stipend Agreement]¹.

3. Proposer represents and warrants to City that: (a) the Stipend Agreement Certification has been duly and validly executed and delivered to City and is in full force and effect; and (b) Proposer is eligible for payment pursuant to the terms of the Stipend Agreement and the RFP.

4. Proposer acknowledges that submission of this invoice, and payment by City of any amount in response to this invoice, is in all respects subject to the terms and conditions of the Stipend Agreement and the RFP.

CERTIFICATION

The undersigned Proposer hereby certifies under penalty of perjury under the laws of the State of California that this entire invoice and all other supporting documentation are each, and collectively, true, correct, and complete.

Date: __________________________

Proposer: ________________________

Signature: _________________________

Name, Title: ______________________ 

---

¹ Remove brackets and include bracketed language if Section 3.3(a) applies. Delete bracketed language if Section 3.3(b) applies.
Attachment 2 to Stipend Agreement

STIPEND AGREEMENT CERTIFICATION

The undersigned Proposer certifies and agrees on behalf of itself, its Equity Members, Major Participants, and all other Members of the Proposer team, as follows:

1. Proposer has received and agreed to an offer from the City of Inglewood ("City") for the payment of a stipend under certain circumstances subject to the terms and conditions set forth in (a) the stipend agreement entered into between City and the Proposer on [date] (the "Stipend Agreement"), and (b) the Request for Proposals issued by City on [date] (as amended, the "RFP"), in connection with the procurement of the Inglewood Transit Connector Project (the "Project").

2. Proposer has reviewed the provisions set forth in the Stipend Agreement and this Stipend Agreement Certification and expressly recognizes and agrees to be bound by the provisions set forth therein and herein.

3. The materials, data, documents, and information that Proposer has delivered to City on or prior to the date hereof constitute the complete and entire Work Product, as defined in the Stipend Agreement.

4. Proposer is eligible to receive all or a portion of the payment requested in Proposer's invoice pursuant to the Stipend Agreement and the RFP.

5. Upon Proposer's receipt of the amount of the stipend as prescribed under the Stipend Agreement and the RFP, Proposer hereby:
   
   (a) grants to City all rights, title, and interest in and to the Transferred Intellectual Property, as defined in the Stipend Agreement, free of all intellectual property rights and claims, without further action on City's part, and without restriction or limitation on their use, exploitation, exercise of rights, or transferability;
   
   (b) grants to City an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license, without incremental charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property solely in connection with the Project, which shall not cover:
      
      (i) Proposer's or any Proposer team member's name, logo, and other branding elements;
      
      (ii) any Background Intellectual Property or Background Work Product embodied in the ATS Operating System; or
      
      (iii) Background Intellectual Property or ATS Operating System Foreground Intellectual Property that is Commercially Available Off-the-Shelf Software;
      
   (c) waives all rights to protest any aspect of the Procurement Process, including any protest of rankings, award, or cancellation of the procurement; and
(d) fully, unconditionally, and irrevocably releases and waives all claims against City arising out of or relating to City's use of the Work Product.

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed in the Stipend Agreement or, if not defined in the Stipend Agreement, the RFP.

Date: __________________________

Proposer: ________________________

Signature: ________________________

Name, Title: ______________________
Exhibit 2
CITY OF INGLEWOOD
Inglewood Transit Connector Project

STIPEND AGREEMENT

THIS STIPEND AGREEMENT FOR THE INGLEWOOD TRANSIT CONNECTOR PROJECT, dated (this "Stipend Agreement") is made by and between the City of Inglewood ("City") and Envision Inglewood a Joint Venture ("Proposer"), with reference to the following facts:

A. On December 6, 2021, City issued a request for qualifications for design-build-finance-operate-maintain (DBFOM) services (as amended, the "DBFOM RFQ") for the Inglewood Transit Connector Project (the "Project").

B. On December 6, 2021, City also issued a request for qualifications for transit technology eligibility (as amended, the "TTE RFQ") for the Project.

C. On May 17, 2022, based on its evaluation of all statements of qualifications received in response to the DBFOM RFQ, City shortlisted three Proposer teams to participate in City's procurement process for the Project ("Procurement Process").

D. On May 17, 2022, based on its evaluation of all eligibility determination requests received in response to the TTE RFQ, City prequalified six transit technology suppliers to participate in the Procurement Process.

E. The shortlisted DBFOM teams thereafter formed or will form, with City's approval, integrated proposer teams with prequalified transit technology suppliers.

F. City has issued or will issue a draft Request for Proposals for the Project (as amended, the "RFP"), which includes or will include draft Instructions to Proposers (the "ITP").

G. Proposer is one of the integrated proposer teams eligible to submit a Proposal for the Project.

H. As a condition to the Proposer's eligibility to receive a stipend with respect to the RFP, Proposer is required to execute and deliver to City a Stipend Agreement by not later than December 19, 2022.

NOW, THEREFORE, City and the Proposer hereby agree as follows:

Section 1. DEFINITIONS

1.1 Capitalized terms used but not otherwise defined in this Stipend Agreement shall have the meanings ascribed in the ITP.

1.2 The following terms have the following meanings.

"ATS Operating System Foreground Intellectual Property" means all Intellectual Property embodied in the ATS Operating System authored, created, invented, or first put into practice for the purposes of Proposer's Proposal or during the Procurement Process.

"Background Intellectual Property" means all Intellectual Property authored, created, invented, or first
put into practice prior to, independent of, and not for the purposes of Proposer's Proposal or the Procurement Process.

"Background Work Product" means all material and items as described in the definition of Work Product that, rather than generated or developed in connection with Proposer’s Proposal or the Procurement Process, are authored, created, invented, or first put into practice prior to, independent of, and not for the purposes of Proposer’s Proposal or the Procurement Process.

"Commercially Available Off-the-Shelf Software (COTS)" means Software that is (a) sold in substantial quantities, (b) readily available to the City without Proposer or third party participation, (c) provided without modification in the same form in which it is sold in the commercial marketplace, and (d) for which there are at least two readily available alternative solutions or items with the same or substantially similar design, use or function as the proposed COTS. For the avoidance of doubt, COTS does not include so-called open source software or sole-source software.

