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AGREEMENT NO.: _____

THIS ADVANCE FUNDS AGREEMENT (“Agreement”) is made and entered into this February ____, 2020, by and between the City of Inglewood (hereinafter referred to as the “City”), a municipal corporation, One Manchester Boulevard, Inglewood, California 90301; and South Bay Cities Council of Governments, a joint powers authority of 16 cities and the County of Los Angeles, (hereinafter referred to as the “COG”) created pursuant to California Government Code 6500 et seq. and whose address is 20285 S. Western Avenue, Suite 100, Torrance, California 90501.

RECITALS

WHEREAS, the COG desires to implement a Fiber Optic Program (the “Program”) but needs the funding to implement the Program; and

WHEREAS, on September 17, 2019, the City authorized \$800,000 as an advance payment for the Program; and

WHEREAS, the COG identified \$670,000 as a realistic amount for starting the Program; and

WHEREAS, in November 2019, the City advanced \$670,000 to the COG to be used for the Program; and

WHEREAS, on January 21, 2020, the COG repaid the City \$670,000; and

WHEREAS, it is the expressed intent of the City to loan the COG additional funds to assist the COG in implementing and completing the Program; and

WHEREAS, said Program will be operated pursuant to Exhibit “A,” a two-page letter of intent dated June 26, 2019, which Exhibit is incorporated herein by this reference as if set forth in full.

WHEREAS, the COG anticipates repayment to the City of all Advances prior to any subsequent fund dispersal.

NOW, THEREFORE, the City and the COG (hereinafter referred to individually as “Party” and collectively as the “Parties”) hereto mutually agree as follows:

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ARTICLE 1 – CITY’S DUTIES

- 1. The aforementioned recitals are true, correct, and are incorporation herein.
- 2. As a necessary and indispensable part of this Agreement, the City agrees to advance \$2,310,000 (the “Advance”), in three (3) separate installments, pursuant to Exhibit “B,” which Exhibit is incorporated herein by this reference, to the COG for the specific purpose of the COG implementing its Fiber Optic Fee Program.

ARTICLE 2 – COG REPAYMENT RESPONSIBILITY

- 1. The COG agrees to repay the City in full pursuant to the schedule provide in Exhibit “B.”
- 2. The COG shall execute a promissory note attached hereto as Exhibit “B.”

ARTICLE 3 – NOTICES

Any notice given pursuant to this Agreement shall be deemed received and effective on the date personally delivered or, if mailed, five (5) days after deposit of the same in the custody of the United States Postal Service, when properly addressed, posted and deposited in the United States mail addressed to the respective parties as follows:

<u>CITY:</u>	<u>COG.:</u>
Yvonne Horton, City Clerk	Christian Horvath, Chairman
City of Inglewood	South Bay Cities Council of Governments
One Manchester Boulevard	20285 S. Western Ave., #100
Inglewood, CA 90301-1750	Torrance, CA 90501

WITH COPY TO:
Artie Fields, City Manager
City of Inglewood
One Manchester Boulevard
Inglewood, CA 90301

ARTICLE 4 – CHANGES, AMENDMENTS, AND MODIFICATIONS

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

ARTICLE 5 – AUDIT

The COG shall maintain any and all records or documents pursuant to this Agreement, and the same shall be made available for inspection, audit and copying, at any time during

1 regular business hours, upon written request by the City or its designated representatives.
2 Copies of such documents or records shall be provided directly to the City for inspection, audit
3 and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed
4 upon, such documents and records shall be made available at the City's address indicated for
5 receipt of notices in this Agreement.

6 **ARTICLE 6 – BOOKS AND RECORDS**

7 The COG shall maintain any and all documents and records demonstrating or relating
8 to the COG's performance of services pursuant to this Agreement. The COG shall maintain any
9 and all ledgers, books of account, invoices, vouchers, canceled checks or other documents or
10 records evidencing or relating to work, services, expenditures and disbursements charged to
11 the City pursuant to this Agreement. Any and all such documents or records shall be
12 maintained in accordance with generally accepted accounting principles and shall be
13 sufficiently complete and detailed so as to permit an accurate evaluation of the services
14 provided by the COG pursuant to this Agreement. Any and all such documents or records shall
15 be maintained to the extent required by laws relating to audits of public agencies and their
16 expenditures.

