

1 **AGREEMENT FOR PROFESSIONAL SERVICES**

2 **(Inglewood Transit Connector Project – Financial Advisory Services)**

3 **THIS AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_\_ day  
4 of \_\_\_\_\_, 2020, by and between the City of INGLEWOOD (the “City” or “Owner”),  
5 a municipal corporation, One Manchester Boulevard, Inglewood, California 90301; and  
6 \_\_\_\_\_(the “Consultant”) with its principal place of business at  
7 \_\_\_\_\_,  
8 \_\_\_\_\_, for the professional services to be  
9 performed hereunder. The Owner and the Consultant are hereinafter sometimes referred to  
10 individually as a “Party” and/or collectively as the “Parties.”

11 **RECITALS**

12 **WHEREAS**, Owner intends to develop an automated people mover system, known as  
13 the Inglewood Transit Connector Project, as depicted in Exhibit A to this Agreement, to directly  
14 connect the City’s major entertainment and activity centers to the Metro Regional Rail System  
15 at the Metro Crenshaw/LAX Line’s Downtown Inglewood station (the “Project”); and

16 **WHEREAS**, to ensure effective Project implementation, the City is developing a  
17 DBFOM/Availability Payment delivery method. Through a competitive procurement process,  
18 the City expects to select a developer (the “Developer/Operator”) to finance, design and build  
19 the Project, to place it into passenger service no later than mid-2026, and to operate and  
20 maintain the Project in accordance with performance specifications for a 25 to 35 year term;  
21 and

22 **WHEREAS**, the City intends to create an independent Community Services District  
23 (“CSD”) that will provide the governance for the Project. The CSD is expected to be fully  
24 authorized, organized and staffed by mid-2021, and will be responsible for managing the  
25 delivery and subsequent operations and maintenance of the Project; and

26 **WHEREAS**, on June 29, 2020 the City issued a Request for Proposals seeking a financial  
27 advisory firm or joint venture to assist the City with pursuit of the Project, including assisting  
28 with preparation for procurement, procurement, selection, contracting and contract  
administration respecting the Developer/Operator for the Project; and

1           **WHEREAS**, in response to the Request for Proposals Consultant submitted a proposal  
2 dated July 29, 2020 to provide the financial advisory services (the “Proposal”), and, after  
3 careful evaluation of all proposals received, the City has selected Consultant as providing the  
4 best value proposal;

5           **NOW, THEREFORE**, in consideration of the promises contained herein, the Parties  
6 hereto mutually agree as follows:

7   **TERMS, CONDITIONS AND PROVISIONS**

8           The Recitals set forth above are incorporated herein as terms, conditions and  
9 provisions of this Agreement.

10          Each Exhibit is incorporated herein by this reference as if set forth in full.

11          In the event of ambiguity, conflict, or inconsistent language, the order of precedence  
12 shall be (in descending order):

- 13          a.       Change orders and Amended Agreements (whichever occurs last);
- 14          b.       This Agreement (except the Exhibits);
- 15          c.       Exhibit amendments;
- 16          d.       Exhibits.

17   **ARTICLE 1 – SCOPE OF SERVICES**

18          The Consultant shall:

- 19          1. Provide the services described in Exhibit B (the “Scope of Services” or “Services”) in  
20 accordance with and subject to the terms and conditions of this Agreement;
- 21          2. Not deviate from Exhibit C, Fee Proposal and breakdown of Hours and Rates for  
22 various services described in the Scope of Services;
- 23          3. Provide all Services in a workmanlike and professional manner in accordance with  
24 the requirements of this Agreement. If for any reason this Agreement does not  
25 expressly set forth what the expected obligation, duty, deliverable, term or  
26 condition is, then and only then, shall the standard industry practices of the locale  
27 in which the Project is being designed/engineered/built be referred to so as to  
28 supply the missing obligation, deliverable, duty, term and/or obligation;

- 1 4. Provide all labor, office space, transportation, materials, tools, machinery,  
2 equipment, and other items and services necessary to properly perform the  
3 services contemplated by this Agreement;
- 4 5. Ensure that all personnel engaged by the Consultant to perform the services of this  
5 Agreement shall be properly licensed;
- 6 6. Agree to comply with and be bound by all applicable federal, state, county and local  
7 laws, rules and regulations; and
- 8 7. Obtain, at its own expense, all necessary licenses and permits, including but not  
9 limited to those required by the City of Inglewood, to perform the services  
10 contemplated by this Agreement.

11 **ARTICLE 2 – CITY’S DUTIES**

12 The City hereby promises to provide access to all data, records and documents  
13 reasonably within its possession or control as are necessary for the Consultant to perform the  
14 Services contemplated by this Agreement. The City agrees to make decisions in its regular  
15 course of business once Consultant has provided all required documentation to the City  
16 necessary for the City to make an informed decision. The City shall designate in writing to the  
17 Consultant the City's primary point of contact for administering this Agreement. However, the  
18 person designated as the City's primary point of contact is not authorized to modify, change,  
19 or alter this Agreement, or to authorize work or Services beyond that which is set forth in this  
20 Agreement, or make promises of payment of any kind. Only the City Council for the City is  
21 authorized to modify, change, or alter this Agreement, or to authorize work or Services beyond  
22 that which is set forth in this Agreement, or make promises of payment of any kind, and then  
23 only after a majority vote of the City Council.

24 **ARTICLE 3 – TERM**

25 Time is of the essence with respect to all time limits set forth in this Agreement. The  
26 Term of this Agreement shall be three years from the date specified in the City’s Notice to  
27 Proceed. At the City’s option in its sole discretion, the Agreement may be extended as follows:  
28

- 1 1. For an additional three years after expiration of the original term, by City's delivery
- 2 to Consultant prior to such expiration of a written notice of election to extend; and
- 3 2. For an additional two years after expiration of the first option period, by action of
- 4 the City Council prior to such expiration if satisfied with Consultant's performance.

