

**AHSC IMPLEMENTATION AND  
MUTUAL INDEMNITY AGREEMENT**

THIS AHSC IMPLEMENTATION AND MUTUAL INDEMNITY AGREEMENT (“Agreement”) is made and entered into as of June 1, 2021, between the City of National City (“City”) and the Metropolitan Area Advisory Committee on Anti-Poverty of San Diego County, Inc., a California nonprofit public benefit corporation (“Developer”, and collectively with the City, the “Parties”, or individually, a “Party”), upon the basis of the following facts, understanding and intentions of the Parties:

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 February 26, 2021 (“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 is applying for AHSC funds in response to the AHSC NOFA to provide funding for (collectively, the “Project”): (A) construction of a 400-unit mixed-income affordable housing project located at 233 Roosevelt Avenue in the City of National City (“Housing Project”); (B) the construction of certain housing related infrastructure (“HRI Improvements”); (C) the construction of certain sustainable transportation infrastructure (“STI Improvements”); (D) the construction of certain transit related amenities (“TRA Improvements”); and (E) program activities (“AHSC Programs”). All of which are described in more detail in the Final Application to be submitted to HCD by the Developer on or about June 8, 2021 (“AHSC Application”).

C. The AHSC Application seeks an award in an aggregate amount not to exceed \$18,150,000 in AHSC funds consisting of: (A) \$13,000,000 of AHSC permanent loan (“AHSC Loan”) funds which will be disbursed to the Developer or it’s nominee (“Partnership”) for construction of the Housing Project and HRI Improvements; and (B) \$5,150,000 of AHSC grant funds (“AHSC Grant”) which will be disbursed for the purpose of financing or reimbursing the cost of the STI Improvements, TRA Improvements and AHSC Programs. The AHSC Loan and the AHSC Grant are collectively referred to herein as the “AHSC Financing.” For the purpose of performing the obligations set forth in Recital F, below, Developer will reimburse the City \$4,950,000.

D. The City and Developer are required to enter into this Agreement in order to comply with the specific AHSC Program Threshold Requirement stated in Section 106(a)12(A) of the 2019-20 AHSC Program Guidelines dated February 24, 2021 (the “Transportation City Prior Experience Threshold Requirement”). Such section of the guidelines dictates 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. Such section of the guidelines also states that applicants may demonstrate the requisite experience by using the past experience of work completed by

a non-applicant so long as the applicant can provide an executed agreement with such non-applicant for the completion of the related to, amongst other things, comply with the Transportation City Prior Experience Threshold Requirement.

E. The City owns the property that the Transit Obligations are to be performed on, and thus has sufficient "Site Control" as that term is defined in the 2019-20 AHSC Program Guidelines dated February 24, 2021.

F. The City is a non-applicant, but, as set forth herein, will have the obligation to perform the following specific STI Improvements, and TRA Improvements included in the AHSC Application (collectively, the "Transit Obligations"):

1. Bayshore Bikeway Segment 5 - \$700,000
  - a. The "Bayshore Bikeway - Segment 5" project (Segment 5) will provide over a half-mile of protected bicycle facilities along McKinley Avenue and Marina Way in the City of National City. Segment 5 will complete the final leg of the Bayshore Bikeway within National City; and enhance bicycling connections to transit and other key destinations such as the Harbor District, Navy Base San Diego, Kimball Elementary School, and several parks. Additionally, the project will provide a connection to the Sweetwater River Trail, another regional bikeway. With the completion of Segment 5, National City residents will be able to access as far north as Downtown San Diego and as far south as the City of Chula Vista using only protected facilities.
  - b. Funds will help construct protected bicycle facilities with enhanced intersection treatments for people walking and biking. Funds will also supplement the southern portion of this segment next to the Paradise Lagoon, including costs for utilizing the old abandoned National City railway, including a small trestle bridge, view overlooks, habitat enhancement and educational opportunities for nature and history signage and exhibits.
2. 8<sup>th</sup> and Roosevelt Multi-Use Path - \$4.25 million
  - a. The proposed project will remove one lane of travel creating a one-way southbound roadway, remove the existing bike lanes, and add over a half-mile of context-sensitive bikeways along 8<sup>th</sup> and Roosevelt. The proposed project will construct over 2,000 feet of safe and accessible pedestrian walkways. The proposed multi-use path will also be used for the proposed NEV Shuttle Route.
  - b. 8<sup>th</sup> Street Naval Base Connection: extend the proposed multi-use path and Neighborhood Electric Vehicle to the Naval Base Gate at 8<sup>th</sup> and Harbor. Funds will also construct crossing improvements at the active BNSF railroad tracks on Harbor Drive. This project would reconstruct the at-grade crossings and crossing arms and signage in addition to extending the 14' wide multi-use path through the intersection of Harbor and 8<sup>th</sup>. This intersection would also be improved with pedestrian crossings, reconfiguration of the high-speed turning lanes and all necessary ADA requirements.