"Indemnified Parties" means the JPA, City, any and all of JPA’s Boards and City’s Boards, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

"Intellectual Property" means all current and future legal and/or equitable rights and interests in know-how (including processes, methodologies, trade secrets and confidential business information which have been recorded in or on any media), patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade dress, trade secrets, trade secret rights, designs (registered and unregistered), other design rights, logos, utility models, database rights, software, business methods, circuit layouts, plant varieties, business and domain names (including fictitious business names), inventions (patentable or not), solutions embodied in technology, other intellectual activity, and all analogous rights in other jurisdictions and applications (drafted or pending), and applications of or for any of the foregoing, subsisting in or incorporated into the Work Product.

"Third Party" means, when capitalized, any individual, public entity, or private entity, other than the Indemnified Parties, except that a "Third Party" includes any Indemnified Party's employee, agent, or contractor who asserts a claim that is: (i) against an Indemnified Party; (ii) within the scope of the indemnities; and (iii) not covered by the Indemnified Party's worker's compensation program.

"Transferred Intellectual Property" means Intellectual Property which is authored, created, invented, or first put into practice for the purposes of Proposer’s Proposal or during the Procurement Process, except Background Intellectual Property and ATS Operating System Foreground Intellectual Property.

"Work Product" means, collectively, all work product (including all written and electronic material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, studies, surveys, plans, specifications, exhibits, photographs, information, documents, data, and other graphic and visual aids) generated or developed by or on behalf of Proposer or any of its team members during the Procurement Process in connection with the Project, including Alternative Technical Concepts (AltTCs), aesthetic design concepts, interim design submittals, and all other items generated or developed in any medium, media, or format by or on behalf of Proposer in connection with Proposer’s Proposal, and including data and information gathered and reports prepared from any surveys or site investigations by or on behalf of Proposer. "Work Product" excludes Intellectual Property subsisting in or incorporated into any of the foregoing.

Section 2. OWNERSHIP AND TRANSFER OF WORK PRODUCT
2.1 Except for Background Work Product, Proposer agrees that all Work Product, whether it includes Intellectual Property or not, is deemed to be owned by City and will not be returned to Proposer.

2.2 In consideration for City's payment to Proposer pursuant to this Stipend Agreement, Proposer grants to City all rights, title, and interest in and to the Transferred Intellectual Property, free of all intellectual property rights and claims, without further action on City's part, and without restriction or limitation on their use, exploitation, exercise of rights, or transferability.

2.3 City grants to Proposer and members of Proposer's team an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license, without incremental charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Work Product and Transferred Intellectual Property.

2.4 Except as provided below and subject to Proposer's receipt of the stipend provided by this Stipend Agreement, Proposer grants to City an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license, without incremental charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property solely in connection with the Project. This right and license shall not cover:

(a) Proposer's or any Proposer team member's name, logo, and other branding elements;

(b) any Background Intellectual Property or Background Work Product related to the ATS Operating System; or

(c) Background Intellectual Property or ATS Operating System Foreground Intellectual Property that is Commercially Available Off-the-Shelf Software.

The license terms shall survive expiration or earlier termination of this Stipend Agreement.

2.5 If City cancels the procurement prior to the submission of the Technical Proposal by Proposer, all Work Product and Transferred Intellectual Property developed by Proposer at any time through the cancellation date will become property of and owned by City and shall be promptly submitted to City as a condition precedent to payment under this Stipend Agreement.

2.6 Proposer agrees that the Work Product and Transferred Intellectual Property have been specially ordered and commissioned by City, and that Transferred Intellectual Property shall be considered "work-made-for-hire," as that term is defined in Section 101 of Title 17 of the U.S. Code ("Copyright Law"). To the extent that the Transferred Intellectual Property is determined by a court of competent jurisdiction, or the U.S. Copyright Office, not to be work-made-for-hire, Proposer hereby agrees to assign to City all right, title, and interest in and to all Transferred Intellectual Property. Neither Proposer nor any of its team members shall claim, retain, apply for, and/or register any U.S. or international Intellectual Property rights in the Transferred Intellectual Property including copyright or patent rights.

2.7 Proposer agrees that City shall be entitled to use, exploit, and exercise all rights in the Transferred Intellectual Property and Work Product, Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property, in whole or in part, to the extent described in this Stipend Agreement (subject to Section 2.4 regarding Background Intellectual Property, Background Work Product and ATS Operating System Foreground
Intellectual Property). Starting after City’s issuance of the Selection Notice, City will have the right to inform the Best Value Proposer regarding the contents of Proposer’s Work Product and Transferred Intellectual Property as well as the Background Work Product, Background Intellectual Property and ATS Operating System Foreground Intellectual Property covered by City’s right and license, and incorporate such Work Product, Transferred Intellectual Property, Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property or concepts based thereon into the Agreement; provided such Best Value Proposer agrees to use such Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property solely for the Project and for no other purpose, and further agrees to keep such Background Intellectual Property, Background Work Product ATS Operating System Foreground Intellectual Property confidential and not to disclose it to third parties except as otherwise required in connection with the Project.

2.8 Use of the Work Product under this Stipend Agreement, whether in connection with the Project or otherwise, and use of the Background Work Product in connection with the Project, by City or any other person or entity acting through or on behalf of City is at City’s and such other person’s or entity’s sole risk and discretion, and shall in no way be deemed to confer liability on Proposer. Further, Proposer makes no warranties, express or implied, as to the conduct, completeness, success or particular results of the Work Product or Background Work Product, or the condition, merchantability, or fitness for a particular purpose of the Work Product or Background Work Product.

Section 3. COMPENSATION AND PAYMENT

3.1 By executing this Stipend Agreement, Proposer has irrevocably elected to accept, as full compensation for the rights, titles, interests and licenses granted to City under this Stipend Agreement, payment of a stipend subject to the terms hereof.

3.2 Proposer shall not be entitled to reimbursement for any of its costs in connection with participating in the Procurement Process or responding to the RFP, except as specified in this Stipend Agreement.

3.3 Subject to the terms of this Section 2 and the RFP, City agrees to pay Proposer for the rights, titles, interests and licenses granted to City under this Stipend Agreement a lump sum stipend equal to the following:

(a) if the procurement is cancelled prior to the Technical Proposal Due Date, the lesser of:

(i) the Maximum Stipend Amount stipulated in Section 3.4; and

(ii) the full amount of the actual, reasonable and documented out-of-pocket development costs actually incurred and paid by Proposer or its Members with respect to preparing Proposer’s Technical Proposal (which costs City acknowledges are a reasonable measure of the value of the Work Product received), provided that costs paid by Proposer or its Members (A) may include payments to an affiliate of the Proposer or any of its Members, as the case may be, and the term “affiliate” shall mean any entity which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the Proposer or any of its Members, and (B) may not include costs incurred or paid with respect to Background Work Product or
Background Intellectual Property; or

(b) if the procurement is not cancelled prior to the Technical Proposal Due Date, the Maximum Stipend Amount stipulated in Section 3.4.

