

**SUBURBAN HOUSING INCENTIVE POOL (SubHIP)
FUNDING AGREEMENT BETWEEN
THE SOLANO TRANSPORTATION AUTHORITY
AND
THE CITY OF FAIRFIELD
FOR THE ONE LAKE APARTMENTS**

THIS SUBURBAN HOUSING INCENTIVE POOL (SubHIP) FUNDING AGREEMENT (“Agreement”) is entered into as of _____, 2020 between the SOLANO TRANSPORTATION AUTHORITY (“STA”), a joint powers authority organized under Government Code section 6500 et seq. consisting of the County of Solano and the cities of Benicia, Dixon, Fairfield, Rio Vista, Suisun, Vacaville and Vallejo, and the CITY OF FAIRFIELD ("City"), a municipal corporation. Unless identified, the public agencies may be commonly referred to individually as “Party” or collectively as "Parties”.

RECITALS

WHEREAS, STA was created in 1990 through a Joint Powers Agreement between the cities of Benicia, Dixon, Fairfield, Rio Vista, Suisun City, Vacaville, Vallejo and the County of Solano to serve as the Congestion Management Agency (CMA) for Solano; and

WHEREAS, STA, as the CMA for the Solano area, partners with various transportation and planning agencies, such as the Metropolitan Transportation Commission (MTC) and Caltrans District 4, and is responsible for countywide transportation planning, programming transportation funds, managing and providing transportation programs and services, delivering transportation projects, and setting transportation priorities; and

WHEREAS, MTC has established the Suburban Housing Incentive Pool (SubHIP) to fund eligible transportation infrastructure to support affordable housing projects in Priority Development Areas (PDAs) or Transit Priority Areas (TPAs); and

WHEREAS, MTC has authorized CMAs to program SubHIP funds consistent with the requirements for One Bay Area Grant (OBAG) Cycle 2 funds which allowed funding for projects that meet the eligibility of any one of the following six transportation categories: 1) Local Streets and Roads Preservation, 2) Bicycle and Pedestrian Improvements, 3) Transportation for Livable Communities, 4) Safe Routes to Schools, 5) Priority Conservation Areas, and 6) CMA Planning Activities; and

WHEREAS, in order to qualify for SubHIP or OBAG Cycle 2 funds, a jurisdiction must satisfy the requirements of Resolution 4202, including having adopted a plan that complies with the California Complete Streets Act of 2008 as well have a general plan housing element adopted and certified by the State Department of Housing and Community Development for 2012-19 RHNA prior to January 31, 2017; and

WHEREAS, MTC requires that CMAs develop county-specific guidelines by which SubHIP funds may be awarded; and

WHEREAS, STA has issued a Call for Projects in accordance with the SubHIP guidelines and has determined that the City of Fairfield meets the requirements for SubHIP Funds.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, the Parties agree:

Part I **Description of Project**

The City of Fairfield is in the process of approving a housing development that will provide 190 units (“Development”) as follows:

- City of Fairfield’s One Lake Apartment Project, a 190 unit affordable housing apartment project (“Project”).

This Development, in concert other private developments around the Fairfield-Vacaville Train Station Priority Development Area, will construct an expansion of Fairfield Linear Park Trail and other active transportation project improvements that improve access to the Fairfield-Vacaville Train Station (as shown in Exhibit A).

To facilitate quick delivery of the Project and remove additional requirements that come with federal funding, the City is proposing to swap \$2.1 in SubHIP federal Surface Transportation Program (STP) funds for local funds to be used at the City’s discretion. The City will program the \$2.1 million in SubHIP funding to an already federalized local streets project and will utilize local discretionary funding to deliver the “Project.”

Part II **Respective Roles and Responsibilities**

A. City’s Role and Responsibilities.

1. City, as Project Sponsor, agrees to deliver the “Project” as adopted in its submission to STA’s SubHIP Call for Projects, dated March 11, 2020. City also agrees to comply with the requirements of MTC Resolution Nos. 3606, 4202, and 4348.
2. Submit a TIP listing for the road paving project in MTC’s Fund Management System (FMS).
3. Pass a resolution of local support for \$2.1 million in SubHIP funding (federal STP funds).
4. Swap \$2.1 million in SubHIP funding for \$2.1 million in local funds to deliver the “Project.”
5. Any changes to project scope, budget, or schedule which require a TIP amendment shall be approved by STA.
6. Provide quarterly project updates to, and as requested by, STA until both the Project and the road paving project are completed.

