

**AGREEMENT BETWEEN
SATELLITE AFFORDABLE HOUSING ASSOCIATES
AND
THE CITY OF SAN JOSE
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR THE
AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES PROGRAM
(226 Balbach Housing Project and Sustainable Transportation Infrastructure
Improvements Project)**

This agreement between Satellite Affordable Housing Association and the City of San Jose and Santa Clara Valley Transportation Authority for the Affordable Housing and Sustainable Communities Program, for 226 Balbach Housing Project and Transportation Improvements Project (“**Agreement**”) is made and entered into as of the Effective Date (as defined below in the signature block) between the City of San Jose (“**City**”), the Santa Clara Valley Transportation Authority, a California independent special district (herein “**VTA**” or “**Transportation Agency**”), and Satellite Affordable Housing Associates, a California nonprofit public benefit corporation (“**Developer**”) (collectively, the “**Parties**” or individually, a “**Party**”), upon the basis of the following facts, understanding and intentions of the Parties:

RECITALS

A. The State of California, the Strategic Growth Council (“**SGC**”) and the Department of Housing and Community Development (“**HCD**”) issued a Notice of Funding Availability dated November 1, 2018 (the “**AHSC NOFA**”), under the Affordable Housing and Sustainable Communities (“**AHSC**”) Program established under Division 44, Part 1 of the Public Resources Code, commencing with Section 75200.

B. Developer and the City, as joint applicants (the “**Applicants**”), are applying for AHSC funding (“**AHSC Funds**”) in response to the AHSC NOFA, which is comprised of two parts – (i) a reimbursement-based grant; and (ii) loan funds to provide funding for the following improvements: (A) construction of the 226 Balbach affordable housing project in San Jose, California (the “**Housing Project**”); (B) the purchase of two electric buses; (C) the construction of certain sustainable transportation infrastructure (the “**STI Improvements**”); (D) the construction of certain transportation-related amenities (the “**TRA Improvements**”); and (E) certain costs related to Vision Zero Programs (the “**AHSC Programs**”). These improvements are described in more detail in the final application to be submitted by the Applicants on February 11, 2019 (collectively, the “**AHSC Application**”).

C. If HCD awards the Applicants an aggregate amount of \$18,908,818 in AHSC Funds, then such funds shall be disbursed as follows: (A) \$12,777,880 of AHSC loan funds for a permanent loan (“**AHSC Housing Loan**”) which will be disbursed to a limited partnership to be formed and controlled by the an affiliate of Developer (the “**Partnership**”), for construction of the Housing Project; (B) \$2,000,000 for the purchase of two electric buses as set forth below; (C) \$2,995,262 of the AHSC grant funds for the purpose of reimbursing the cost of the STI Improvements; (D) \$975,176 of AHSC grant funds shall be used for the purpose of reimbursing

the cost of TRA Improvements; and (E) \$160,500 of AHSC grant funds for reimbursing the costs of the AHSC Programs. The AHSC grants shall be referred to collectively as the “**AHSC Grants.**” The AHSC Housing Loan and the AHSC Grants are collectively referred to herein as the “**AHSC Financing.**” The AHSC Application and all standard agreements, disbursement agreements, regulatory agreements and any other agreements required by HCD in connection with the AHSC Financing are collectively referred to herein as the “**AHSC Documents.**”

D. Under the FY 2017-2018 AHSC Program Guidelines, Section 106 (a)(12), (attached hereto as Exhibit A), applicants are required to meet an application threshold requirement, which requires that:

"Applicants must demonstrate prior experience by providing evidence of at least two prior projects that are similar to the proposed AHSC project in scope and size, which have been completed by the applicant, or joint applicant, during the ten (10) years preceding the application due date.

(A) For STI or TRA components only, an applicant may demonstrate the requisite experience (as detailed above) by using the past experience of work completed of a Locality or Transportation Agency non-applicant so long as the applicant can provide an executed agreement with that specific Locality or Transportation Agency non-applicant for the completion of the STI or TRA component of the AHSC Project for which funding is sought.”

E. VTA is the “Transportation Agency” non-applicant through which the Applicants are demonstrating the requisite experience for certain STI components included in their AHSC Application.

F. The Transportation Agency can demonstrate prior experience and provide evidence of at least two prior projects that are similar in scope and size which have been completed during the ten (10) years preceding February 11, 2019. Below is a list of these projects:

1. Bus Procurements:

(a) Name – Low/No Electric Bus Procurement, Board authorized May 5, 2017

(1) Procuring Party - Santa Clara Valley Transportation Authority

(2) Completion Date – 2018/2019

(3) Brief Description – This procurement authorized VTA to purchase five, zero-emission electric buses through a partnership with Proterra. The contract also included funding the acquisition of supporting facilities such as recharging, refueling and maintenance facilities.