3.4 The Maximum Stipend Amount is $3,000,000, provided that, if City cancels the procurement, then the Maximum Stipend Amount shall be deemed to equal whichever of the following is applicable:

<table>
<thead>
<tr>
<th>Procurement Cancellation Date</th>
<th>Maximum Stipend Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to the first round of AltTC Meetings (based on the October 19/20, 2022 dates provided in Section 2.4 of the ITP).</td>
<td>$0</td>
</tr>
<tr>
<td>On or after the first round of AltTC Meetings, but prior to 60 days before the Technical Proposal Due Date</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>On or after the date that is 60 days before the Technical Proposal Due Date, but prior to the date that is 30 days before the Technical Proposal Due Date</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>On or after the date that is 30 days before the Technical Proposal Due Date (including any cancellation after selection of the Best Value Proposer and prior to Commercial Close)</td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>

3.5 Cancellation of the procurement will be deemed to occur only if City issues notice of cancellation to Proposer.

3.6 As a condition to Proposer’s entitlement to this stipend, Proposer shall deliver to City all Work Product, including all of Proposer’s AltTCs. City shall be under no obligation to make this payment if Proposer withholds Work Product that is not otherwise exempt from submittal under this Stipend Agreement or the RFP.

3.7 City will make payment within 30 days after City receives the following within the applicable time frame set forth in Section 3.8:

(a) a proper invoice, in the form of Attachment 1 to the Stipend Agreement;
(b) if Section 3.3(a) applies, supporting documentation of Proposer’s claimed costs;
(c) an executed Stipend Agreement Certification, in the form of Attachment 2 to the Stipend Agreement; and
(d) the Work Product, including all AltTCs.

3.8 Proposer may submit the materials identified in Section 3.7 only within the following applicable time frames:

(a) If City cancels the procurement prior to or following the Technical Proposal Due Date, then no earlier than the date of notice of cancellation and no later than 120 days after the date of the notice of cancellation; or
(b) If City does not cancel the procurement, then no earlier than the date City notifies Proposer of Commercial Close or 120 days after City issues the Selection Notice, whichever occurs first, and no later than 120 days thereafter.

3.9 If City withholds payment on grounds that Proposer’s submission is incomplete or erroneous, City shall provide notice to Proposer identifying the incomplete or erroneous materials and provide Proposer at least ten days grace period from the date of notice to deliver the required materials.

Section 4. Eligibility

Notwithstanding the foregoing, no stipend shall be payable to Proposer in any of the following circumstances:

4.1 If Proposer withdraws from the Procurement Process at any time prior to the Financial Proposal Due Date or fails to submit a Technical Proposal or Financial Proposal, unless due to City’s cancellation of the Procurement Process;

4.2 If Proposer effectively withdraws from the Procurement Process by ceasing to actively engage in the Procurement Process prior to cancellation of the procurement;

4.3 If Proposer’s Technical Proposal is submitted after the Technical Proposal Due Date or is submitted by the Technical Proposal Due Date but determined by City in its good faith discretion to be non-responsive pursuant to the ITP and/or to not achieve a passing score on any of the pass/fail criteria in the ITP;

4.4 If Proposer’s Financial Proposal is submitted after the Financial Proposal Due Date or is submitted by the Financial Proposal Due Date but determined by City in its good faith discretion to be non-responsive pursuant to the ITP and/or to not achieve a passing score on any of the pass/fail criteria in the ITP, provided that a Price Proposal that exceeds one or more affordability limits stated in the ITP shall not in itself bar entitlement to payment of the stipend;

4.5 If Proposer has not fully complied with the terms and conditions of the RFP, including any circumstance that under the terms and conditions of the RFP entitles City to draw on Proposer’s Proposal Security;

4.6 If Proposer has not fully complied with the terms and conditions set forth in this Stipend Agreement, including delivery to City of the materials identified in Section 3.7;

4.7 If Proposer has filed a protest of any aspect of the Procurement Process, including any protest of rankings, award, or cancellation of the procurement; or

4.8 If Proposer is selected as the Best Value Proposer and:

(a) City proceeds with award as described in the RFP; or

(b) Proposer refuses or is unable to perform all of the acts or furnish all of the documents required from Developer for Commercial Close as provided in the ITP by the Developer Commercial Close Deadline, or should refuse or be unable to enter into the Agreement for any reason (including failure to negotiate in good faith), unless such failure is directly attributable to: (i) City’s cancellation of the procurement or decision not to execute the
Agreement with Proposer; or (ii) City's failure to provide any deliverable City is required to deliver to Proposer or satisfy any other condition to Commercial Close, where such failure is not caused in whole or part by the acts, omissions, negligence, fault, recklessness, or willful misconduct of Proposer.

Section 5. INDEMNITIES; DISCLAIMERS

5.1 Proposer agrees that it will indemnify, defend, protect, and hold harmless the Indemnified Parties from any claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including attorneys' fees and costs) asserted, incurred, suffered, or awarded as a result of or that relate to any Third Party demands, suits, actions, allegations, or proceedings to the extent arising out of or caused by any acts, actions, negligence, omissions, fault, willful misconduct, violation of law, or breach of this Agreement by Proposer, its Equity Members, Major Participants, any other Members, or their respective agents, employees, or representatives arising out of or relating to the Work Product or Transferred Intellectual Property, whether direct or indirect. The foregoing indemnity shall expressly apply to and include all Third Party claims, suits, actions, or allegations of infringement, confidential information, domestic or foreign patent rights, copyrights, intellectual property rights, moral rights, trade secrets, proprietary rights, licensing rights, and unauthorized use. Notwithstanding the foregoing:

(a) the indemnity is subject to, and limited by, Section 2.8;

(b) the indemnity shall not extend to any liability attributable to modifications or updates to the Work Product; and

(c) Proposer shall not be liable for damages arising out of injury or damage to persons or property to the extent directly caused by or resulting from the active negligence, willful misconduct, violation of law, or breach of this Stipend Agreement by any of the Indemnified Parties or any Third Parties.