G. The City 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 June 8, 2021.

H. The City's obligations and duties under this Agreement shall be limited to developing and constructing the Transit Obligations, and for all costs and expenses related thereto. Developer shall be responsible for constructing and developing the Housing Project and the HRI Improvements (collectively, the "Developer Obligations"), and for all costs and expenses related thereto. In connection with the AHSC Financing, Developer is required to enter into standard agreements, disbursement agreements, and regulatory agreements with HCD whereby Developer will be liable for the full and timely performance of the obligations set forth therein, including completion of the Housing Project, completion of the HRI, STI and TRA Improvements and funding of the AHSC Programs, as described in the AHSC Application. The AHSC Application and all standard agreements, disbursement agreements, regulatory agreements and any other agreements required by HCD in connection with the AHSC Financing shall be collectively referred to herein as the "AHSC Documents".

I. The City and Developer each acknowledge and agree that the inability or failure by either Party to fully and timely complete each Party's respective improvements required by the AHSC Documents may affect the timing and right of the other Party to receive disbursement of due the other party notwithstanding the other Party's full and timely performance of its obligations.

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 hereto hereby agree as follows:

### AGREEMENT

1. Obligations. The City shall have the sole responsibility to complete the Transit Obligations in accordance with the terms of the AHSC Documents, the approved design and construction documents and the terms of this Agreement. The Developer have the sole responsibility to complete the Developer Obligations in accordance with the terms of the AHSC Documents, the approved design and construction documents and the terms of this Agreement. Each Party will provide the other Party with copies of all requisitions for work related to their respective obligation, the notice of completion, and other documents related to their respective work that another Party may reasonably request.

2. City Indemnity. The City shall be responsible for carrying out the Transit Obligations using AHSC Grant proceeds in accordance with the AHSC Documents, including, but not limited to, any disbursement deadlines contained therein. The City shall indemnify, defend, protect, and hold harmless Developer, and Developer's affiliates, directors, officers, partners, members, agents and employees (each, a "**Developer Indemnified Party**") against any and all claims, actions, suits, causes of action, losses, liabilities, injuries, costs, damages and

expenses (collectively, "Claims"), including, without limitation, any direct liability, damage, or expense arising out of or in connection with the City's performance of or failure to perform its obligations to complete the Transit Obligations, in the manner, within the time periods, and to otherwise perform any covenants constituting City obligations, set forth in the AHSC Documents, including any claims, losses or liabilities of the Partnership caused by a breach or default by the City under the AHSC Documents that triggers a default under the AHSC Loan. However, in no event shall any Developer Indemnified Party be indemnified hereunder for any Claims resulting from such Party's sole negligence or willful misconduct.

3. Developer Indemnity. Developer shall be responsible for carrying out the Developer Obligations using AHSC Financing funds in accordance with the AHSC Documents, including, but not limited to, any disbursement deadlines contained therein. Developer and the Partnership shall indemnify, defend, protect, and hold harmless the City and its affiliates, councilmembers, officers, officials, agents and employees (each, an "**City Indemnified Party**") against any and all Claims, including, without limitation, any direct, indirect or consequential loss, liability, damage, or expense, arising out of or in connection with Developer's performance of or failure to perform the Developer Obligations, in the manner, within the time periods, and to otherwise perform any covenants constituting the Developer Obligations, set forth in the AHSC Documents, including any claims, losses or liabilities of all City Indemnified Parties caused by a breach or default by the Developer or the Partnership under the AHSC Documents that triggers a default under the AHSC Financing. However, in no event shall any City Indemnified Party be indemnified hereunder for any Claims resulting from such Party's sole negligence or willful misconduct.

4. Schedule of Performance; Progress Reports. The City and Developer shall comply with a schedule of performance for the completion of their respective obligations hereunder (the "Schedule of Performance") to be finalized and approved by the City Manager and President & CEO of the Developer no later than 90 days after the AHSC funds are awarded. The City and Developer each agrees to give the other Party a written quarterly status report on the progress toward the milestones on the Developer and Transit Obligations. If any Party anticipates not meeting the targeted construction and disbursement milestones as established in the AHSC Documents, that Party will promptly notify the other parties in writing and will meet the other Party 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 good standing with the terms and conditions established in the AHSC Documents.

5. Delegation. Notwithstanding the obligations of each Party under this Agreement, each Party shall be entitled to enter into sub-agreements with each other or with other parties to provide any assistance or services needed for such Party to perform its obligations under this Agreement and the AHSC Documents.

6. Cost Overruns. Developer shall be responsible for paying all costs required to complete the Developer Obligations, irrespective of whether such costs exceeds the AHSC Loan and the portion of the AHSC Grant designated for the Developer Obligations. City shall

be responsible for paying all costs required for the Transit Obligations irrespective of whether such costs exceed the portion of the AHSC Grant designated for the Transit Obligations.