7. Acquire or provide full project funding, beyond the SubHIP, to deliver project as adopted pursuant to Item 1 above and to deliver the “Project” by June 30, 2023, consistent with the completion of the 5th Cycle of the Regional Housing Needs Allocation.
8. The City is responsible for returning \$2.1 million to STA or MTC if the Project listed above is not under construction by June 30, 2023.

B. STA’s Role and Responsibilities.

STA agrees to provide:

1. Assistance with programming and submittal of project Transportation Improvement Program (TIP) listings to MTC.
2. Review project design and monitor implementation of project to ensure it is consistent with SubHIP/OBAG Cycle 2 guidelines.
3. Provide assistance with navigating Caltrans and MTC project delivery policies.

C. Anticipated Schedule.

Time is of the essence with regard to this Project. Due to project funding requirements, the Parties agree to the following schedule:

Time is of the essence with regard to the road paving project due to the federal cycle deadlines. Due to project funding requirements, the Parties agree to the following schedule for the road paving project:

Actions/Milestones	Date
Prepare PID	01/01/2020
Field Review	04/23/2020
PA&ED start	09/01/2020
STA Board Approval	11/01/2020
TIP Programming	12/01/2020
Anticipated NEPA Document Type	CE
Technical Reports to Caltrans	1/15/2021
Environmental Adopted	2/28/2021
Environmental Circulation/Permits	2/31/2021
Final Design	9/30/2021
ROW Certification	10/1/2021
Request CON Authorization	11/1/2021
Receive CON Authorization	2/1/2022
Advertise Date	4/15/2022
Contract Award Date	6/1/2022
Project Completion	12/1/2022
Project Closeout	3/30/2023

As outlined in STA’s project delivery policies, failure to adhere to this project delivery schedule may result in rescoping the project, funding swaps or reprogramming of funding to other eligible projects.

D. Mutual Responsibilities.

1. Parties agree to abide by MTC Resolution No. 4348, incorporated into this Agreement by this reference, and its implementing instructions, as provided by MTC during the term of this Project.
2. The Parties agree to communicate information in a timely format and provide direction as needed so as to not impact the Project Schedule. To the extent that any Party is not performing its duties under this Agreement in such a manner as to impact either the schedule and/or Project funding, the Parties agree to meet and confer to resolve any dispute.

Part III
Funding

STA will program SubHIP Funds in the amount of \$2.1 million in FY 2020-21 for the road paving project. The City is responsible for complying to all federal funding obligations, including local fund match requirements.

As referenced in Part II Section A: Any cost increases related to this project are the sole responsibility of the Project Sponsor.

Part IV
General Terms and Conditions

A. Term of Agreement

This Agreement shall remain in effect through the filing of the Notice of Completion on the Project or the completion of the reimbursement by City, whichever is later, unless the Agreement is terminated or amended earlier as stipulated in this Agreement. This Agreement may also be terminated due to Project funding shortfalls or other unforeseen event(s), as mutually agreed to by the Parties. In the event of loss of funding, the Parties agree to work collaboratively to redirect the Project funds or other SubHIP projects eligible for such funding.

B. Indemnification

1. STA to Indemnify City

STA agrees to indemnify and release City, its elected bodies, agents, officers and employees (collectively referred to in this paragraph as “City”), from and against any and all claims, liability, or expense (including attorneys’ fees and witness costs) arising from any negligent act or omission or willful misconduct of STA. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

2. City to Indemnify STA

City agrees to indemnify and release the STA, its elected bodies, agents, officers and employees (collectively referred to in this paragraph as 'STA') from and against any and all claims, liability or expense (including attorneys' fees and witness costs) arising from any negligent act or omission or willful misconduct of City. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts.

3. Each Party to Defend Itself for Concurrent Claims

STA agrees to defend itself, and City agrees to defend itself, from any claim, action or proceeding arising out of the negligent act or omission or willful misconduct of STA and City in the performance of this Agreement. In such cases, STA and City agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in subparagraph 5 below.

4. Joint Defense

Notwithstanding subparagraph 3 above, in cases where STA and City agree in writing to a joint defense, STA and City may appoint joint defense counsel to defend the claim, action or proceeding arising out of the negligent act or omission or willful misconduct of City and STA in the performance of this Agreement. Joint defense counsel shall be selected by mutual agreement of STA and City. STA and City agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in subparagraph 5 below. STA and City further agree that neither Party may bind the other to a settlement agreement without the written consent of both STA and City.

5. Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, STA and City may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

C. Insurance

1. Each Party agrees to maintain its status as a legally self-insured public entity for general, auto and professional liability insurance coverage with limits of no less than \$1,000,000 per occurrence and no less than twenty-five million dollars (\$25,000,000) aggregate. Each Party's insurance will be considered primary for all claims arising out of acts of that Party. Each Party agrees to endorse the other Party, its officials, employees and agents, using standard ISO endorsement No. CG2010 or its equivalent for general liability coverage. Each Party also agrees to require all consultant, contractors and subcontractors engaged to work on this Project to name the other Party as an additional insured as well.