5 **ARTICLE 4 – COMPENSATION**

- 6 1. Provided that Consultant is in full compliance with the terms and conditions of this
- 7 Agreement, including the terms and conditions of this Article 4, City shall pay
- 8 Consultant in the ordinary course of City business for Services rendered in
- 9 accordance with this Agreement, and agrees that it will use its best efforts to avoid
- 10 all unnecessary delays in processing the Consultant's invoices.
- 11 2. Services rendered by Consultant shall be eligible for compensation only if the
- 12 Services are authorized pursuant to a specific task order issued in writing by City
- 13 (each a "Task Order") and the cumulative compensation for such Services is within
- 14 the budget established under the Task Order. Consultant shall strictly comply with
- 15 the scope, terms and conditions of each Task Order. The Consultant agrees that,
- 16 should work be performed outside the Scope of Services or outside the scope or
- 17 budget of a Task Order without the prior written approval of the City, such work
- 18 shall be deemed a gratuitous effort on the part of Consultant, and Consultant shall
- 19 have no claim against the City for reimbursement. Consultant acknowledges and
- 20 understands that (a) at least through June 30, 2021 City intends to issue Task
- 21 Orders only as first approved for reimbursement by the California Department of
- 22 Transportation pursuant to agreements between City and Caltrans for grant funding
- 23 under the State of California's Transit Intercity Rail Capital Program (TIRCP), and (b)
- 24 the scope of services under a Task Order may be a subset of the Scope of Services
- 25 described for each Task in Exhibit B.
- 26 3. City and Consultant agree on the fee schedule and hourly rates set forth in Exhibit
- 27 C. Such rates shall increase on each anniversary of the commencement date of the
- 28 term of this Agreement (including optional extensions) at the lesser of (a) 2% of the

1 prior year's rate or (b) the percentage increase, if any, over the prior one-year  
2 period in the Consumer Price Index, All Urban Consumers, for the Los Angeles  
3 Metropolitan Area (1982-84 = 100).

- 4 4. City and Consultant agree on the budget set forth in Exhibit C for the Tasks  
5 described in Exhibit C, which budget sets a not-to-exceed amount for work  
6 faithfully performed on such Tasks. Task Orders with respect to such Tasks will be  
7 drawn against such budget.
- 8 5. Consultant shall follow and comply with Title 2 Code of Federal Regulations 200 (2  
9 CFR 200) Uniform Administrative Requirements, Cost Principles for State and Local  
10 Government, and Audit Requirements for Federal Awards, which City and  
11 Consultant shall use to determine the allowability of individual cost items.  
12 Consultant shall not charge the City with, and City shall have no obligation to  
13 reimburse Consultant for, any cost items that are ineligible for compensation  
14 pursuant to 2 CFR 200.
- 15 6. The Consultant shall invoice the City monthly for services contemplated hereunder  
16 and which have been completed within the prior month. Consultant's invoices shall  
17 not include any work or Services not authorized by a Task Order, in excess of the  
18 budget for such Task Order, or ineligible for compensation as provided in paragraph  
19 5 above, unless otherwise approved by City in writing. Consultant shall submit  
20 separate invoices corresponding to each Task Order.
- 21 7. Fees and rates under Article 4 of this Agreement represent full compensation for  
22 the Services rendered and are all-inclusive of Consultant's salaries, wages,  
23 overhead, direct and indirect expenses and profit, except for reimbursable travel  
24 expenses allowable under City's policies. Travel and per diem reimbursements to  
25 Consultant will be allowable as costs only after those costs are incurred and paid for  
26 by Consultant or its subconsultants or subcontractors.
- 27 8. All invoices shall contain:  
28 a. date of invoice;

- b. sequential invoice number;
- c. City Agreement number;
- d. project code number and title;
- e. Task Order number;
- e. description of Services billed under this invoice;
- f. position, title and hours worked;
- g. total amount for invoiced Services;
- h. total amount billed to date;
- i. total amount remaining on the Agreement, and total Agreement amount.

9. The Consultant shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of the City and shall certify, on each invoice, that it is entitled to receive the amount invoiced.

10. The Owner has the right, without limiting any of its other rights, to have the Consultant provide more backup and detail to support the invoice so that the Owner can fully understand, assess and evaluate the invoice before paying same.

11. The Consultant shall submit a final invoice to City within ten working days after the termination of this Agreement.

12. The Consultant agrees that cost shall not be the overriding factor when assigning its personnel to a task. However, the Consultant shall nevertheless provide the services contemplated by this Agreement in a cost effective manner when and where reasonable.

13. The City may withhold or nullify the whole or any part of any payment due the Consultant to such extent as may reasonably be necessary to protect the City from loss as a result of defective services not remedied in accordance with provisions of this Agreement. Whenever the City withholds any monies otherwise due the Consultant, the City will provide Consultant written notice of the amount withheld and the reasons therefor. Within 35 days after Consultant rectifies and removes

1 the grounds for such withholding, the City will pay to Consultant the amount so  
2 withheld.

3 **ARTICLE 5 – TERMINATION**

4 1. **Termination for Cause.**

5 Each Party has the right to terminate this Agreement for default of the other Party  
6 where the default is not cured within 30 days after the defaulting Party receives notice of the  
7 default.

8 2. **Termination for Convenience.**

9 The Owner also has the right to terminate this Agreement at any time for convenience,  
10 without cause and in its sole discretion. Should Owner terminate this Agreement for  
11 convenience, Consultant shall be paid for all services performed per the requirements of this  
12 Agreement up through the date Consultant receives the Owner’s notice of termination at the  
13 agreed to rate, less payments previously made, less any offsets/back charges. The  
14 compensation set forth in this paragraph shall constitute the exclusive compensation  
15 Consultant is entitled to if the Owner terminates for convenience and shall be in lieu of any  
16 damages Consultant might otherwise contend that it has sustained as a result of such  
17 termination.

18 **ARTICLE 6 – NOTICES**

19 Any notice given pursuant to this Agreement shall be deemed received and effective on  
20 the date personally delivered or, if mailed, five days after deposit of the same in the custody of  
21 the United States Postal Service, when properly addressed, posted and deposited in the United  
22 States mail addressed to the respective Parties as follows:

23 **CITY:**  
24 **Yvonne Horton,**  
City Clerk  
25 City of Inglewood  
One Manchester Boulevard  
26 Inglewood, California 90301-1750

**CONSULTANT:**  
**NAME,**  
TITLE  
COMPANY NAME  
STREET ADDRESS  
CITY, STATE, ZIP CODE

27 **WITH COPY TO:**  
28 **Public Works Director,**  
One Manchester Boulevard

**AGENT FOR SERVICE OF PROCESS**  
**NAME**  
STREET ADDRESS

1 Inglewood, California 90301-1750

CITY, STATE, ZIP CODE

2 Either Party may from time to time designate another address, addressee or agent for  
3 notices and shall, in such instances, notify the other Party in writing within ten calendar days  
4 of such designation.

5 **ARTICLE 7 – INSURANCE REQUIREMENTS**

6 The Consultant shall procure and maintain for the duration of this Agreement  
7 insurance as required by this Article 7. The cost of such insurance shall be borne by the  
8 Consultant. Failure to maintain or renew coverage or to provide evidence of renewal may be  
9 treated by Owner as a material breach of contract.

