

1 **AGREEMENT FOR PROFESSIONAL SERVICES**

2 **(Inglewood Transit Connector Project – APM Operating System Technical 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 at least through June 30, 2021 City intends to issue Task Orders
- 21 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).
- 24 3. City and Consultant agree on the fee schedule and hourly rates set forth in Exhibit
- 25 C. Such rates shall increase on each anniversary of the commencement date of the
- 26 term of this Agreement (including optional extensions) at the lesser of (a) 2% of the
- 27 prior year's rate or (b) the percentage increase, if any, over the prior one-year
- 28

1 period in the Consumer Price Index, All Urban Consumers, for the Los Angeles
2 Metropolitan Area (1982-84 = 100).

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

1 withheld.

2 **ARTICLE 5 – TERMINATION**

3 1. **Termination for Cause.**

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

7 2. **Termination for Convenience.**

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

17 **ARTICLE 6 – NOTICES**

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

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

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

28 **WITH COPY TO:**
Public Works Director,
One Manchester Boulevard
Inglewood, California 90301-1750

AGENT FOR SERVICE OF PROCESS
NAME
STREET ADDRESS
CITY, STATE, ZIP CODE

1
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** 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 Pursuant to the full language of California Civil Code §2782.8, the Consultant agrees to
6 indemnify, defend and hold harmless the City, the CSD and their respective officers, officials,
7 employees, agents and volunteers (collectively “Indemnitees”) from and against any and all
8 claims, causes of action, demands, damages, losses, costs and liabilities, including but not
9 limited to attorneys’ fees, that arise out of, pertain to, or relate to the negligence,
10 recklessness, or willful misconduct of the Consultant, its subcontractors, their respective
11 officers, employees or agents, or anyone for whose acts Consultant may be liable, in the
12 performance of Services under this Agreement, but this indemnity does not apply to liability
13 for damages arising from the sole negligence, active negligence, or willful acts of the City; and
14 does not apply to any passive negligence of the City unless caused at least in part by the
15 Consultant. If any action or proceeding is brought against any of the Indemnitees by reason of
16 any act of the matters against which Consultant has agreed to indemnify Indemnitees as
17 provided above, then Consultant, upon notice from City, shall defend the Indemnitees at
18 Consultant’s expense by counsel acceptable to City, such acceptance not to be unreasonably
19 withheld. The City agrees that in no event shall the cost to defend charged to the Consultant
20 exceed Consultant’s proportionate percentage of fault. This duty to indemnify and defend shall
21 not be waived or modified by acts or omissions of the Parties except by an express written
22 waiver signed by the City and, as applicable, the CSD.

23 **ARTICLE 9 – BOOKS AND RECORDS**

24 The Consultant shall maintain, and require its subconsultants and subcontractors to
25 maintain, any and all ledgers, books of account, invoices, vouchers, canceled checks,
26 documents, papers, records and other evidence relating to the Services or to the expenditures
27 and disbursements charged to City pursuant to this Agreement (collectively the “books and
28 records”). The Consultant shall maintain, and require its subconsultants and subcontractors to

1 maintain, the books and records until a minimum of three years after the date of final
2 payment to Consultant. Consultant's accounting system and books and records shall properly
3 accumulate and segregate incurred fees and costs by line item. Any and all such books and
4 records shall be maintained in accordance with generally accepted accounting principles, shall
5 enable the determination of incurred costs at interim points of completion, provide support
6 for reimbursement payment vouchers or invoices, and shall be sufficiently complete and
7 detailed so as to permit an accurate evaluation of the Services provided by the Consultant
8 pursuant to this Agreement. Any and all such books and records shall be maintained to the
9 extent required by laws relating to audits of public agencies and their expenditures.

10 **ARTICLE 10 – AUDIT**

- 11 1. The Consultant shall make, and require its subconsultants and subcontractors to
12 make, the books and records available for inspection, audit, examination, extracts,
13 transactions and copying, at any time during regular business hours, upon written
14 request by (a) City or its designated representatives, (b) the CSD or its designated
15 representatives, (c) representatives of State of California, (d) the California State
16 Auditor, (e) auditors representing the federal government, and (f) any other
17 governmental authority that may provide funding for compensation to Consultant
18 under this Agreement or its designated representatives. Copies of such books and
19 records shall be provided directly to the City or other requesting party for
20 inspection, audit and copying within three business days after receipt of any such
21 request; otherwise, unless an alterative is mutually agreed upon, such books and
22 records shall be made available at City's address indicated for receipt of notices in
23 this Agreement.
- 24 2. The Consultant shall permit, and require its subconsultants and subcontractors to
25 permit, access to all records of employment, employment advertisements,
26 employment application forms, and other pertinent data and records by the State
27 Fair Employment Practices and Housing Commission, or any other agency of the
28 State of California designated by State, for the purpose of any investigation to

1 ascertain compliance with this Agreement and the Global Warming Solutions Act of
2 2006 (Assembly Bill [AB] 32, Nunez, Chapter 488).