2. Each Party will maintain Workers' Compensation as required by law for all its employees with limits not less than \$1,000,000 per occurrence. Neither Party's insurance shall be called upon to satisfy any claim for workers' compensation filed by an employee of the other Party. Each Party will provide the other with a Waiver of Subrogation endorsement for Workers Compensation. Each Party also agrees to require all consultants, contractors and subcontractors engaged to work on this Project to carry the same Workers Compensation insurance limits and endorsements.

3. Each Party will require all consultants, contractors, and subcontractors engaged to work on this Project to carry insurance in levels commensurate with the exposure of the respective work provided by the consultant, contractor or subcontractor.

D. No Waiver

The waiver by any Party of any breach or violation of any requirement of this Agreement shall not be deemed a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

E. Assignability

No Party to this Agreement shall assign or transfer any interest nor responsibility for the performance of any duties or obligations, without the prior written consent of the other Parties, and any attempt by a Party to so assign or transfer this Agreement or any rights, duties or obligations thereunder shall be void and of no effect.

F. Governing Law and Venue

The construction and interpretation of this Agreement and the rights and duties of the Parties shall be governed by the laws of California with venue residing in Solano County.

G. Force Majeure

No Party shall be held responsible or deemed to be in default for any delay or failure in performance under this Agreement caused by unforeseeable events beyond the control of the Parties. Such events may include but are not restricted to the following: Acts of God, fire, epidemics, earthquake, flood, or other natural disaster, riots, strike, war, significant economic or other events beyond the reasonable control of the Parties.

H. Notices

All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that a Party desires to give to the other Parties shall be addressed to the other Parties at the addresses set forth below. A Party may change its address by notifying the other Parties of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

SOLANO TRANSPORTATION
AUTHORITY
Janet Adams, Director of Projects
Solano Transportation Authority
One Harbor Center, Suite 130
Suisun City, CA 94585

CITY OF FAIRFIELD
Paul Kaushal, Director of Public Works
City of Fairfield
1000 Webster Street, 3rd Floor
Fairfield, CA 94533

I. Subcontracts

Within the funds allocated by the Parties under this Agreement, any Party may be authorized to contract for any and all of the tasks necessary to undertake the projects or studies contemplated by

this Agreement. Agencies must follow federal procedures in selecting consultants for contracts paid in full or partially by STP funds.

J. Prior Agreements and Amendments

This Agreement represents the entire agreement of the Parties regarding the matter described, and no representation, warranties, inducements or oral agreements have been made by the Parties except as expressly set forth in this Agreement. This Agreement may only be modified by a written amendment duly executed by the Parties.

K. Severability

If any provision or portion of this Agreement is found by any court of competent jurisdiction to be unenforceable or invalid such provision shall be severable and shall not impair the enforceability of any other provision of this Agreement.

L. Compliance with All Laws

The Parties shall observe and comply with all federal, state and local laws, ordinances, and codes including those of the Federal Highway Administration (FHWA) and Federal Transit Authority (FTA).

M. Non-Discrimination Clause

1. During the performance of this Agreement, the Parties and their subcontractors shall deny no benefits or privileges to any person on the basis of race, religion, color, ethnic group identification, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, sex or sexual orientation, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, ethnic group identification, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, sex or sexual orientation. Each Party shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

2. The Parties shall comply with Title VI of the Civil Rights Act of 1964, the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated under it (Title 2, California Code of Regulations, section 7285.0, et seq.), Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement the foregoing, as such statutes and regulations may be amended from time to time.

N. Access to Records and Retention

All Parties, acting through their duly authorized representative, any federal or state grantor agency providing all or part of the funding associated with this Agreement, the State Controller, the Comptroller General of the United States, and the duly authorized representatives of the Parties, shall have access to any books, documents, papers and records of any Party directly pertinent to the matter of this Agreement to make audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, the Parties shall maintain all required records for three years after final payment for any work associated with this Agreement, or after all pending matters are closed, whichever is later.

This Agreement was executed by the Parties on the day and year first written above.

SOLANO TRANSPORTATION AUTHORITY APPROVED AS TO FORM:

By: _____
Daryl K. Halls, Executive Director

By: _____
STA Legal Counsel

CITY OF FAIRFIELD

APPROVED AS TO FORM:

By: _____
Stefan Chatwin, City Manager

By: _____
City Attorney