17 **ARTICLE 7 – SEVERABILITY**

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

25 **ARTICLE 8 – WAIVER**

26 Waiver by any party to this Agreement of any term, condition, or covenant of this
27 Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by
28 any party of any breach of the provisions of this Agreement shall constitute a waiver of any

1 other provision, or a waiver of any subsequent breach, violation of any provision of this
2 Agreement. Acceptance by the City of any work or services by the COG shall not constitute a
3 waiver of any of the provisions of this agreement.

4 **ARTICLE 9 – ATTORNEYS FEES, COSTS AND EXPENSES**

5 In the event litigation or other proceeding is required to enforce or interpret any
6 provision of this Agreement, the prevailing party in such litigation or other proceeding shall be
7 entitled to an award of reasonable attorney’s fees, costs and expenses, in addition to any
8 other relief to which it may be entitled.

9 **ARTICLE 10 – ENTIRE AGREEMENT**

10 This Agreement, including all Exhibits, is the entire, complete, final and exclusive
11 expression of the Parties with respect to the matters addressed therein and supersedes all
12 other Agreements or understandings, whether oral or written, entered into between the COG
13 and the City prior to the execution of this Agreement. No statements, representations or
14 other Agreements, whether oral or written, made by any party which are not embodied herein
15 shall be valid and binding unless in writing and duly executed by the Parties or their authorized
16 representatives.

17 **ARTICLE 11 – GOVERNING LAW; VENUE**

18 This Agreement shall be interpreted, construed, and governed according to the laws of
19 the State of California. In the event of litigation between the Parties, venue in state trial courts
20 shall lie exclusively in the County of Los Angeles, Superior Court, Southwest District, located at
21 825 Maple Avenue, Torrance, California 90503-5058. In the event of litigation in the United
22 States District Court, venue shall lie exclusively in the Central District of California, in Los
23 Angeles.

24 **ARTICLE 12 – MISCELLANEOUS**

25 The Parties waive any benefits from the principle of *contra proferentem* and
26 interpreting ambiguities against drafters. No party shall be deemed to be the drafter of this
27 Agreement, or of any particular provision or provisions, and no part of this Agreement shall be
28 construed against any party on the basis that the particular party is the drafter of any part of

1 this Agreement.

2 This Agreement may be executed in counterparts, and when each party hereto has
3 signed and delivered at least one such counterpart, each counterpart shall be deemed an
4 original and, when taken together with the other signed counterparts, shall constitute one
5 Agreement, which shall be binding upon and effective as to all parties hereto.

6 Article titles, paragraph titles or captions contained herein are inserted as a matter of
7 convenience and for reference, and in no way define, limit, extend, or describe the scope of
8 this Agreement or any provision hereof.

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

11
12 **CITY OF INGLEWOOD**

**SOUTH BAY CITIES COUNCIL OF
13 GOVERNMENTS**

14
15
16 _____
17 **James T. Butts, Jr.,**
18 Mayor

_____ **Christian Horvath,**
Chairman

19
20
21 **ATTEST:**

APPROVED AS TO FORM:

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23
24 _____
25 **Yvonne Horton,**
26 City Clerk

_____ **Kenneth R. Campos,**
City Attorney

EXHIBIT "B"

CITY OF INGLEWOOD

UNSECURED PROMISSORY NOTE RELATING TO AGREEMENT NO.: _____

FOR VALUE RECEIVED, this Unsecured Promissory Note ("Promissory Note") evidences an indebtedness of the South Bay Cities Council of Governments ("Maker") to the City of Inglewood ("Holder"). For value received, Maker hereby promises to pay to the order of Holder, at such address as Holder shall designate, the not-to-exceed amount of two million three hundred and ten thousand dollars (\$2,310,000) ("Loan Amount"), with **interest**, in accordance with the terms of this Promissory Note.

1. **Unsecured Obligation.** The Maker's obligations under this Promissory Note are not secured by any instrument encumbering any property or asset of Maker.