(b) 60’ Articulated Bus Procurement, Board authorized December 8, 2016

- (1) Procuring Party - Santa Clara Valley Transportation Authority
- (2) Completion Dates – 40 buses, 2018; seven buses, 2018; eight buses, currently in production, to be completed/delivered in 2019.
- (3) Brief Description – This procurement authorized VTA to purchase 47 sixty foot hybrid New Flyer articulated transit buses with the option to purchase eight additional sixty foot buses for service to future BART stations.

G. The purpose of this Agreement is to establish the roles and responsibilities of each Party with respect to the Transportation Agency’s purchase and operation of a bus should the Applicants be awarded the AHSC Funds.

H. The Transportation Agency acknowledges and agrees that the inability or failure by the Transportation Agency to fully and timely complete its respective obligations required by the AHSC Documents may affect the timing and right of the Applicants to receive or retain the disbursement of AHSC Funds.

NOW, THEREFORE, in consideration of the recitals, covenants, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree that, contingent upon receiving the AHSC Funds per Section 18(i) of the Agreement, their obligations are as follows:

AGREEMENT

1. General. The Transportation Agency shall be solely responsible for completing the Transit Obligations, as defined below, in accordance with the terms of the AHSC Documents and the approved design and construction documents. The Transportation Agency shall provide the other Parties, upon reasonable request, with copies of all requisitions related to its work, the notice of completion, and other documents related to that work.

2. Joint Obligations of the City and the Developer. In connection with the AHSC Grants and AHSC Loan, the City and Developer have committed to entering into an agreement governing their respective and joint obligations under the AHSC Program. At Transportation Agency’s request, either Applicant shall provide Transportation Agency a copy of such agreement once executed by the Parties thereto. If City and Developer do not enter into such an agreement, Transportation Agency would have the right to terminate its obligations under this Agreement.

3. Transportation Agency Obligations (hereinafter referred to as “Transit Obligations”).

(a) Purchase two electric buses and commit to servicing, at minimum, two electric bus on Route 66. Note, however, that the purchased electric bus will not exclusively run on Route 66, as VTA assigns buses to different routes, depending on operational needs. VTA is expected to provide both buses within three years after the grant award date and the bus price is expected to cost approximately \$1,000,000.00 each.

(b) VTA commits to operating Route 66 during peak times on weekdays as a 15 minute frequent service for a period of 12 years. Per the VTA Board of Director's 2018 approved Transit Plan, Route 66 is identified as a 15 minute, route; VTA has determined that Route 66 shall continue to operate as such for the foreseeable future as part of VTA's core network. VTA reserves the right, however, to re-assess Route 66's 15 minute frequency based on performance; ridership; any unforeseen changes to VTA's financial status; or any other circumstances that affect VTA's route planning. Increased frequency is expected to begin in 2019, which will approximately correspond with BART's new revenue service to San Jose. There are no costs associated with this in the AHSC application.

The Transportation Agency is responsible for purchasing, installing, and maintaining the Transit Obligations, and for all up-front costs and expenses related thereto.

4. Indemnification.

(a) City Indemnity. City shall indemnify, defend, protect, and hold harmless Transportation Agency, and its board members, officers, agents, consultants, and employees, (each, a "**Transportation Agency Indemnified Party**"), against any and all claims, actions, suits, causes of action, losses, liabilities, injuries, costs, damages, or expenses (collectively, "**Claims**") to the extent caused by City's performance of or failure to perform its City Obligations in the manner and within the time periods set forth herein. However, in no event shall the Transportation Agency Indemnified Party be indemnified hereunder for any Claims resulting from Transportation Agency Indemnified Party's sole negligence, active negligence, or willful misconduct.

(b) Developer Indemnity. Developer shall indemnify, defend, protect, and hold harmless Transportation Agency Indemnified Party against any and all Claims to the extent caused by Developer's performance of or failure to perform its Developer Obligations in the manner and within the time periods set forth herein. However, in no event shall the Transportation Agency Indemnified Party be indemnified hereunder for any Claims resulting from Transportation Agency Indemnified Party's sole negligence or willful misconduct.