10 **A. Minimum Scope and Limit of Insurance.**

11 Coverage shall be at least as broad as:

- 12 **1. Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01  
13 11 85 or 11 88 covering CGL on an “occurrence” basis, including products and  
14 completed operations, property damage, bodily injury and personal & advertising  
15 injury, independent contractor’s liability, broad form contractual liability, and cross-  
16 liability protection, with limits no less than **\$3,000,000** per occurrence. If a general  
17 aggregate limit applies, either the general aggregate limit shall apply separately to  
18 this project/location (ISO Form CG 25 03 or 25 04) or the general aggregate limit  
19 shall be twice the required occurrence limit.
- 20 **2. Automobile Liability:** Commercial Automobile Liability (equivalent in coverage  
21 scope to ISO Form CA 00 01 060 92) in an amount not less than **\$3,000,000**  
22 combined single limit per accident for bodily injury and property damage covering  
23 Auto Symbol 1 (Any Auto). If an automobile is not used in connection with the  
24 services provided by the Consultant, the Consultant should provide a written  
25 request for a waiver of this requirement.
- 26 **3. Workers’ Compensation** insurance as required by the State of California, with  
27 Statutory Limits, and Employer’s Liability Insurance with limit of no less than  
28 **\$1,000,000** per accident for bodily injury or disease.



1           **4. Professional Liability** (Errors and Omissions) insurance providing coverage of  
2           liability arising out of any negligent act, error or omission in the performance of  
3           professional services for the Owner, including for bodily injury or property damage,  
4           with a limit no less than **\$10,000,000** per claim, **\$15,000,000** in the aggregate.

5           If the Consultant maintains broader coverage and/or higher limits than the minimums  
6           shown above, the City requires and shall be entitled to the broader coverage and/or the higher  
7           limits maintained by the Consultant.

8           **B. Other Insurance Provisions.**

9           **1. Additional Insured Status.**

10           The “City of Inglewood, its officers, officials, employees, agents and volunteers” shall  
11           be covered as additional insureds on the CGL and auto policies with respect to liability arising  
12           out of work or Services performed by or on behalf of the Consultant including materials, parts,  
13           or equipment furnished in connection with such work or Services. General liability coverage  
14           can be provided in the form of an endorsement to the Consultant’s insurance (at least as  
15           broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG  
16           20 37 forms if later revisions used). Within ten business days after City notifies Consultant that  
17           the CSD has been formed, Consultant shall add the CSD, its officers, officials, employees,  
18           agents and volunteers as additional insureds as provided in the previous sentence and deliver  
19           the additional insured endorsement to the CSD.

20           **2. Primary Coverage.**

21           For any claims related to this Agreement, the Consultant’s insurance required by this  
22           Article 7 shall be primary insurance coverage at least as broad as ISO Form CG 20 01 04 13 as  
23           respects the City, its officers, officials, employees, agents and volunteers. Any insurance or  
24           self-insurance, primary or excess, maintained by the City, its officers, officials, employees,  
25           agents or volunteers shall be excess of the Consultant’s insurance and shall not contribute with  
26           it.

27           **3. Notice of Cancellation.**

28           Each insurance policy required by this Article 7 shall state that coverage shall not be

1 canceled, suspended or non-renewed, except with 30 days' prior written notice to the City (or  
2 ten days' prior written notice for cancellation due to nonpayment of premium).

3 **4. Waiver of Subrogation.**

4 Consultant waives all rights of recovery against the City, its officers, officials,  
5 employees, agents and volunteers for any claims to the extent covered (i.e. not excluded) by  
6 insurance required pursuant to this Article 7, except such rights as Consultant may have to the  
7 proceeds of such insurance. Each policy shall include a waiver of any right of subrogation  
8 against the City, its officers, officials, employees, agents and volunteers or the insurer's  
9 consent to the insured's waiver of recovery in advance of loss. However, no waiver of  
10 subrogation rights under the professional liability policy shall be required. Consultant agrees to  
11 obtain any endorsement that may be necessary to effect this waiver of subrogation, but this  
12 provision applies regardless of whether the City has received a waiver of subrogation  
13 endorsement from the insurer.

14 **5. Self-Insured Retentions.**

15 Self-insured retentions must be declared to and approved by the Inglewood City  
16 Attorney. The Inglewood City Attorney may require the Consultant to provide proof of ability  
17 to pay losses and related investigations, claim administration, and defense expenses within the  
18 retention. The policy language shall provide, or be endorsed to provide, that the self-insured  
19 retention may be satisfied by either the named insured or the City.

20 **6. Acceptability of Insurers.**

21 Insurance shall be placed only with insurers admitted to write insurance in the state of  
22 California or non-admitted insurers on the state of California's List of Surplus Lines Insurers  
23 (LSLI). All insurers must have a current A.M. Best's rating of no less than A:VIII, unless  
24 otherwise acceptable to the City.

25 **7. Claims Made Policies.**

26 If any of the required policies provide coverage on a claims-made basis:

- 27 a. The Retroactive Date must be shown and must be before the date of this  
28 Agreement or the beginning of contract work.

1           **b.** Insurance must be maintained and evidence of insurance must be provided for  
2           at least five years after completion of the Scope of Services.

3           **c.** If coverage is canceled or non-renewed, and not replaced with another claims-  
4           made policy form with a Retroactive Date prior to the contract effective date,  
5           the Consultant must purchase “extended reporting” coverage for a minimum of  
6           five years after completion of the Scope of Services.

7           **8. Verification of Coverage.**

8           Before the work begins under this Agreement, the Consultant shall furnish the  
9           Inglewood City Attorney with original Certificates of Insurance including all required  
10          amendatory endorsements (or copies of the applicable policy language effecting coverage  
11          required by this Article 7) and a copy of the Declarations and Endorsement Page of the CGL  
12          and professional liability policies listing all policy endorsements. The Certificate Holder must be  
13          the “City of Inglewood,” and the Certificate Holder’s address must be the address of the City of  
14          Inglewood. However, failure to deliver the required documents prior to the work beginning  
15          shall not waive the Consultant’s obligation to provide them. The City reserves the right to  
16          require complete, certified copies of all required insurance policies, including endorsements  
17          required by these specifications, at any time.

18          **9. Consultants, Subconsultants, Contractors and Subcontractors of Consultant.**

19          The Consultant shall require and verify that all of its consultants, subconsultants,  
20          contractors and subcontractors maintain insurance meeting all the requirements stated  
21          herein, and Consultant shall ensure that the City is an additional insured on the CGL and auto  
22          insurance required from all of them. The Consultant shall cause its consultants,  
23          subconsultants, contractors and subcontractors to provide to the City the same verifications of  
24          coverage as the Consultant must provide.