5.2 Proposer's obligation to indemnify, defend, protect, and pay for the defense or, at any Indemnified Party's option, to participate and associate with the Indemnified Party in defense of any claim and any related settlement negotiations, shall be triggered by (a) tender of payment of the stipend to Proposer and (b) the Indemnified Party's notice of claim for indemnification to Proposer. Except to the extent that California Civil Code section 2782.8 may apply and provide otherwise, if a final and non-appealable order or judgment specifically finds that injury or damage to a Third Party or its property was caused in part by or in part resulted from the negligence, willful misconduct or violation of law of any of the Indemnified Parties, then Proposer's liability shall be limited to the portion of the injury or damage not caused by such negligence, willful misconduct or violation of law. Proposer shall pay all reasonable costs and fees related to this obligation and its enforcement by any Indemnified Party.

Section 6. WAIVER OF CONSEQUENTIAL AND INDIRECT DAMAGES

In no event shall City or Proposer be liable to one another under this Stipend Agreement, whether by way of breach of statutory duty, contract, tort, or under any other legal theory for any lost profits, loss of use, cost of capital, loss of goodwill, lost revenues, loss of profit, loss of contracts, or special, exemplary, indirect, or consequential losses or damages, even if such party has been advised of the possibility of such damages, and each party hereby releases the other from any such liability; provided that this waiver of liability does not extend to any liability to a Third Party for which Indemnified Parties are entitled to
Section 7. ASSIGNMENT

7.1 Proposer shall not assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement without City's prior written consent, in its sole discretion; provided that Proposer may assign this Stipend Agreement to the special purpose vehicle formed by Proposer for the purposes of acting as Developer for the Project without the prior written consent of City, but upon written notice to City. Any assignment of this Stipend Agreement without the required written consent of City shall be null and void.

7.2 City may assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement and all rights, titles, licenses and interests hereunder: (a) without Proposer's consent, to: (i) the JPA upon or before Financial Close, and (ii) any Person that succeeds to the governmental powers and authority of City; and (b) to others with the prior written consent of Proposer, which shall not be unreasonably withheld. In addition, if the JPA is an assignee or transferee of this Stipend Agreement, the JPA may assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement and all rights, titles, licenses and interests hereunder (A) without Proposer's consent to any Person that succeeds to the governmental powers and authority of the JPA; and (B) to others with the prior written consent of Proposer, which shall not be unreasonably withheld. Where Proposer's consent is required but not given, any assignment of this Stipend Agreement shall be null and void.

Section 8. MISCELLANEOUS

8.1 Proposer and City agree that Proposer and its Equity Members, Major Participants, and other Members, and their respective employees, are not agents or representatives of, or joint venture members with, City as a result of this Stipend Agreement.

8.2 All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular.

8.3 Unless otherwise indicated, all references to Sections in this Stipend Agreement are to the Section numbers of this Stipend Agreement.

8.4 This Stipend Agreement, together with the RFP, embody the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Stipend Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto with respect to the subject matter hereof.

8.5 It is understood and agreed by the parties hereto that if any part, term, or provision of this Stipend Agreement is by the courts held to be illegal or in conflict with any applicable law: (a) the parties shall promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties; and (b) the validity of the remaining portions or provisions shall not be affected.

8.6 This Stipend Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the parties in state court, venue 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 between the parties in the United States District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

8.7 This instrument 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.

[Signature page immediately follows]
IN WITNESS WHEREOF, this Stipend Agreement has been executed and delivered as of the day and year first above written.

CITY OF INGLEWOOD

By: ______________________________________________________
    James T. Butts, Jr., Mayor

Date: ____________________________________________________

ATTEST:

By: ______________________________________________________
    Aisha L. Thompson, City Clerk

APPROVAL AS TO FORM:

________________________________________________________
KENNETH R. CAMPOS
City Attorney

Patrick Pettibon

By: ______________________________________________________
    Authorized Representative

Name, Title

Date: March 24, 2023
Attachment 1 to Stipend Agreement

FORM OF INVOICE FOR STIPEND

Reference is made to that Request for Proposals issued on , (as amended, the "RFP") by the City of Inglewood ("City") for the Inglewood Transit Connector Project.

Reference is also made to that certain Stipend Agreement (the "Stipend Agreement") dated as of , by and between City and ________________ ("Proposer").

Capitalized terms used but not otherwise defined in this invoice shall have the meanings ascribed in the Stipend Agreement or, if not defined in the Stipend Agreement, the RFP.

1. Pursuant to the RFP and the Stipend Agreement, Proposer hereby requests payment of ___________ U.S. dollars ($_________), reflecting the amount to which Proposer is entitled under Section 3.3 of the Stipend Agreement.

2. Attached to this invoice are an executed Stipend Agreement Certification, in the form of Attachment 2 to the Stipend Agreement [and supporting documentation for the allowable costs under Section 3.3(a)(ii) of the Stipend Agreement]¹.

3. Proposer represents and warrants to City that: (a) the Stipend Agreement Certification has been duly and validly executed and delivered to City and is in full force and effect; and (b) Proposer is eligible for payment pursuant to the terms of the Stipend Agreement and the RFP.

4. Proposer acknowledges that submission of this invoice, and payment by City of any amount in response to this invoice, is in all respects subject to the terms and conditions of the Stipend Agreement and the RFP.

CERTIFICATION

The undersigned Proposer hereby certifies under penalty of perjury under the laws of the State of California that this entire invoice and all other supporting documentation are each, and collectively, true, correct, and complete.

Date: ____________________________

Proposer: __________________________

Signature: __________________________

Name, Title: __________________________

¹ Remove brackets and include bracketed language if Section 3.3(a) applies. Delete bracketed language if Section 3.3(b) applies.
Attachment 2 to Stipend Agreement

STIPEND AGREEMENT CERTIFICATION

The undersigned Proposer certifies and agrees on behalf of itself, its Equity Members, Major Participants, and all other Members of the Proposer team, as follows:

1. Proposer has received and agreed to an offer from the City of Inglewood ("City") for the payment of a stipend under certain circumstances subject to the terms and conditions set forth in (a) the stipend agreement entered into between City and the Proposer on (the "Stipend Agreement"), and (b) the Request for Proposals issued by City on (as amended, the "RFP"), in connection with the procurement of the Inglewood Transit Connector Project (the "Project").

2. Proposer has reviewed the provisions set forth in the Stipend Agreement and this Stipend Agreement Certification and expressly recognizes and agrees to be bound by the provisions set forth therein and herein.