(c) Transportation Agency Indemnity. Transportation Agency shall indemnify, defend, protect, and hold harmless 1) Developer and its board members, officers, agents, consultants, and employees (each, a "**Developer Indemnified Party**") and 2) the City and its affiliates, directors, officers, councilmembers, agents and employees (each, a "**City Indemnified Party**") against any and all Claims to the extent caused by Transportation Agency's performance of or failure to perform its Transit Obligations in the manner and within the time periods set forth herein. Note, however, that any action by VTA for re-assessing its Route 66 frequency (as set forth in Section 3(b)) shall not serve as a basis for an indemnifiable claim. In no event shall: 1) the City Indemnified Party be indemnified hereunder for any Claims to the extent resulting from City Indemnified Party's sole negligence, active negligence, or willful misconduct, or 2) the Developer Indemnified Party be indemnified hereunder for any Claims to the extent resulting from Developer Indemnified Party's sole negligence or willful misconduct.

These indemnity provisions in this Agreement (including this Section 4 and Section 11, below) will survive the expiration or termination of this Agreement and remain in full force and effect.

5. Independent Contractor.

(a) The Transportation Agency has complete control over its operations and employees, and is an independent contractor. The Transportation Agency is not an agent or employee of the City, and shall not represent or act as the City's agent or employee.

(b) As an independent contractor, the Transportation Agency has complete control over its subcontractors, suppliers, agents and any other person or entity with whom the Transportation Agency contracts in furtherance of this Agreement (collectively "**Subcontractors**"). The Transportation Agency is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.

6. City Obligations. The City shall disburse AHSC Funds to Transportation Agency as set forth in Section 9 titled "Disbursement of AHSC Grant Funds" below ("**City Obligations**").

7. Developer Obligations. The Developer shall disburse AHSC Funds to Transportation Agency as set forth in Section 9 titled "Disbursement of AHSC Grant Funds" below (collectively, the "**Developer Obligations**").

8. Schedule of Performance; Progress Reports. The Transportation Agency shall comply with the schedule of performance as set forth in the AHSC Documents for the completion of the Transit Obligations hereunder. The Transportation Agency agrees to give any other Party a written quarterly status report on the progress toward the milestones listed in Exhibit C, i.e., Transportation Agency will report on the Transportation Agency's progress on the STI Improvements.

If Transportation Agency anticipates not meeting the targeted construction and grant disbursement milestones for the Transit Obligations, as established in the AHSC Documents, the Transportation Agency shall promptly notify the other Parties in writing. The Parties shall meet to discuss the reasons why the milestone dates may not be met and what actions the delayed Party intends to take to meet the milestones or otherwise rectify the work schedule in order to maintain in good standing with the terms and conditions established in the AHSC Documents.

9. Disbursement of AHSC Grant Funds.

(a) The maximum amount the Applicants will pay the Transportation Agency for all fees, costs, charges and expenses related to performing the Transit Obligations is **Two Million Dollars (\$2,000,000)** ("**Maximum Total Compensation**").

(b) Transportation Agency, Developer and City agree that either the City or the Developer shall reimburse the Transportation Agency for the Transit Obligations within 30 Business Days of City's or Developer's receipt of disbursement of AHSC Funds from HCD. Transportation Agency must submit its invoice to the City or Developer within 30 Business Days following completion of the task(s) to the City's Director of Transportation ("**Director**") and to the Developer's satisfaction. Each invoice must include sufficient information and supporting documents to establish to the City's and Developer's satisfaction that the Transportation Agency is entitled to the payment requested. The City or Developer will pay the undisputed portion of the invoice amount within 30 Business Days of the Director's and Developer's approval of such undisputed amount. Notwithstanding the foregoing, if required by the AHSC Documents, the

Transportation Agency shall submit to Applicants all draw requests for AHSC Grant funds for the costs associated with the Transit Obligations, respectively, and Applicants shall submit such requests to HCD and disburse to the Transportation Agency and City any such funds received from HCD. Transportation Agency shall apply any such proceeds received to pay the invoices submitted in connection with the draw request.

(c) The Transportation Agency acknowledges and agrees that the Transportation Agency is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment.

10. Insurance and Bond Requirements. Insurance and self-insurance specification requirements for all Parties will be determined and incorporated into the Agreement at a later time via an amendment.

11. Access to Work Product. Upon City's request, provided that Transportation Agency is not subject to any disclosure restrictions imposed by contractors employed by VTA, Transportation Agency shall provide City with any of the following finished or unfinished work product (including electronic equivalents) without restriction or limitation upon their use, whether created by the Transportation Agency or any other person engaged directly or indirectly by the Transportation Agency to perform the Transportation Agency's services pursuant to this Agreement: reports, drawings, plans, data, software, models, documents or other materials developed or discovered (collectively "**Work Product**"). Notwithstanding the foregoing, VTA will not be responsible for City's use of said Work Product and City will indemnify VTA to the extent that VTA is subject to any Claims related to such use.