25          **10. Special Risks or Circumstances.**

26          The City reserves the right to modify these requirements, including limits, based on the  
27          nature of the risk, prior experience, insurer, coverage, or other special circumstances.

1           **11. Waiver or Modification of Insurance Requirements.**

2           Any waiver or modification of the insurance requirements can only be made by the City  
3 Attorney in writing. All waivers or modifications request are reviewed on a case-by-case basis.

4                                   **ARTICLE 8 – INDEMNIFICATION**

5           The Consultant agrees to indemnify, defend and hold harmless the City, the CSD and  
6 their respective officers, officials, employees, agents and volunteers (collectively  
7 “Indemnitees”) from and against any and all claims, causes of action, demands, damages,  
8 losses, costs and liabilities, including but not limited to attorneys’ fees, to the extent that the  
9 same arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of  
10 the Consultant, its subcontractors, their respective officers, employees or agents, or anyone  
11 for whose acts Consultant may be liable, in the performance of Services under this Agreement.  
12 If any action or proceeding is brought against any of the Indemnitees by reason of any act of  
13 the matters against which Consultant has agreed to indemnify Indemnitees as provided above,  
14 then Consultant, upon notice from City, shall defend the Indemnitees at Consultant’s expense  
15 by counsel acceptable to City, such acceptance not to be unreasonably withheld. This duty to  
16 indemnify and defend shall not be waived or modified by acts or omissions of the Parties  
17 except by an express written waiver signed by the City and, as applicable, the CSD.

18                                   **ARTICLE 9 – BOOKS AND RECORDS**

19           The Consultant shall maintain, and require its subconsultants and subcontractors to  
20 maintain, any and all ledgers, books of account, invoices, vouchers, canceled checks,  
21 documents, papers, records and other evidence relating to the Services or to the expenditures  
22 and disbursements charged to City pursuant to this Agreement (collectively the “books and  
23 records”). The Consultant shall maintain, and require its subconsultants and subcontractors to  
24 maintain, the books and records until a minimum of three years after the date of final  
25 payment to Consultant. Consultant’s accounting system and books and records shall properly  
26 accumulate and segregate incurred fees and costs by line item. Any and all such books and  
27 records shall be maintained in accordance with generally accepted accounting principles, shall  
28 enable the determination of incurred costs at interim points of completion, provide support

1 for reimbursement payment vouchers or invoices, and shall be sufficiently complete and  
2 detailed so as to permit an accurate evaluation of the Services provided by the Consultant  
3 pursuant to this Agreement. Any and all such books and records shall be maintained to the  
4 extent required by laws relating to audits of public agencies and their expenditures.

5 **ARTICLE 10 – AUDIT**

- 6 1. The Consultant shall make, and require its subconsultants and subcontractors to  
7 make, the books and records available for inspection, audit, examination, extracts,  
8 transactions and copying, at any time during regular business hours, upon written  
9 request by (a) City or its designated representatives, (b) the CSD or its designated  
10 representatives, (c) representatives of State of California, (d) the California State  
11 Auditor, (e) auditors representing the federal government, and (f) any other  
12 governmental authority that may provide funding for compensation to Consultant  
13 under this Agreement or its designated representatives. Copies of such books and  
14 records shall be provided directly to the City or other requesting party for  
15 inspection, audit and copying within three business days after receipt of any such  
16 request; otherwise, unless an alternative is mutually agreed upon, such books and  
17 records shall be made available at City’s address indicated for receipt of notices in  
18 this Agreement.
- 19 2. The Consultant shall permit, and require its subconsultants and subcontractors to  
20 permit, access to all records of employment, employment advertisements,  
21 employment application forms, and other pertinent data and records by the State  
22 Fair Employment Practices and Housing Commission, or any other agency of the  
23 State of California designated by State, for the purpose of any investigation to  
24 ascertain compliance with this Agreement and the Global Warming Solutions Act of  
25 2006 (Assembly Bill [AB] 32, Nunez, Chapter 488).
- 26 3. Provisions of Article III, Section 2 (Audits and Reports) of the TIRCP master  
27 agreement between the City and the California Department of Transportation,  
28

1 which provisions are set forth in Exhibit F, are hereby incorporated herein by  
2 reference and made a part hereof.

3  
4 **ARTICLE 11 – OWNERSHIP OF DOCUMENTS**

5 Ownership of Documents. “Documents” as used in this paragraph means original  
6 studies, surveys, reports, data, substantive notes, and other evidence used in preparation of  
7 any submission to the City, whether existing as electronic files or in hard copy. “Documents”  
8 does not refer to informal communications such as emails and staff notes, whether those  
9 communications are internal to the Consultant’s staff or between the Consultant and any  
10 subconsultants. All documents prepared, developed, or discovered by the Consultant in the  
11 course of providing any services pursuant to this Agreement shall remain the sole property of  
12 the City and may not be used, reused, or otherwise disposed of without the permission of the  
13 City. The Consultant shall deliver to the City all such documents within ten days after  
14 completion or expiration of this Agreement or after delivery of any notice terminating this  
15 Agreement, at no cost to the City. In the event the City requires or desires other information  
16 in the control of the Consultant that is not a Document as described above (such as informal  
17 communications, staff notes, and other correspondence), the Consultant shall provide any  
18 requested information to the City within 30 days. The City acknowledges that its alteration of  
19 Documents without the consent of the Consultant, or use of the Documents for any purpose  
20 other than the Scope of Services, is at the City’s own risk and without liability to the  
21 Consultant.

22 **ARTICLE 12 – INDEPENDENT CONTRACTOR**

23 The Consultant enters into this Agreement as an independent contractor and not as an  
24 employee of the City. Consultant shall have no power or authority by this Agreement to bind  
25 the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with  
26 this relationship or status. All employees, agents, contractors or subcontractors hired or  
27 retained by the Consultant are employees, agents, contractors or subcontractors of the  
28 Consultant and not of the City. The City shall not be obligated in any way to pay any wage  
claims or other claims made against Consultant by any such employees, agents, contractors, or

1 subcontractors, or any other person resulting from performance of this Agreement. City shall  
2 not have the right to direct and control the manner and means in which the Consultant carries  
3 out the work contemplated by this Agreement. City shall not train nor provide instruction to  
4 the Consultant for the carrying out of the services contemplated by this Agreement.