3. The materials, data, documents, and information that Proposer has delivered to City on or prior to the date hereof constitute the complete and entire Work Product, as defined in the Stipend Agreement.

4. Proposer is eligible to receive all or a portion of the payment requested in Proposer's invoice pursuant to the Stipend Agreement and the RFP.

5. Upon Proposer's receipt of the amount of the stipend as prescribed under the Stipend Agreement and the RFP, Proposer hereby:

(a) grants to City all rights, title, and interest in and to the Transferred Intellectual Property, as defined in the Stipend Agreement, free of all intellectual property rights and claims, without further action on City's part, and without restriction or limitation on their use, exploitation, exercise of rights, or transferability;

(b) grants to City an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license, without incremental charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property solely in connection with the Project, which shall not cover:

(i) Proposer's or any Proposer team member's name, logo, and other branding elements;

(ii) any Background Intellectual Property or Background Work Product embodied in the ATS Operating System; or

(iii) Background Intellectual Property or ATS Operating System Foreground Intellectual Property that is Commercially Available Off-the-Shelf Software;

(c) waives all rights to protest any aspect of the Procurement Process, including any protest of rankings, award, or cancellation of the procurement; and
(d) fully, unconditionally, and irrevocably releases and waives all claims against City arising out of or relating to City's use of the Work Product.

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed in the Stipend Agreement or, if not defined in the Stipend Agreement, the RFP.

Date: ____________________________

Proposer: __________________________

Signature: _________________________

Name, Title: _______________________

Exhibit 3
CITY OF INGLEWOOD
Inglewood Transit Connector Project

STIPEND AGREEMENT

THIS STIPEND AGREEMENT FOR THE INGLEWOOD TRANSIT CONNECTOR PROJECT, "Stipend Agreement") is made by and between the City of Inglewood ("City") and a Consortium with SPV yet to be formed ("Proposer"), with reference to the following facts:

A. On December 6, 2021, City issued a request for qualifications for design-build-finance-operate-maintain (DBFOM) services (as amended, the "DBFOM RFQ") for the Inglewood Transit Connector Project (the "Project").

B. On December 6, 2021, City also issued a request for qualifications for transit technology eligibility (as amended, the "TTE RFQ") for the Project.

C. On May 17, 2022, based on its evaluation of all statements of qualifications received in response to the DBFOM RFQ, City shortlisted three Proposer teams to participate in City's procurement process for the Project ("Procurement Process").

D. On May 17, 2022, based on its evaluation of all eligibility determination requests received in response to the TTE RFQ, City prequalified six transit technology suppliers to participate in the Procurement Process.

E. The shortlisted DBFOM teams thereafter formed or will form, with City's approval, integrated proposer teams with prequalified transit technology suppliers.

F. City has issued or will issue a draft Request for Proposals for the Project (as amended, the "RFP"), which includes or will include draft Instructions to Proposers (the "ITP").

G. Proposer is one of the integrated proposer teams eligible to submit a Proposal for the Project.

H. As a condition to the Proposer's eligibility to receive a stipend with respect to the RFP, Proposer is required to execute and deliver to City a Stipend Agreement by no later than December 19, 2022.

NOW, THEREFORE, City and the Proposer hereby agree as follows:

Section 1. DEFINITIONS

1.1 Capitalized terms used but not otherwise defined in this Stipend Agreement shall have the meanings ascribed in the ITP.

1.2 The following terms have the following meanings.

"ATS Operating System Foreground Intellectual Property" means all Intellectual Property embodied in the ATS Operating System authored, created, invented, or first put into practice for the purposes of Proposer's Proposal or during the Procurement Process.

"Background Intellectual Property" means all Intellectual Property authored, created, invented, or first
put into practice prior to, independent of, and not for the purposes of Proposer’s Proposal or the Procurement Process.

“Background Work Product” means all material and items as described in the definition of Work Product that, rather than generated or developed in connection with Proposer’s Proposal or the Procurement Process, are authored, created, invented, or first put into practice prior to, independent of, and not for the purposes of Proposer’s Proposal or the Procurement Process.

“Commercially Available Off-the-Shelf Software (COTS)” means Software that is (a) sold in substantial quantities, (b) readily available to the City without Proposer or third party participation, (c) provided without modification in the same form in which it is sold in the commercial marketplace, and (d) for which there are at least two readily available alternative solutions or items with the same or substantially similar design, use or function as the proposed COTS. For the avoidance of doubt, COTS does not include so-called open source software or sole-source software.

“Indemnified Parties” means the JPA, City, any and all of JPA’s Boards and City’s Boards, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

“Intellectual Property” means all current and future legal and/or equitable rights and interests in know-how (including processes, methodologies, trade secrets and confidential business information which have been recorded in or on any media), patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade dress, trade secrets, trade secret rights, designs (registered and unregistered), other design rights, logos, utility models, database rights, software, business methods, circuit layouts, plant varieties, business and domain names (including fictitious business names), inventions (patentable or not), solutions embodied in technology, other intellectual activity, and all analogous rights in other jurisdictions and applications (drafted or pending), and applications of or for any of the foregoing, subsisting in or incorporated into the Work Product.

“Third Party” means, when capitalized, any individual, public entity, or private entity, other than the Indemnified Parties, except that a “Third Party” includes any Indemnified Party’s employee, agent, or contractor who assert a claim that is: (i) against an Indemnified Party; (ii) within the scope of the indemnities; and (iii) not covered by the Indemnified Party’s worker’s compensation program.

“Transferred Intellectual Property” means Intellectual Property which is authored, created, invented, or first put into practice for the purposes of Proposer’s Proposal or during the Procurement Process, except Background Intellectual Property and ATS Operating System Foreground Intellectual Property.

“Work Product” means, collectively, all work product (including all written and electronic material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, studies, surveys, plans, specifications, exhibits, photographs, information, documents, data, and other graphic and visual aids) generated or developed by or on behalf of Proposer or any of its team members during the Procurement Process in connection with the Project, including Alternative Technical Concepts (AltTCS), aesthetic design concepts, interim design submittals, and all other items generated or developed in any medium, media, or format by or on behalf of Proposer in connection with Proposer’s Proposal, and including data and information gathered and reports prepared from any surveys or site investigations by or on behalf of Proposer. “Work Product” excludes Intellectual Property subsisting in or incorporated into any of the foregoing.