- 3 3. Provisions of Article III, Section 2 (Audits and Reports) of the TIRCP master
4 agreement between the City and the California Department of Transportation,
5 which provisions are set forth in Exhibit F, are hereby incorporated herein by
6 reference and made a part hereof.

7
8 **ARTICLE 11 – OWNERSHIP OF DOCUMENTS**

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

26 **ARTICLE 12 – INDEPENDENT CONTRACTOR**

27 The Consultant enters into this Agreement as an independent contractor and not as an
28 employee of the City. Consultant shall have no power or authority by this Agreement to bind
the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with

1 this relationship or status. All employees, agents, contractors or subcontractors hired or
2 retained by the Consultant are employees, agents, contractors or subcontractors of the
3 Consultant and not of the City. The City shall not be obligated in any way to pay any wage
4 claims or other claims made against Consultant by any such employees, agents, contractors, or
5 subcontractors, or any other person resulting from performance of this Agreement. City shall
6 not have the right to direct and control the manner and means in which the Consultant carries
7 out the work contemplated by this Agreement. City shall not train nor provide instruction to
8 the Consultant for the carrying out of the services contemplated by this Agreement.

9 **ARTICLE 13 – ASSIGNABILITY**

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

1 assumes the City's obligations under this Agreement arising from and after the
2 effective date of assignment. Upon such assignment and assumption, City shall be
3 deemed automatically released from any liability and responsibility under this
4 Agreement arising from and after the effective date of assignment. The foregoing
5 right to assign and release does not limit any other legal right of the City to assign
6 and transfer this Agreement.

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

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

1 other agreements, as appropriate. Every vendor for the City, including Consultant,
2 violating this section is subject to all the penalties imposed for a violation of
3 California Labor Code §1735: Discrimination in Employment Because of Race, Color,
4 etc., and other applicable law.

5 2. Terms and conditions with respect to participation by State of California certified
6 Small Business, Disadvantaged Business or Disabled Veteran Business Enterprises,
7 including their specific roles/responsibilities in performance of the Services, are set
8 forth in Exhibit E.

9 3. Should federal funds be constituted as part of Project funding or compensation
10 received by Consultant during the performance of this Agreement, Consultant shall
11 comply with all applicable federal mandated contract provisions, including
12 nondiscrimination provisions, as set forth in the applicable federal funding
13 agreement.

14 4. Consultant shall include the provisions of this Article 14 in each contract with a
15 subconsultant or subcontractor, at all tiers.

16 **ARTICLE 15- KEY PERSONNEL**

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

1 Owner approval in its sole discretion before their assignment to perform Services under this
2 Agreement.

3 **ARTICLE 16 – CONFLICTS OF INTEREST**

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

14 **ARTICLE 17 – RESTRICTIONS ON LOBBYING**

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

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

26
27 [Signature page immediately follows]
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CITY OF INGLEWOOD