2. **Repayment of Promissory Note.**

2.1 Holder promises to advance to the Maker, pursuant to Section 2.2 of this Promissory Note, the not-to-exceed Loan Amount of two million three hundred ten thousand dollars (\$2,310,000) sometime on or before September 1, 2020, (the "Maturity Date"). Maker shall start to accrue interest on the Loan Amount, or any portion thereof, on September 2, 2020. The interest paid to the Holder will be calculated at 2.25% per annum.

2.2 Holder shall Advance to the Maker, seven hundred and seventy thousand dollars (\$770,000) (the "Advance") on or before each of the following dates: 1) February 29, 2020; 2) May 31, 2020; and 3) July 31, 2020, provided Maker has made a full repayment of all previous Advances pursuant to Section 2.3.

2.3 Maker shall repay Holder, seven hundred and seventy thousand dollars (\$770,000) on or before each of the following dates: 1) April 30, 2020; 2) July 29, 2020; and 3) September 1, 2020. No Advance shall be made until the COG has made a full repayment of all previous Advances.

A full and complete repayment of two million three hundred and ten thousand dollars (\$2,310,000) to be made by the Maker to the Holder in full on or before September 1, 2020. Any payment(s) made thereafter shall be considered late ("Late Payment")

2.4 All payments due hereunder are payable in lawful money of the United States in same day funds. The Loan Amount may be prepaid, in whole or in part, at any time on or before September 1, 2020, and from time to time without penalty or premium.

2.5 The entire unpaid balance of the Loan Amount shall be due and payable, on or before the Maturity Date, or upon Maker's material breach of any of the obligations of this Promissory Note.

2.6 Should any payment of interest or principal and interest due herein be received by the Holder of this Promissory Note after September 1, 2020, the Maker shall pay a Late Payment penalty equal to five percent (5%) per annum, or the legal maximum, on any amount overdue and outstanding until paid, beginning with the date of the Late Payment.

2.7 All costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by the Holder in enforcing this Note as a result of any default by the Maker, and such expense will be added to the Loan Amount then outstanding and will immediately be due and payable by the Maker to the Holder.

3. Assignment.

3.1 Holder shall have no power to transfer or assign its right to receive any payment under this Promissory Note, unless Maker has first granted written approval to Holder for such a proposed assignment, in the Maker's sole and absolute discretion.

3.2 This Promissory Note shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Maker and the Holder.

4. **Waiver of Presentment.** The Maker expressly waives presentment, protest, demand, notice of dishonor, presentment for the purpose of accelerating maturity, and diligence in collection.

5. **Severability.** The unenforceability or invalidity of any provision or provisions of this Promissory Note as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other person or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.

6. **Attorney's Fees, Costs and Expenses.** In the event litigation or other proceeding is required to enforce or interpret any provision of this Promissory Note, the prevailing party in such

litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

7. **Governing Law.** The validity, interpretation and performance of this Promissory Note shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws principles.

8. **Jurisdiction and Venue.** In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Los Angeles, Superior Court, Southwest District, located at 825 Maple Avenue, Torrance, California 90503-5058. In the event of litigation in the United States District Court, venue shall lie exclusively in the Central District of California, in Los Angeles. Holder and Maker expressly waive, to the maximum legal extent, any legal right either Party may have to have such action or proceeding transferred to or prosecuted in any other court or jurisdiction.

9. **Amendments and Modifications.** This Promissory Note may be amended or modified only in writing signed by the Holder and the Maker.

10. **Time of the Essence.** Time is of the essence of this Promissory Note.

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**SIGNATURE PAGE
TO
SOUTH BAY CITIES COUNCIL OF GOVERNMENTS
UNSECURED PROMISSORY NOTE**

**MAKER:
SOUTH BAY CITIES COUNCIL OF GOVERNMENTS**

ATTEST:

Christian Horvath,
Board Chairman
Date: _____

Jacki Bacharach,
Board Secretary
Date: _____

**HOLDER:
CITY OF INGLEWOOD**

ATTEST:

James T. Butts, Jr.,
Mayor
Date: _____

Yvonne Horton,
City Clerk
Date: _____

APPROVED AS TO FORM:

Kenneth R. Campos,
City Attorney
Date: _____