5 **ARTICLE 13 – ASSIGNABILITY**

- 6 1. The expertise and experience of the Consultant are material considerations for this  
7 Agreement. The City has an interest in qualifications of and capability of the  
8 Consultant which will fulfill the duties and obligations imposed under this  
9 Agreement. In recognition of that interest, the Consultant shall not assign or  
10 transfer this Agreement or any portion of or interest in this Agreement or the  
11 performance of any of the Consultant’s duties or obligations under this Agreement  
12 without the prior written consent of the City in its sole discretion. Any attempted  
13 unauthorized assignment shall be ineffective, null and void, and shall constitute a  
14 material breach of this Agreement entitling the City to any and all remedies at law  
15 or in equity, including summary termination of this Agreement.
- 16 2. Consultant shall not add, change or remove any subconsultant or subcontractor  
17 included in the Proposal as a member of Consultant’s team without the prior  
18 written approval of City in its sole discretion. City reserves the right to require that  
19 Consultant replace a subconsultant or subcontractor to perform Services under this  
20 Agreement in the event the City, in its sole discretion, determines such a  
21 replacement is necessary. Any replacement shall be subject to City’s prior written  
22 approval in its sole discretion.
- 23 3. City shall have the right to assign this Agreement and its rights and obligations  
24 under this Agreement to the CSD at any time after its formation, provided the CSD  
25 assumes the City’s obligations under this Agreement arising from and after the  
26 effective date of assignment. Upon such assignment and assumption, City shall be  
27 deemed automatically released from any liability and responsibility under this  
28 Agreement arising from and after the effective date of assignment. The foregoing

1 right to assign and release does not limit any other legal right of the City to assign  
2 and transfer this Agreement.

3 **ARTICLE 14 – EQUAL EMPLOYMENT; SBE/DBE/DVBE**

- 4 1. In the performance of work under this Agreement, Consultant shall not unlawfully  
5 discriminate, harass or allow harassment against any employee or applicant for  
6 employment, shall not refuse to select a person for a training program leading to  
7 employment, shall not bar or discharge a person from employment or from a  
8 training program leading to employment, and shall not discriminate against a  
9 person in compensation or in terms, conditions, or privileges of employment,  
10 because of race, religious creed, color, national origin, ancestry, physical disability,  
11 mental disability, medical condition, genetic information, marital status, sex,  
12 gender, gender identity, gender expression, age, sexual orientation, military and  
13 veteran status, family and medical care leave, pregnancy leave, and disability leave.  
14 Consultant shall ensure that the evaluation and treatment of its employees and  
15 applicants for employment or for a training program leading to employment are  
16 free from such discrimination and harassment. Consultant shall comply with the  
17 provisions of the Fair Employment and Housing Act (Government Code section  
18 12900 et seq.), and the applicable regulations promulgated thereunder (California  
19 Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the  
20 Fair Employment and Housing Commission implementing Government Code section  
21 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of  
22 Regulations, are incorporated into this Agreement by reference and made a part  
23 hereof as if set forth in full. Consultant shall give written notice of its obligations  
24 under this clause to labor organizations with which it has a collective bargaining or  
25 other agreements, as appropriate. Every vendor for the City, including Consultant,  
26 violating this section is subject to all the penalties imposed for a violation of  
27 California Labor Code §1735: Discrimination in Employment Because of Race, Color,  
28 etc., and other applicable law.



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2. Terms and conditions with respect to participation by State of California certified Small Business, Disadvantaged Business or Disabled Veteran Business Enterprises, including their specific roles/responsibilities in performance of the Services, are set forth in Exhibit E.
  
3. Should federal funds be constituted as part of Project funding or compensation received by Consultant during the performance of this Agreement, Consultant shall comply with all applicable federal mandated contract provisions, including nondiscrimination provisions, as set forth in the applicable federal funding agreement.
  
4. Consultant shall include the provisions of this Article 14 in each contract with a subconsultant or subcontractor, at all tiers.

**ARTICLE 15- KEY PERSONNEL**

Consultant commits the key staff for the Scope of Services, in their respective roles and responsibilities, as set forth in Exhibit D. Consultant may not replace such key staff, and Consultant shall not redirect to other staff the work and Services that Exhibit D indicates are intended to be performed by such key staff, unless their employment is terminated, they are unable to work due to sickness or disability, or their replacement or work reallocation is agreed to in advance by the Owner in writing in its sole discretion. The Owner must approve replacement staff before the replacement staff is assigned to perform Services under this Agreement. Any request to replace key staff must be accompanied with resumes/qualifications demonstrating that the replacement individual is at least equally qualified. Owner reserves the right to require that Consultant replace a staff person assigned to perform Services under this Agreement in the event the Owner, in its sole discretion, determines such a replacement is necessary. Replacement staff in every case is subject to Owner approval in its sole discretion before their assignment to perform Services under this Agreement.

1 **ARTICLE 16 – CONFLICTS OF INTEREST**

2 Consultant covenants that it presently has no interest and shall not acquire any  
3 interest, direct or indirect, which may be affected by the Services to be performed by  
4 Consultant under this Agreement, or which would conflict in any manner with the  
5 performance of its Services hereunder. Consultant further covenants that no person having  
6 any such interest shall be employed by it in the performance of the Services. Consultant agrees  
7 not to accept any employment or representation during the term of this Agreement which is  
8 likely to make Consultant financially interested, as provided by California Government Code  
9 Section 1090 in any decision made by Owner on any matter in connection with which  
10 Consultant has been retained pursuant to this Agreement. Nothing in this Article shall preclude  
11 Consultant from accepting other engagements with the Owner.

12 **ARTICLE 17 – RESTRICTIONS ON LOBBYING**

- 13 1. By signing this Agreement, Consultant certifies, to the best of its knowledge and  
14 belief, that no federal appropriated funds have been paid or will be paid, by or on  
15 behalf of Consultant, to any person for influencing or attempting to influence an  
16 officer or employee of any federal Owner, a Member of Congress, an officer or an  
17 employee of Congress, or an employee of a Member of Congress in connection with  
18 this Agreement.
- 19 2. If any funds, other than federal appropriated funds, have been paid or will be paid  
20 to any person for influencing or attempting to influence an officer or an employee  
21 of any federal Owner, a Member of Congress, an officer or an employee of  
22 Congress or an employee of a Member of Congress in connection with this  
23 Agreement, Consultant shall complete and submit all required lobbying disclosure  
24 forms and reports.
- 25 3. This certification is a material representation of fact upon which reliance was  
26 placed when this Agreement was executed.
- 27  
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1                                   **ARTICLE 18 – CHANGES, AMENDMENTS AND MODIFICATIONS**

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

4                                   **ARTICLE 19 – SEVERABILITY**

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

12                                   **ARTICLE 20 – WAIVER**

13                   Waiver by any party to this Agreement of any term, condition, or covenant of this  
14 Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by  
15 any party of any breach of the provisions of this Agreement shall not constitute a waiver of any  
16 other provision, nor a waiver of any subsequent breach or violation of any provision of this  
17 Agreement. Acceptance by the City of any work or Services by Consultant shall not constitute  
18 a waiver of any of the provisions of this Agreement.