Section 2. OWNERSHIP AND TRANSFER OF WORK PRODUCT
2.1 Except for Background Work Product, Proposer agrees that all Work Product, whether it includes Intellectual Property or not, is deemed to be owned by City and will not be returned to Proposer.

2.2 In consideration for City’s payment to Proposer pursuant to this Stipend Agreement, Proposer grants to City all rights, title, and interest in and to the Transferred Intellectual Property, free of all intellectual property rights and claims, without further action on City's part, and without restriction or limitation on their use, exploitation, exercise of rights, or transferability.

2.3 City grants to Proposer and members of Proposer’s team an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license, without incremental charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Work Product and Transferred Intellectual Property.

2.4 Except as provided below and subject to Proposer’s receipt of the stipend provided by this Stipend Agreement, Proposer grants to City an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license, without incremental charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property solely in connection with the Project. This right and license shall not cover:

(a) Proposer’s or any Proposer team member’s name, logo, and other branding elements;

(b) any Background Intellectual Property or Background Work Product related to the ATS Operating System; or

(c) Background Intellectual Property or ATS Operating System Foreground Intellectual Property that is Commercially Available Off-the-Shelf Software.

The license terms shall survive expiration or earlier termination of this Stipend Agreement.

2.5 If City cancels the procurement prior to the submission of the Technical Proposal by Proposer, all Work Product and Transferred Intellectual Property developed by Proposer at any time through the cancellation date will become property of and owned by City and shall be promptly submitted to City as a condition precedent to payment under this Stipend Agreement.

2.6 Proposer agrees that the Work Product and Transferred Intellectual Property have been specially ordered and commissioned by City, and that Transferred Intellectual Property shall be considered “work-made-for-hire,” as that term is defined in Section 101 of Title 17 of the U.S. Code (“Copyright Law”). To the extent that the Transferred Intellectual Property is determined by a court of competent jurisdiction, or the U.S. Copyright Office, not to be work-made-for-hire, Proposer hereby agrees to assign to City all right, title, and interest in and to all Transferred Intellectual Property. Neither Proposer nor any of its team members shall claim, retain, apply for, and/or register any U.S. or international Intellectual Property rights in the Transferred Intellectual Property including copyright or patent rights.

2.7 Proposer agrees that City shall be entitled to use, exploit, and exercise all rights in the Transferred Intellectual Property and Work Product, Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property, in whole or in part, to the extent described in this Stipend Agreement (subject to Section 2.4 regarding Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property).
Intellectual Property). Starting after City’s issuance of the Selection Notice, City will have the right to inform the Best Value Proposer regarding the contents of Proposer’s Work Product and Transferred Intellectual Property as well as the Background Work Product, Background Intellectual Property and ATS Operating System Foreground Intellectual Property covered by City’s right and license, and incorporate such Work Product, Transferred Intellectual Property, Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property or concepts based thereon into the Agreement; provided such Best Value Proposer agrees to use such Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property solely for the Project and for no other purpose, and further agrees to keep such Background Intellectual Property, Background Work Product ATS Operating System Foreground Intellectual Property confidential and not to disclose it to third parties except as otherwise required in connection with the Project.

2.8 Use of the Work Product under this Stipend Agreement, whether in connection with the Project or otherwise, and use of the Background Work Product in connection with the Project, by City or any other person or entity acting through or on behalf of City is at City’s and such other person’s or entity’s sole risk and discretion, and shall in no way be deemed to confer liability on Proposer. Further, Proposer makes no warranties, express or implied, as to the conduct, completeness, success or particular results of the Work Product or Background Work Product, or the condition, merchantability, or fitness for a particular purpose of the Work Product or Background Work Product.

Section 3. COMPENSATION AND PAYMENT

3.1 By executing this Stipend Agreement, Proposer has irrevocably elected to accept, as full compensation for the rights, titles, interests and licenses granted to City under this Stipend Agreement, payment of a stipend subject to the terms hereof.

3.2 Proposer shall not be entitled to reimbursement for any of its costs in connection with participating in the Procurement Process or responding to the RFP, except as specified in this Stipend Agreement.

3.3 Subject to the terms of this Section 2 and the RFP, City agrees to pay Proposer for the rights, titles, interests and licenses granted to City under this Stipend Agreement a lump sum stipend equal to the following:

(a) if the procurement is cancelled prior to the Technical Proposal Due Date, the lesser of:
   (i) the Maximum Stipend Amount stipulated in Section 3.4; and
   (ii) the full amount of the actual, reasonable and documented out-of-pocket development costs actually incurred and paid by Proposer or its Members with respect to preparing Proposer’s Technical Proposal (which costs City acknowledges are a reasonable measure of the value of the Work Product received), provided that costs paid by Proposer or its Members (A) may include payments to an affiliate of the Proposer or any of its Members, as the case may be, and the term ‘affiliate’ shall mean any entity which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the Proposer or any of its Members, and (B) may not include costs incurred or paid with respect to Background Work Product or
Background Intellectual Property; or

(b) if the procurement is not cancelled prior to the Technical Proposal Due Date, the Maximum Stipend Amount stipulated in Section 3.4.

3.4 The Maximum Stipend Amount is $3,000,000, provided that, if City cancels the procurement, then the Maximum Stipend Amount shall be deemed to equal whichever of the following is applicable:

<table>
<thead>
<tr>
<th>Procurement Cancellation Date</th>
<th>Maximum Stipend Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to the first round of AltTC Meetings (based on the October 19/20, 2022 dates provided in Section 2.4 of the ITP).</td>
<td>$0</td>
</tr>
<tr>
<td>On or after the first round of AltTC Meetings, but prior to 60 days before the Technical Proposal Due Date</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>On or after the date that is 60 days before the Technical Proposal Due Date, but prior to the date that is 30 days before the Technical Proposal Due Date</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>On or after the date that is 30 days before the Technical Proposal Due Date (including any cancellation after selection of the Best Value Proposer and prior to Commercial Close)</td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>

3.5 Cancellation of the procurement will be deemed to occur only if City issues notice of cancellation to Proposer.

3.6 As a condition to Proposer’s entitlement to this stipend, Proposer shall deliver to City all Work Product, including all of Proposer’s AltTCs. City shall be under no obligation to make this payment if Proposer withholds Work Product that is not otherwise exempt from submittal under this Stipend Agreement or the RFP.