COMPANY NAME

James T. Butts, Jr.,
Mayor

NAME,
TITLE

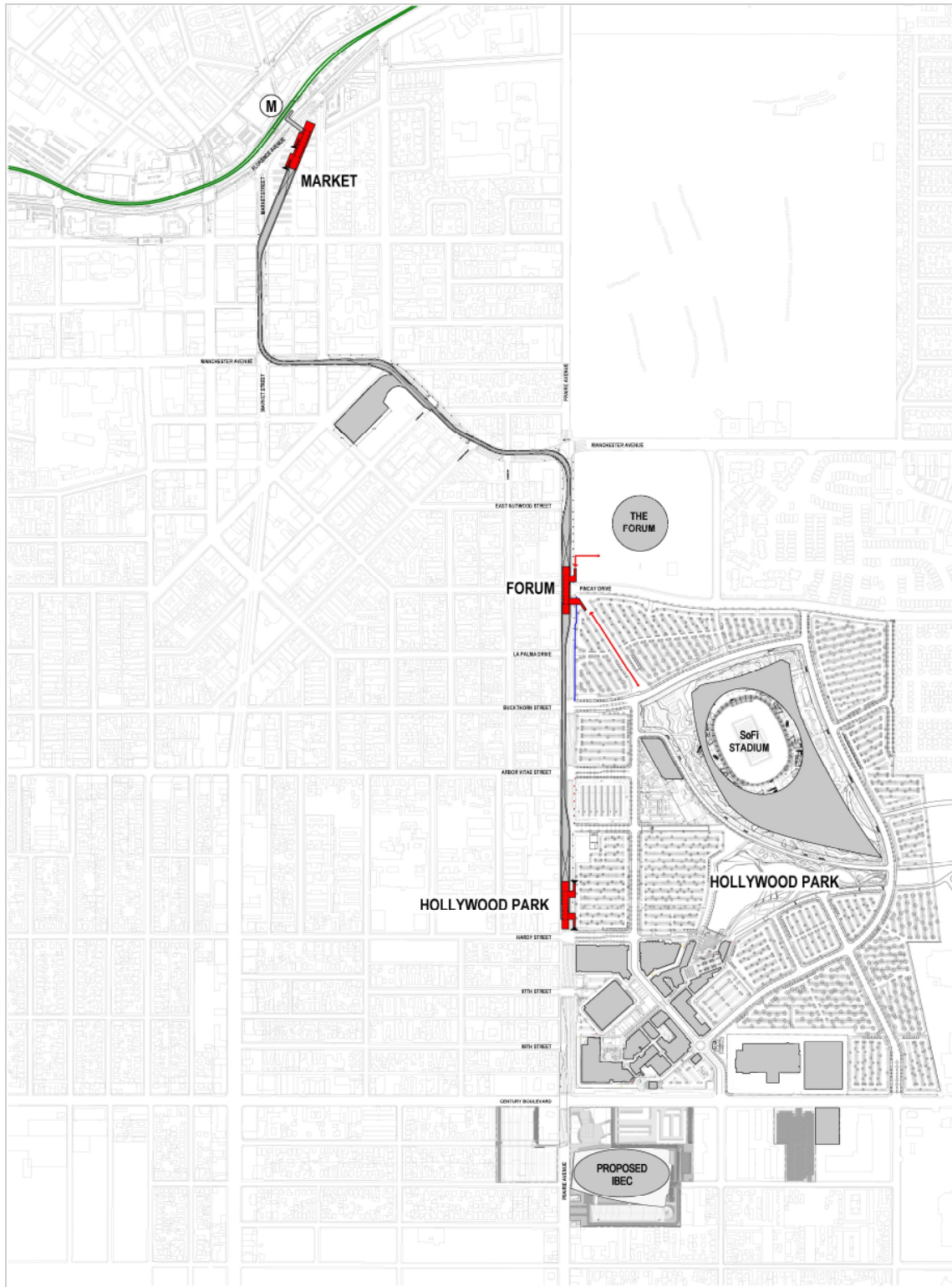
ATTEST:

APPROVED AS TO FORM:

Yvonne Horton,
City Clerk

Kenneth R. Campos,
City Attorney

Exhibit A
Depiction of Project



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1 **Exhibit B**

2 **Scope of Services**

3 Provide a range of technical services associated with the APM Operating System, Architecture
4 and Urban design, engineering and program management for the Project, to support the City
5 in the definition, procurement and delivery of the Project.
6

7 The Scope of Services may include but not be limited to the following:

- 8 • Project definition and advanced planning of the APM Operating System and its
9 requirements;
- 10
- 11 • Developing and defining the architecture, aesthetics and urban design/streetscape and
12 its integration for all aspects of the APM stations, guideways, maintenance and storage
13 facility, substations, etc;
- 14
- 15 • Determining and coordinating with applicable regulatory authorities on requirements
16 to comply with applicable codes and standards;
- 17
- 18 • Project controls including but not limited to cost estimates, schedules, risk matrices
19 and configuration control;
- 20
- 21 • Development of performance based technical specifications, drawings and other
22 technical requirements as required for incorporation into the DBFOM procurement
23 documents;
- 24
- 25 • Assisting City staff and its consulting team with developing other aspects of
26 procurement documentation requiring engineering expertise or experience, including
27 assistance with structuring payment deduction regimes for technical non-compliances;
- 28
- Supporting the procurement process, including technical reviews of DBFOM proposals;
- Supporting negotiations and contract award to the selected DBFOM Contractor;

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- Supporting the City in the oversight and administration of the DBFOM Contract;
- Supporting the City in the review of DBFOM Contractor design and other submittals;
- Supporting safety certification reviews for the integrated Project;
- Supporting review of requirements applicable to sensitive security information;
- Supporting the City in the oversight of operations and maintenance; and
- Supporting the City’s program management of the overall Project, including providing reports, findings, recommendations etc. as requested.

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Exhibit C
Fee Proposal and Breakdown of Hours and Rates

1 **Exhibit D**

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

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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.