19                                   **ARTICLE 21 – ENTIRE AGREEMENT**

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

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

28                   This Agreement shall be interpreted, construed and governed according to the laws of

1 the State of California. In the event of litigation between the Parties, venue in state trial courts  
2 shall lie exclusively in the County of Los Angeles, Superior Court, Southwest District, located at  
3 825 Maple Avenue, Torrance, California 90503-5058. In the event of litigation in the United  
4 States District Court, venue shall lie exclusively in the Central District of California, in Los  
5 Angeles.

6 **ARTICLE 23 – MISCELLANEOUS**

- 7 1. Consultant agrees to, at all times during the performance of the Agreement, obtain  
8 and maintain an Inglewood City Business Tax Certificate. The purchase of the  
9 Certificate must be made prior to the rendering of services and a copy of the  
10 Certificate must be forwarded to the Purchasing Division.
- 11 2. The Parties waive any benefits from the principle of contra proferentem and  
12 interpreting ambiguities against drafters. No party shall be deemed to be the  
13 drafter of this Agreement, or of any particular provision or provisions, and no part  
14 of this Agreement shall be construed against any party on the basis that the  
15 particular party is the drafter of any part of this Agreement.
- 16 3. This Agreement may be executed in counterparts, and when each party hereto has  
17 signed and delivered at least one such counterpart, each counterpart shall be  
18 deemed an original and, when taken together with the other signed counterparts,  
19 shall constitute one Agreement, which shall be binding upon and effective as to all  
20 Parties hereto.
- 21 4. Article titles, paragraph titles or captions contained herein are inserted as a matter  
22 of convenience and for reference, and in no way define, limit, extend, or describe  
23 the scope of this Agreement or any provision hereof.

24 [Signature page immediately follows]

25

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

3 **CITY OF INGLEWOOD**

**COMPANY NAME**

4  
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6 \_\_\_\_\_  
7 **James T. Butts, Jr.,**  
8 Mayor

\_\_\_\_\_ **NAME,**  
TITLE

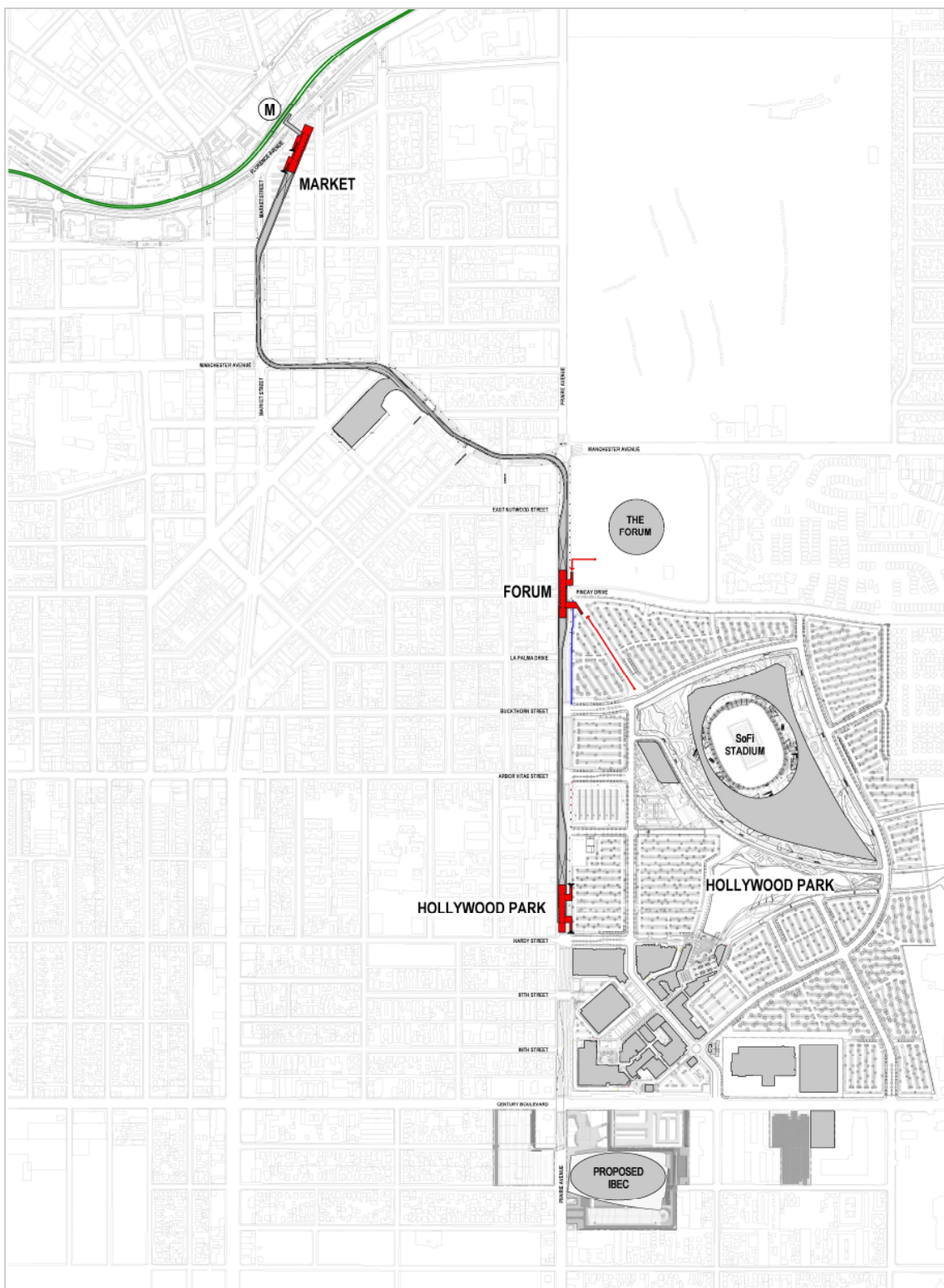
9 **ATTEST:**

**APPROVED AS TO FORM:**

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12 \_\_\_\_\_  
13 **Yvonne Horton,**  
14 City Clerk

