

1 **AGREEMENT NO.:** \_\_\_\_\_

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

9 **RECITALS**

10 **WHEREAS**, the COG desires to implement a Fiber Optic Program (the “Program”) but is  
11 in need of funding to implement the Program; and

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

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

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

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

19 **WHEREAS**, the City agreed to advance the COG a total of three additional payments of  
20 \$770,000, each with the understanding that advances would only be made once a timely  
21 repayment had been made; and

22 **WHEREAS**, the COG received two of the three scheduled advances and made both  
23 repayments in a timely manner; and

24 **WHEREAS**, the July 2020, advance, which was the last scheduled advance, was not  
25 requested by the COG due a delay experienced by its vendor; and

26 **WHEREAS**, the COG now wished to request the final advance and the City is willing and  
27 able to make said advance; and

28 **WHEREAS**, said Program will be operated pursuant to Exhibit “A,” a two-page letter of

1 intent dated June 26, 2019, which Exhibit is incorporated herein by this reference as if set forth  
2 in full; and

3 **WHEREAS**, the original Agreement, Agreement **NO.: 20-137**, has expired and a new  
4 agreement needs to be executed; and

5 **WHEREAS**, the City and the COG now seek to enter into this Agreement.

6 **NOW, THEREFORE**, the City and the COG (hereinafter referred to individually as a  
7 "Party" and collectively as the "Parties") hereto mutually agree as follows:

8 **ARTICLE 1 – CITY’S DUTIES**

- 9 1. The aforementioned recitals are true, correct, and are incorporation herein.  
10 2. As a necessary and indispensable part of this Agreement, the City agrees to advance  
11 \$770,000 (the "Advance"), in one installment, pursuant to Exhibit "B," which Exhibit is  
12 incorporated herein by this reference, to the COG for the specific purpose of the COG  
13 implementing its Fiber Optic Fee Program.

14 **ARTICLE 2 – COG REPAYMENT RESPONSIBILITY**

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

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27 **ARTICLE 3 – NOTICES**

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

5 **CITY:**

6 Yvonne Horton, City Clerk  
7 City of Inglewood  
8 One Manchester Boulevard  
9 Inglewood, CA 90301-1750

5 **COG.:**

6 Christian Horvath, Chairman  
7 South Bay Cities Council of Governments  
8 20285 S. Western Ave., #100  
9 Torrance, CA 90501

9 **WITH COPY TO:**

10 Artie Fields, City Manager  
11 City of Inglewood  
12 One Manchester Boulevard  
13 Inglewood, CA 90301

12 **ARTICLE 4 – CHANGES, AMENDMENTS, AND MODIFICATIONS**

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

15 **ARTICLE 5 – AUDIT**

16 The COG shall maintain any and all records or documents pursuant to this Agreement,  
17 and the same shall be made available for inspection, audit and copying, at any time during  
18 regular business hours, upon written request by the City or its designated representatives.  
19 Copies of such documents or records shall be provided directly to the City for inspection, audit  
20 and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed  
21 upon, such documents and records shall be made available at the City's address indicated for  
22 receipt of notices in this Agreement.

23 **ARTICLE 6 – BOOKS AND RECORDS**

24 The COG shall maintain any and all documents and records demonstrating or relating  
25 to the COG's performance of services pursuant to this Agreement. The COG shall maintain any  
26 and all ledgers, books of account, invoices, vouchers, canceled checks or other documents or  
27 records evidencing or relating to work, services, expenditures and disbursements charged to  
28 the City pursuant to this Agreement. Any and all such documents or records shall be

1 maintained in accordance with generally accepted accounting principles and shall be  
2 sufficiently complete and detailed so as to permit an accurate evaluation of the services  
3 provided by the COG pursuant to this Agreement. Any and all such documents or records shall  
4 be maintained to the extent required by laws relating to audits of public agencies and their  
5 expenditures.

6 **ARTICLE 7 – SEVERABILITY**

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

14 **ARTICLE 8 – WAIVER**

15 Waiver by any party to this Agreement of any term, condition, or covenant of this  
16 Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by  
17 any party of any breach of the provisions of this Agreement shall constitute a waiver of any  
18 other provision, or a waiver of any subsequent breach, violation of any provision of this  
19 Agreement. Acceptance by the City of any work or services by the COG shall not constitute a  
20 waiver of any of the provisions of this agreement.

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

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

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28 **ARTICLE 10 – ENTIRE AGREEMENT**

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

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

9 This Agreement shall be interpreted, construed, and governed according to the laws of  
10 the State of California. In the event of litigation between the Parties, venue in state trial courts  
11 shall lie exclusively in the County of Los Angeles, Superior Court, Southwest District, located at  
12 825 Maple Avenue, Torrance, California 90503-5058. In the event of litigation in the United  
13 States District Court, venue shall lie exclusively in the Central District of California, in Los  
14 Angeles.

15 **ARTICLE 12 – MISCELLANEOUS**

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

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

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

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

**CITY OF INGLEWOOD**

**SOUTH BAY CITIES COUNCIL OF GOVERNMENTS**

\_\_\_\_\_  
**James T. Butts, Jr.,**  
Mayor

\_\_\_\_\_  
**Christian Horvath,**  
Chairman

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Yvonne Horton,**  
City Clerk

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

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**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 seven hundred and seventy thousand dollars (\$770,000) (the "Loan Amount" or "Advance"), 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 seven hundred and seventy thousand dollars (\$770,000) sometime before February 28, 2021, (the "Maturity Date"). Maker shall start to accrue interest on the Loan Amount, or any portion thereof, on March 1, 2021. 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) on or before the following date: December 1, 2020.

2.3 Maker shall repay Holder, seven hundred and seventy thousand dollars (\$770,000) on or before February 28, 2021.

A full and complete repayment of seven hundred and seventy thousand dollars (\$770,000) to be made by the Maker to the Holder in full on or before February 28, 2021. Any payment made thereafter shall be considered late (the "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 February 28, 2021, 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 February 28, 2021, 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.





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

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

**ATTEST:**

\_\_\_\_\_  
**Olivia Valentine,**  
Board Chairperson  
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: \_\_\_\_\_