3.7 City will make payment within 30 days after City receives the following within the applicable time frame set forth in Section 3.8:

(a) a proper invoice, in the form of Attachment 1 to the Stipend Agreement;
(b) if Section 3.3(a) applies, supporting documentation of Proposer’s claimed costs;
(c) an executed Stipend Agreement Certification, in the form of Attachment 2 to the Stipend Agreement; and
(d) the Work Product, including all AltTCs.

3.8 Proposer may submit the materials identified in Section 3.7 only within the following applicable time frames:

(a) If City cancels the procurement prior to or following the Technical Proposal Due Date, then no earlier than the date of notice of cancellation and no later than 120 days after the date of the notice of cancellation; or
(b) If City does not cancel the procurement, then no earlier than the date City notifies Proposer of Commercial Close or 120 days after City issues the Selection Notice, whichever occurs first, and no later than 120 days thereafter.

3.9 If City withholds payment on grounds that Proposer’s submission is incomplete or erroneous, City shall provide notice to Proposer identifying the incomplete or erroneous materials and provide Proposer at least ten days grace period from the date of notice to deliver the required materials.

Section 4. ELIGIBILITY

Notwithstanding the foregoing, no stipend shall be payable to Proposer in any of the following circumstances:

4.1 If Proposer withdraws from the Procurement Process at any time prior to the Financial Proposal Due Date or fails to submit a Technical Proposal or Financial Proposal, unless due to City’s cancellation of the Procurement Process;

4.2 If Proposer effectively withdraws from the Procurement Process by ceasing to actively engage in the Procurement Process prior to cancellation of the procurement;

4.3 If Proposer’s Technical Proposal is submitted after the Technical Proposal Due Date or is submitted by the Technical Proposal Due Date but determined by City in its good faith discretion to be non-responsive pursuant to the ITP and/or to not achieve a passing score on any of the pass/fail criteria in the ITP;

4.4 If Proposer’s Financial Proposal is submitted after the Financial Proposal Due Date or is submitted by the Financial Proposal Due Date but determined by City in its good faith discretion to be non-responsive pursuant to the ITP and/or to not achieve a passing score on any of the pass/fail criteria in the ITP, provided that a Price Proposal that exceeds one or more affordability limits stated in the ITP shall not in itself bar entitlement to payment of the stipend;

4.5 If Proposer has not fully complied with the terms and conditions of the RFP, including any circumstance that under the terms and conditions of the RFP entitles City to draw on Proposer’s Proposal Security;

4.6 If Proposer has not fully complied with the terms and conditions set forth in this Stipend Agreement, including delivery to City of the materials identified in Section 3.7;

4.7 If Proposer has filed a protest of any aspect of the Procurement Process, including any protest of rankings, award, or cancellation of the procurement; or

4.8 If Proposer is selected as the Best Value Proposer and:

(a) City proceeds with award as described in the RFP; or

(b) Proposer refuses or is unable to perform all of the acts or furnish all of the documents required from Developer for Commercial Close as provided in the ITP by the Developer Commercial Close Deadline, or should refuse or be unable to enter into the Agreement for any reason (including failure to negotiate in good faith), unless such failure is directly attributable to: (i) City’s cancellation of the procurement or decision not to execute the
Agreement with Proposer; or (ii) City’s failure to provide any deliverable City is required to deliver to Proposer or satisfy any other condition to Commercial Close, where such failure is not caused in whole or part by the acts, omissions, negligence, fault, recklessness, or willful misconduct of Proposer.

Section 5. INDEMNITIES; DISCLAIMERS

5.1 Proposer agrees that it will indemnify, defend, protect, and hold harmless the Indemnified Parties from any claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including attorneys' fees and costs) asserted, incurred, suffered, or awarded as a result of or that relate to any Third Party demands, suits, actions, allegations, or proceedings to the extent arising out of or caused by any acts, actions, negligence, omissions, fault, willful misconduct, violation of law, or breach of this Agreement by Proposer, its Equity Members, Major Participants, any other Members, or their respective agents, employees, or representatives arising out of or relating to the Work Product or Transferred Intellectual Property, whether direct or indirect. The foregoing indemnity shall expressly apply to and include all Third Party claims, suits, actions, or allegations of infringement, confidential information, domestic or foreign patent rights, copyrights, intellectual property rights, moral rights, trade secrets, proprietary rights, licensing rights, and unauthorized use. Notwithstanding the foregoing:

(a) the indemnity is subject to, and limited by, Section 2.8;

(b) the indemnity shall not extend to any liability attributable to modifications or updates to the Work Product; and

(c) Proposer shall not be liable for damages arising out of injury or damage to persons or property to the extent directly caused by or resulting from the active negligence, willful misconduct, violation of law, or breach of this Stipend Agreement by any of the Indemnified Parties or any Third Parties.

5.2 Proposer's obligation to indemnify, defend, protect, and pay for the defense or, at any Indemnified Party's option, to participate and associate with the Indemnified Party in defense of any claim and any related settlement negotiations, shall be triggered by (a) tender of payment of the stipend to Proposer and (b) the Indemnified Party's notice of claim for indemnification to Proposer. Except to the extent that California Civil Code section 2782.8 may apply and provide otherwise, if a final and non-appealable order or judgment specifically finds that injury or damage to a Third Party or its property was caused in part by or in part resulted from the negligence, willful misconduct or violation of law of any of the Indemnified Parties, then Proposer’s liability shall be limited to the portion of the injury or damage not caused by such negligence, willful misconduct or violation of law. Proposer shall pay all reasonable costs and fees related to this obligation and its enforcement by any Indemnified Party.

Section 6. WAIVER OF CONSEQUENTIAL AND INDIRECT DAMAGES

In no event shall City or Proposer be liable to one another under this Stipend Agreement, whether by way of breach of statutory duty, contract, tort, or under any other legal theory for any lost profits, loss of use, cost of capital, loss of goodwill, lost revenues, loss of profit, loss of contracts, or special, exemplary, indirect, or consequential losses or damages, even if such party has been advised of the possibility of such damages, and each party hereby releases the other from any such liability; provided that this waiver of liability does not extend to any liability to a Third Party for which Indemnified Parties are entitled to
Section 7. ASSIGNMENT

7.1 Proposer shall not assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement without City's prior written consent, in its sole discretion; provided that Proposer may assign this Stipend Agreement to the special purpose vehicle formed by Proposer for the purposes of acting as Developer for the Project without the prior written consent of City, but upon written notice to City. Any assignment of this Stipend Agreement without the required written consent of City shall be null and void.