\_\_\_\_\_ **Kenneth R. Campos,**  
City Attorney

Exhibit A  
Depiction of Project



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1 **Exhibit B**

2 **Scope of Services**

3 **Task 1: Project Delivery Feasibility.**

4 Work with Project team, to complete a feasibility analysis for use in the evaluation of project  
5 delivery alternatives. Develop preliminary financial models to assess viability of potential plans  
6 of finance, including potential options for fare box/ridership generated revenue streams. Aid in  
7 the development of stakeholder presentations. Support the Project team in assessing the  
8 economics and market feasibility of the Project, and support the Project team in the  
9 evaluation and assessment of other innovative finance opportunities as requested.  
10

11 **Task 2: Project Financing**

12 Develop detailed project financial model for potential project financings, including all  
13 identified and potential revenue streams such as but not limited to ridership/farebox  
14 generated revenue streams, state and local grants, various City revenues, infrastructure  
15 impact fee revenues and potential stakeholder commitments. Provide expertise with public  
16 and private funding and financing partners and instruments including USDOT, FHWA, TIFIA,  
17 private activity bonds, private equity, taxable bonds, private placement financing and tax  
18 issues. Provide financial advice regarding market conditions, financial products and alternative  
19 and specialized financing strategies and structures that may benefit the project, including but  
20 not limited to implications of federalizing the project. Provide analysis and documentation to  
21 assist Project team in securing credit ratings for project-related debt. Assist Project team in  
22 completing the application process for TIFIA, or other federal credit support. Support Project  
23 team’s negotiations with financial partners, including underwriters, lenders, insurance  
24 providers, federal programs and/or other investors. Assist Project team in preparation for and  
25 completion of financial close.  
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1 **Task 3 – Support for Project Procurement through Innovative Delivery (for Financial Advisory**  
2 **Aspects)**  
3

4 Consultant will provide procurement and transaction support in areas of financial advice to  
5 achieve a clear, transparent, competitive solicitation and bidding process that is most likely to  
6 maximize City’s achievement of its Project goals and still meet all of City’s procurement and  
7 contracting requirements.

8 Given the complexity and diversity of such project procurements, Consultant will work with  
9 City’s technical staff, other technical consultants and external project advisors during the  
10 procurement process through financial close. In consultation with the City, Consultant will be  
11 available to perform tasks associated with procurement support including, but not limited to  
12 those below.  
13

- 14 • Meeting(s) with City staff, along with legal advisors, project management/strategic  
15 advisors and technical consultants;
- 16 • Workshops among the Project team to discuss goals during procurement, key features  
17 unique to the Project, and strategies to maximize competition, transparency, effective  
18 communication with potential bidders;
- 19 • Develop and provide appropriate commercial/financial terms and conditions to be  
20 incorporated into the procurement documents;
- 21 • Assistance in the management of a transparent and competitive procurement process  
22 for the financial transaction;
- 23 • Assist with financial inputs into a realistic timetable for all procurement phases,  
24 identifying key milestones, in coordination with external project advisors;
- 25 • Identify and draft materials to convey relevant Project financial information to  
26 potential private sector bidders to support effective implementation of the  
27 procurement procedure;  
28



- 1 • Assist City staff and its consulting team with developing the procurement
- 2 documentation (RFQ, RFP, evaluation criteria, etc.);
- 3 • Assist with evaluating and developing the financial aspects of the Project Agreement,
- 4 including the payment mechanism, payment deduction regimes, the structure and
- 5 quantum of equity participation , and funding/financing structures;
- 6 • Draft responses to financial related requests for information;
- 7 • Support City in the following activities:
- 8 ○ Review selected portions of procurement documents (request for qualification
- 9 and request for proposal) and contractual agreements;
- 10 ○ Review bidder qualification and bid evaluation criteria related to financial
- 11 qualifications and financial proposals; and
- 12 ○ Support the preparation of required due diligence documents for potential debt
- 13 providers and guarantors;
- 14 • Assist in the evaluation of financial components of proposer/bidder statements of
- 15 qualifications and proposals;
- 16 • Assist with contract negotiations as requested;
- 17 • Provide support and analysis during commercial and financial close;
- 18 • Review the tax and accounting implications associated with the proposed transaction;
- 19 and
- 20 • Support the City in credit rating agency evaluations and obtaining ratings for the
- 21 anticipated revenue streams.

22 **Task 4– Implementation and Contract Administration Support**

23 Following successful procurement of a Developer/Operator, Consultant may, at City’s sole

24 discretion, be required to perform additional tasks on an as-needed basis to provide advice or

25 complete deliverables in support of effective initial contract implementation and

26 administration. Consultant will be available to perform tasks associated with Project

27 implementation and contract administration including, but not limited to:

28

- 1 • Support the City and CSD in accomplishing the transition of funding and financing
- 2 sources to the CSD;
- 3 • Assist the CSD with setting up its accounting and reporting systems, including
- 4 financial reporting in connection with the DBFOM contract and grant agreements;
- 5 • Attend follow up meetings and/or conference calls with City staff and external
- 6 project advisors to discuss and make recommendations with respect to financial
- 7 aspects of project contract administration;
- 8 • Discuss with City staff the Project Agreement, including application of the
- 9 payment mechanism or other financial aspects of the Project Agreement;
- 10 • Draft user materials and guidance regarding the Project Agreement, especially
- 11 application of the payment mechanism to support appropriate use of performance
- 12 deductions;
- 13 • Assist with financial analysis of developer claims and requests for relief; and
- 14 • Update the financial model as needed with any subsequent relevant financial
- 15 information regarding the Project.

16 Specific tasks and deliverables will be clearly defined by City staff and communicated through  
17 the Project Manager at the time that City has determined that support for Project contract  
18 administration and implementation support is required.

19 **Task 5 – Assessment of Additional Financing Opportunities**

20 Consultant will work closely and in coordination with the City Project Managers and other  
21 external advisors staff to assess the opportunity for alternative funding mechanisms in the  
22 vicinity of the Project. City staff and/or its advisors would serve as a liaison with local  
23 governments and other stakeholders. Consultant will work with City and use publicly available  
24 information as well as any consultant-owned or proprietary sources of related information to:

- 25 • Identify the current land uses and designations, significant landowners and any
- 26 development plans, and entitlements and assessing development potential along with
- 27 related generation of revenues that could support the Project financing;
- 28