7. Disbursement of AHSC Grant Funds. The City and Developer agree that the AHSC Grant for the Transit Obligations shall be reimbursed directly to City and that the AHSC Grant for the Developer Obligations shall be reimbursed directly to Developer. The Parties further agree that all of the AHSC Loan funds shall be disbursed directly to the Developer or Partnership, as applicable. Notwithstanding the foregoing, if required by the AHSC Documents, the City shall submit to Developer all draw requests for AHSC Grant funds for the costs associated with the Transit Obligations and Developer shall submit such requests to HCD and promptly disburse to the City any such funds received from HCD. The City shall apply any such proceeds received to pay the invoices submitted in connection with the draw request.

8. Implementation Agreements. In the event the AHSC Financing is received from AHSC, the City and Developer recognize that each Party will need additional assurances from the other Party (including assurances for the Project's lenders and investors) regarding the specific grant award before commencement of construction of the Project. The Parties agree to cooperate in amending this Agreement and/or entering into implementation agreements or other documents necessary to provide reasonable assurances related to the disbursement of AHSC Grant funds. The Parties recognize that any such amendments to this Agreement or execution of additional agreements may require approval of the City Council and the Developer's Board of Directors.

9. Notices. All notices under this Agreement shall be in writing and sent (a) by certified or registered U.S. mail, return receipt requested, (b) overnight by a nationally recognized overnight courier such as UPS Overnight or FedEx, or (c) by personal delivery. All notices shall be effective upon receipt (or refusal to accept delivery). All notices shall be delivered to the following addresses or such other addresses as changed by any party from time to time by written notice to the other parties hereto.

City: City of National City  
1243 National City Boulevard  
National City, CA 91950  
Attention: City Manager

Developer: Metropolitan Area Advisory Committee  
on Anti-Poverty of San Diego County, Inc.  
1355 Third Avenue  
Chula Vista, CA 91911  
Attn: President & CEO

10. Events of Default. The failure of any Party to perform any action or covenant required by this Agreement which is not cured within thirty (30)-days after written notice of such failure has been delivered to the defaulting Party shall be a default hereunder; provided, however, the other Party shall not be in default if such alleged default is such that it is not capable of being

cured within thirty (30) days, but corrective action is initiated within thirty (30) days and the allegedly defaulting Party diligently and in good faith works to effect a cure as soon as is reasonably possible.

11. Termination. This Agreement shall terminate upon the earlier of: (i) completion of all obligations under the AHSC Documents; or (ii) the mutual agreement of the parties hereto. Notwithstanding the foregoing, the indemnity obligations set forth in Sections 2 and 3, above, shall survive termination of this Agreement.

12. Third Party Beneficiary. The Partnership shall be a third-party beneficiary of this Agreement and shall be entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were Party to this Agreement.

13. Assignment. City hereby acknowledges and approves the assignment by Developer and the Partnership to the Housing Project's senior lender ("Construction Lender") of all of each of their respective right, title and interest in, to and under the Agreement ("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 Partnership's interest in the Housing Project, the City hereby agrees that Construction Lender shall have all of Developer's rights and interests under the Agreement. If this Agreement is assigned to the Construction Lender as contemplated by this Section 13, then the Construction Lender shall be an express third-party beneficiary of this Section 13, and in such event the parties hereto shall not amend, modify or terminate the Agreement without Construction Lender's express written consent.

14. Miscellaneous.

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

(b) This Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and their respective representatives, heirs, executor, administrators, successors, and assigns. This Agreement may not be amended except by a written instrument executed by the parties hereto.

(c) This Agreement shall be deemed to have been delivered and accepted in the State of California and governed exclusively by the internal substantive laws of the State of California as the same may exist at the date hereof. The parties hereto hereby agree that any action hereon between the Parties hereto and their successors in interest shall be filed and maintained at San Diego County Superior Court, and consent to the jurisdiction of said court for the purposes connected herewith.

(d) Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto, except as otherwise set forth herein.

(e) 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.

(f) This Agreement shall be effective as of the date first written above, provided however that in the event that the parties do not receive an award of the AHSC Financing, this Agreement shall automatically terminate and be of no further force or effect.

Each of the undersigned hereby executes this Agreement in the spaces provided below to evidence their respective agreement to the terms of this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

**CITY:**

City of National City

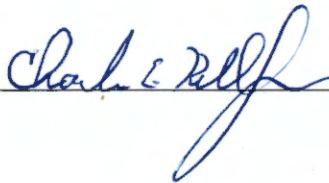
By: \_\_\_\_\_

  
Brad Raulston, City Manager

**APPROVED AS TO FORM:**

Charles Bell Jr., City Attorney


By: \_\_\_\_\_



**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

**DEVELOPER:**

Metropolitan Area Advisory Committee on Anti-Poverty of San Diego County, Inc., a  
California nonprofit public benefit corporation

By:   
Name: Arnulfo Manriquez  
Its: President & CEO