7.2 City may assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement and all rights, titles, licenses and interests hereunder: (a) without Proposer's consent, to: (i) the JPA upon or before Financial Close, and (ii) any Person that succeeds to the governmental powers and authority of City; and (b) to others with the prior written consent of Proposer, which shall not be unreasonably withheld. In addition, if the JPA is an assignee or transferee of this Stipend Agreement, the JPA may assign, transfer, pledge, sell, or otherwise convey this Stipend Agreement and all rights, titles, licenses and interests hereunder (A) without Proposer's consent to any Person that succeeds to the governmental powers and authority of the JPA; and (B) to others with the prior written consent of Proposer, which shall not be unreasonably withheld. Where Proposer's consent is required but not given, any assignment of this Stipend Agreement shall be null and void.

Section 8. MISCELLANEOUS

8.1 Proposer and City agree that Proposer and its Equity Members, Major Participants, and other Members, and their respective employees, are not agents or representatives of, or joint venture members with, City as a result of this Stipend Agreement.

8.2 All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular.

8.3 Unless otherwise indicated, all references to Sections in this Stipend Agreement are to the Section numbers of this Stipend Agreement.

8.4 This Stipend Agreement, together with the RFP, embody the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Stipend Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto with respect to the subject matter hereof.

8.5 It is understood and agreed by the parties hereto that if any part, term, or provision of this Stipend Agreement is by the courts held to be illegal or in conflict with any applicable law: (a) the parties shall promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties; and (b) the validity of the remaining portions or provisions shall not be affected.

8.6 This Stipend Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the parties in state court, venue 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 between the parties in the United States District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

8.7 This instrument 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.

[Signature page immediately follows]
IN WITNESS WHEREOF, this Stipend Agreement has been executed and delivered as of the day and year first above written.

CITY OF INGLEWOOD

By: ______________________________________
    James T. Butts, Jr., Mayor

Date: ______________________________________

ATTEST:

By: ______________________________________
    Aisha L. Thompson, City Clerk

INGLEWOOD COMMUNITY CONNECTORS

By: ______________________________________
    David H. Parker, Authorized Representative

Date: 3/24/2023

APPROVAL AS TO FORM:

________________________________________
KENNETH R. CAMPOS
City Attorney
Attachment 1 to Stipend Agreement

FORM OF INVOICE FOR STIPEND

Reference is made to that Request for Proposals issued on ______ (as amended, the “RFP”) by the City of Inglewood (“City”) for the Inglewood Transit Connector Project.

Reference is also made to that certain Stipend Agreement (the “Stipend Agreement”) dated as of ______, by and between City and ______________________ (“Proposer”).

Capitalized terms used but not otherwise defined in this invoice shall have the meanings ascribed in the Stipend Agreement or, if not defined in the Stipend Agreement, the RFP.

1. Pursuant to the RFP and the Stipend Agreement, Proposer hereby requests payment of ________ U.S. dollars ($_________), reflecting the amount to which Proposer is entitled under Section 3.3 of the Stipend Agreement.

2. Attached to this invoice are an executed Stipend Agreement Certification, in the form of Attachment 2 to the Stipend Agreement [and supporting documentation for the allowable costs under Section 3.3(a)(ii) of the Stipend Agreement]¹.

3. Proposer represents and warrants to City that: (a) the Stipend Agreement Certification has been duly and validly executed and delivered to City and is in full force and effect; and (b) Proposer is eligible for payment pursuant to the terms of the Stipend Agreement and the RFP.

4. Proposer acknowledges that submission of this invoice, and payment by City of any amount in response to this invoice, is in all respects subject to the terms and conditions of the Stipend Agreement and the RFP.

CERTIFICATION

The undersigned Proposer hereby certifies under penalty of perjury under the laws of the State of California that this entire invoice and all other supporting documentation are each, and collectively, true, correct, and complete.

Date: ____________________________

Proposer: _________________________

Signature: _________________________

Name, Title: _______________________

¹ Remove brackets and include bracketed language if Section 3.3(a) applies. Delete bracketed language if Section 3.3(b) applies.
Attachment 2 to Stipend Agreement

STIPEND AGREEMENT CERTIFICATION

The undersigned Proposer certifies and agrees on behalf of itself, its Equity Members, Major Participants, and all other Members of the Proposer team, as follows:

1. Proposer has received and agreed to an offer from the City of Inglewood ("City") for the payment of a stipend under certain circumstances subject to the terms and conditions set forth in (a) the stipend agreement entered into between City and the Proposer on ___________ (the "Stipend Agreement"), and (b) the Request for Proposals issued by City on ___________ (as amended, the "RFP"), in connection with the procurement of the Inglewood Transit Connector Project (the "Project").

2. Proposer has reviewed the provisions set forth in the Stipend Agreement and this Stipend Agreement Certification and expressly recognizes and agrees to be bound by the provisions set forth therein and herein.

3. The materials, data, documents, and information that Proposer has delivered to City on or prior to the date hereof constitute the complete and entire Work Product, as defined in the Stipend Agreement.

4. Proposer is eligible to receive all or a portion of the payment requested in Proposer's invoice pursuant to the Stipend Agreement and the RFP.

5. Upon Proposer's receipt of the amount of the stipend as prescribed under the Stipend Agreement and the RFP, Proposer hereby:

   (a) grants to City all rights, title, and interest in and to the Transferred Intellectual Property, as defined in the Stipend Agreement, free of all intellectual property rights and claims, without further action on City's part, and without restriction or limitation on their use, exploitation, exercise of rights, or transferability;

   (b) grants to City an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license, without incremental charge, to use, exploit, manufacture, distribute, reproduce, adapt, and display the Background Intellectual Property, Background Work Product and ATS Operating System Foreground Intellectual Property solely in connection with the Project, which shall not cover:

      (i) Proposer's or any Proposer team member's name, logo, and other branding elements;

      (ii) any Background Intellectual Property or Background Work Product embodied in the ATS Operating System; or

      (iii) Background Intellectual Property or ATS Operating System Foreground Intellectual Property that is Commercially Available Off-the-Shelf Software;

   (c) waives all rights to protest any aspect of the Procurement Process, including any protest of rankings, award, or cancellation of the procurement; and
(d) fully, unconditionally, and irrevocably releases and waives all claims against City arising out of or relating to City's use of the Work Product.

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed in the Stipend Agreement or, if not defined in the Stipend Agreement, the RFP.

Date: _____________________________

Proposer: __________________________

Signature: __________________________

Name, Title: _________________________