- 1 • Identify and describe existing taxing districts that have already been or are in the  
2 process of being implemented that are comparable (i.e., case study data);
- 3 • Determine and rank funding opportunity areas based on relevant factors including the  
4 existing use and entitlements and development potential;
- 5 • Estimate the revenue potential of funding opportunity areas using the available  
6 alternative funding tools and/or from value capture through joint development  
7 opportunities;
- 8 • Compare the tools and determine interest in pursuing said funding tools;
- 9 • Prepare a market assessment and projections of revenue from corporate sponsorships.  
10 This may include:
  - 11 ○ Identify examples of projects of similar scope and size, and how these have  
12 employed corporate sponsorships;
  - 13 ○ Identify targeted business fields or specific corporations for potential  
14 sponsorship and analyze any known current sponsorships and investments;
  - 15 ○ Model scenarios and ranges of projected revenue from corporate sponsorships;  
16 and
  - 17 ○ Recommend an action plan for marketing the Project to potential corporate  
18 sponsors;
- 19 • Prepare a market assessment and projections of revenue from advertisements. This  
20 may include:
  - 21 ○ Identify examples of projects of similar scope and size, and how these have  
22 employed advertising as a revenue source;
  - 23 ○ Perform a market study of advertising rates on similar projects and/or in similar  
24 markets, and identify potential partners for implementing an advertising  
25 program; and
  - 26 ○ Model scenarios and ranges of projected revenue from advertising; and
- 27 • Prepare a market assessment and projections of revenue from vendor concessions.  
28 This may include:

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- Identify examples of projects of similar scope and size, and how these have employed a vendor concessions program;
- Perform a market study to determine potential revenue generation from a vendor concessions program, and, working with the City’s technical consultant, identify related physical and/or infrastructure improvements and related costs to implement a vendor concessions program;
- Model scenarios and ranges of projected revenue from a concessions program; and
- Recommend an action plan for marketing the Project to potential concessionaires.

The results of these funding assessments may be provided in the form of one or more presentations or one or more written reports of the assessments that include descriptions, maps, numerical analysis, and priority list for funding opportunity areas. Recommendations, if any, will be included for state or local legislation to facilitate implementation or improved utilization of tax assessment districts or other funding mechanisms.

Consultant may be asked to share the results of the assessments with municipal stakeholders and be available for meetings and/or conference calls to identify next steps, whether it be community and stakeholder outreach, to pursue the alternative funding tools, or recommendations for legislation to amend or create new tools.

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**Exhibit C**  
**Fee Proposal and Breakdown of Hours and Rates**  
[Insert from Proposal]

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**Exhibit D**

**Key Staff Names, Titles, Time Commitments and Responsibilities**

Name	Company Affiliation	Title	Time Commitment	Role and Responsibility	Contact Information
		Project Manager			

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**Exhibit E**  
**Terms and Conditions Regarding Small Business, Disadvantaged Business**  
**or Disabled Veteran Business Enterprises**  
[Insert from Proposal]

1 **Exhibit F**

2 **Excerpt from TIRCP Master Agreement**

3  
4 **ARTICLE III – GENERAL PROVISIONS**

5 **Section 2. Audits and Reports**

6 A. *Cost Principles*

7 1. Recipient agrees to comply with Title 2 Code of Federal Regulations 200 (2 CFR 200)  
8 Uniform Administrative Requirements, Cost Principles for State and Local Government, and  
9 Audit Requirements for Federal Awards.

10 2. Recipient agrees, and will assure that its contractors and subcontractors will be  
11 obligated to agree to follow 2 CFR 200 and it shall be used to determine the allowability of  
12 individual Project cost items. Every sub-recipient receiving Project funds as a contractor or  
sub-contractor under this Agreement shall comply with 2 CFR 200.

13 3. Any Project costs for which Recipient has received payment or credit that are  
14 determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment  
15 by Recipient to State. Should Recipient fail to reimburse moneys due State within thirty (30)  
16 days of demand, or within such other period as may be agreed in writing between the Parties  
17 hereto, State is authorized to intercept and withhold future payments due to Recipient from  
State or any third-party source whose funding passes through the State, including but not  
limited to, the State Treasurer, the State Controller and the CTC.

18 4. The State may terminate the grant for any reason at any time if it is determined by the  
19 State, based on an audit under this section, that there has been a violation of any State or  
20 federal law or policy by the Recipient during performance under this or any other grant  
21 agreement or contract entered into with the State. If the grant is terminated under this  
section, the Recipient may be required to fully or partially repay funds.

22 B. *Record Retention*

23 1. Recipient agrees, and will assure that its contractors and subcontractors shall establish  
24 and maintain an accounting system and records that properly accumulate and segregate  
25 incurred Project costs and matching funds by line item for the Project. The accounting system  
26 of Recipient, its contractors and all subcontractors shall conform to Generally Accepted  
27 Accounting Principles (GAAP), enable the determination of incurred costs at interim points of  
28 completion, and provide support for reimbursement payment vouchers or invoices. All  
accounting records and other supporting papers of Recipient, its contractors and  
subcontractors connected with Project performance under this Agreement and each Program  
Supplement shall be maintained for a minimum of three (3) years from the date of final  
payment to Recipient under a Program Supplement and shall be held open to inspection,



1 copying, and audit by representatives of State, the California State Auditor, and auditors  
2 representing the federal government. Copies thereof will be furnished by Recipient, its  
3 contractors, and subcontractors upon receipt of any request made by State or its agents. In  
4 conducting an audit of the costs and match credits claimed under this Agreement, State will  
5 rely to the maximum extent possible on any prior audit of Recipient pursuant to the provisions  
6 of federal and State law. In the absence of such an audit, any acceptable audit work performed  
7 by Recipient's external and internal auditors may be relied upon and used by State when  
8 planning and conducting additional audits.

9  
10 2. For the purpose of determining compliance with Title 21, California Code of  
11 Regulations, Section 2500 et seq., when applicable, and other matters connected with the  
12 performance of Recipient's contracts with third parties pursuant to Government Code section  
13 8546.7, Recipient, Recipient's contractors and subcontractors, and State shall each maintain  
14 and make available for inspection all books, documents, papers, accounting records, and other  
15 evidence pertaining to the performance of such contracts, including, but not limited to, the  
16 costs of administering those various contracts. All of the above referenced parties shall make  
17 such Agreement and Program Supplement materials available at their respective offices at all  
18 reasonable times during the entire Project period and for three (3) years from the date of final  
19 payment to Recipient under any Program Supplement. State, the California State Auditor, or  
20 any duly authorized representative of State or the United States Department of  
21 Transportation, shall each have access to any books, records, and documents that are  
22 pertinent to the Project for audits, examinations, excerpts, and transactions, and Recipient  
23 shall furnish copies thereof if requested.

24  
25 3. Recipient, its contractors and subcontractors will permit access to all records of  
26 employment, employment advertisements, employment application forms, and other  
27 pertinent data and records by the State Fair Employment Practices and Housing Commission,  
28 or any other agency of the State of California designated by State, for the purpose of any  
investigation to ascertain compliance with this Agreement and the Act.