12. Disclosure of Work Product. Except as authorized by the Director or as otherwise required by law (including but not limited to the California Public Records Act and any other disclosure law), the Transportation Agency shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Transportation Agency, or (c) information prepared, developed or received by the Transportation Agency or any of its Subcontractors in the course of performing services pursuant to this Agreement. The Transportation Agency will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions or information that the Transportation Agency is otherwise prohibited from disclosing. The prohibition in this Section does not apply to disclosures between the Transportation Agency and its Subcontractors that are needed to perform the Transit Obligations. This Section 12 will survive the expiration or earlier termination of this Agreement.

13. Audit/Inspection of Records.

(a) The Transportation Agency shall retain the following records (collectively "**Records**") for a minimum of three (3) years from the date of the City's final payment to the Transportation Agency under this Agreement or for any longer period required by law:

- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Transportation Agency's charges for performing

services, or to the Transportation Agency's expenditures and disbursements charged to the City; and

- All Work Product and other records evidencing Transportation Agency's performance.

(b) At any time during the Agreement term or during the period of time that the Transportation Agency is required to retain the Records, the City's Manager, the Director, the City's Attorney, the City's Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Transportation Agency shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the Parties. The Transportation Agency shall produce the requested Records at no cost to the City.

(c) In accordance with Government Code Section 8546.7, the Transportation Agency may be subject to audit by the California State Auditor with regard to the Transportation Agency's performance of this Agreement.

14. Non-Discrimination/Non-Preference.

(a) The Transportation Agency shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

(b) The Transportation Agency shall include the terms and conditions set forth in this Section 14 in each subcontract that it enters into in furtherance of this Agreement.

15. Notices. Formal notices, demands, and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:

City: City of San José
Housing Department
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113
Attn: 226 Balbach Project

With a copy to:

City of San José
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113
Attn: Housing Attorney

Developer: Satellite Affordable Housing Associates
1835 Alcatraz Ave.
Berkeley, CA 94703
Attn: 226 Balbach Project

Transportation Agency:

Santa Clara Valley Transportation Authority
Planning and Programming
3331 N. 1st Street, B2
San Jose, CA 95134
Attn: Land Use

With a copy to:

Santa Clara Valley Transportation Authority
Office of the General Counsel
3331 N. 1st Street, B2
San Jose, CA 95134
Attn: General Counsel

Any Party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other Parties pursuant to this Section.

16. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement:

(a) City fails to perform any of its City Obligations under this Agreement, and does not cure such failure within 30 calendar days after written notice of such failure has been delivered to City in accordance with Section 15 above; or

(b) Developer fails to perform any of its Developer Obligations under this Agreement, and does not cure such failure within 30 calendar days after written notice of such failure has been delivered to Developer in accordance with Section 15 above; or

(c) Transportation Agency fails to perform any of its Transit Obligations under this Agreement, and does not cure such failure within 30 calendar days after written notice of such failure has been delivered to the Transportation Agency in accordance with Section 15 above; or

(d) Failure to perform or satisfy any other term, condition or obligation under this Agreement.

If an Event of Default occurs, the defaulting Party agrees to pay any and all costs and expenses incurred by the non-defaulting Party in securing performance of such terms, conditions, or obligations giving rise to the Event of Default, including, but not limited to, fees and charges of architects, engineers, and contractors.

Further, Developer and City will be jointly and severally liable to the Transportation Agency in an Event of Default under Section 16(a) or 16 (b). Accordingly, Transportation Agency may seek recovery from either Developer or City for reimbursement claims.

The Parties' rights and remedies specified in this Section 16 shall be deemed cumulative and in addition to any rights or remedies that a Party may have at law or in equity.

17. Termination. This Agreement shall terminate upon the earlier of: (i) completion of all obligations under this Agreement; or (ii) mutual agreement of the parties hereto; or (iii) cancellation or termination of either AHSC funding or the AHSC Program. Upon termination, the Applicants have the option of requiring the Transportation Agency to provide any Work Product prepared by the Transportation Agency up to the date of termination.

18. Miscellaneous.

(a) Nothing in this Agreement shall be construed to limit any claim or right which any Party may otherwise have at any time against another Party or any other person or entity arising from any source other than this Agreement, including any claim for fraud, misrepresentation, waste, or breach of contract other than this Agreement, and any rights of contribution or indemnity under any federal or state environmental law or any other applicable law, regulation, or ordinance.

(b) If any Party delays in exercising or fails to exercise any right or remedy against another Party, that alone shall not be construed as a waiver of such right or remedy. All remedies of any Party against another Party are cumulative.

(c) This Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective representatives, heirs, executor, administrators, successors, and assigns.

(d) This Agreement may not be amended except by a written instrument executed by the Parties.

(e) The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between the Parties, without regard to conflict of law provisions.

(f) Each Party agrees that it will resolve any claim, cause of action, or dispute arising out of or related to this Agreement in a state or federal court located in Santa Clara County, California. Each Party agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

(g) Each party hereto intends that, except as stated otherwise, this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the Parties.

(h) This Agreement may be executed in multiple counterpart copies, any one of which when duly executed, with all formalities hereof, shall be fully binding and effective as the original of this Agreement.

(i) This Agreement shall be effective as of the Effective Date (as defined below in the signature block), provided however that in the event that the Applicants do not receive an award of the AHSC Financing, this Agreement shall automatically terminate and be of no further force or effect.

(j) “Business Day” and “Business Days” means the day(s) on which City Hall is open to conduct business.

(k) Failure of any Party to insist upon strict performance of any terms or conditions of this Agreement or failure or delay in exercising any rights or remedies provided herein by law or its failure to properly notify any Other Party in the event of breach or its acceptance of or payment for any obligations hereunder shall not release any Other Party from the representations or obligations of this Agreement and shall not be deemed a waiver of any right of that Party to insist upon strict performance hereof or any of its rights or remedies hereunder.

(l) The City’s acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.

(m) The Transportation Agency shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Transportation Agency’s obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.

(n) No Party shall assign or transfer or subcontract out this Agreement or any portion thereof without the prior written consent of the other Parties. Except to the extent this Agreement authorizes the Transportation Agency to use Subcontractors, the Transportation Agency shall not assign any part of this Agreement without the Director’s prior written consent. The City, at the City’s discretion, may void this Agreement if a violation of this provision occurs. Notwithstanding any provision of this subsection (n) to the contrary, the Parties hereby acknowledges and approves the assignment by Developer and the Partnership to the Housing Project’s senior lender (“Construction Lender”) of all of their respective right, title and interest in, to and under the Agreement (the “Collateral”) as collateral security for the Partnership’s obligations to Construction Lender under, and in connection with Construction Lender’s loan to the Partnership. In the event Construction Lender forecloses upon the Collateral, the Parties hereby agrees that Construction Lender shall accede to all of Developer’s rights, interests and obligations under the Agreement. Construction Lender is hereby made an express third party beneficiary of this Section, and the Parties shall not amend, modify or terminate the Agreement without Construction Lender’s express written consent. Prior to any funding of construction financing by Construction Lender, Developer and the Partnership shall ensure that Construction Lender signs an agreement with the Applicants outlining the scope of the obligations and benefits of the assignment of this Agreement to Construction Lender that is both agreeable to and approved by City.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below ("Effective Date").

CITY:

City of San José,
a California municipal corporation

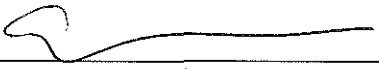
By: _____
Name: Leland Wilcox
Its: Chief of Staff, Office of the City Manager
Date: _____

APPROVED AS TO FORM:

Hana Hardy
Deputy City Attorney


DEVELOPER:

Satellite Affordable Housing Associates,
a California nonprofit public benefit corporation,

By:  _____
Name: Susan Friedland
Its: Chief Executive Officer
Date: 1-22-19

TRANSPORTATION AGENCY:

Santa Clara Valley Transportation Authority,
a California independent special district

By: 
Name: Nuria I. Fernandez
Its: General Manager/CEO
Date: 1/23/19

APPROVED AS TO FORM:


Victor A. Pappalardo
Senior Assistant Counsel



MEMORANDUM

TO: Board Chairperson Teresa O'Neill
Board Vice Chairperson Cindy Chavez

FROM: Nuria I. Fernandez 
General Manager/CEO

DATE: January 18, 2019

SUBJECT: Out of Office Notification – Delegation of Authority

I will be away from the office on Tuesday, January 22 through Wednesday, January 23, 2019. During this period, I am delegating my signature authority to Inez Evans, Chief Operating Officer. Inez may be reached on her desk phone at (408) 321-7002 or cell phone at (408) 691-8936.

cc: Executive Team

EXHIBIT A

FY 2017-2018 Program Guidelines

EXHIBIT B

INSURANCE REQUIREMENT

[Intentionally Omitted]

EXHIBIT C

VTA'S ESTIMATED SCHEDULE OF PERFORMANCE

Electric Buses	
Task	Deadline
Exercise Purchase	March 2020
Produce Bus (est. assembly line entry)	December 2020
Deliver Bus	April 2021
Test Bus	May 2021
Operate Bus	June 2021