

SUB-RECIPIENT AGREEMENT

THIS SUB-RECIPIENT AGREEMENT (the “**Agreement**”) is made and entered into as of April 7, 2021, between the City of Coachella, a municipal corporation (“**City**”) and SunLine Transit Agency, a California Joint Powers Authority (“**SunLine**”), upon the basis of the following facts, understanding and intentions of the parties. City and SunLine may collectively be referred to as the “Parties,” or individually as “Party.”

A. The Strategic Growth Council (“**SGC**”) and the California 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 Program (“**AHSC Program**”) established under Division 44, Part 1 of the Public Resources Code, commencing with Section 75200.

B. The City, SunLine, 6th & Cesar Chavez CIC, LP, a California limited partnership (“**Partnership**”) and Chelsea Investment Corporation, a California corporation (“**Chelsea**”) (Chelsea and Partnership individually and collectively are “**Developer**”) submitted an application for AHSC Program funding in response to the AHSC NOFA.

C. In July 2019, staff was informed that the application had been approved, and SunLine, the City, and Developer entered into a Standard Agreement for the AHSC Loan (19-AHSC-12799, dated June 30, 2020 and Revised August 27, 2020) (the “**AHSC Loan Standard Agreement**”) and a separate Standard Agreement for the AHSC Grant (19-AHSC-12800, dated June 30, 2020 and Revised August 27, 2020) (the “**AHSC Grant Standard Agreement**”) (and collectively with the AHSC Loan Standard Agreement, the “**AHSC Standard Agreements**”) with HCD whereby the Parties are jointly and severally liable for all obligations set forth in the AHSC Standard Agreements.

D. SunLine’s total award under the AHSC Standard Agreements is \$2,800,000 for the purchase of buses, and \$1,813,500 for the construction of a transit hub (“**Transit Hub**”) as set forth in the AHSC Standard Agreements. Of the funds awarded for the Transit Hub, \$500,000 is specifically allocated for “Site or right of way acquisition for the Capital Improvement Project.” (“**Acquisition Funds**”)

E. The City has agreed to purchase the property and rights of way necessary for the construction of the Transit Hub, and the parties wish to enter into this Agreement so that the City may be reimbursed through the Acquisition Funds for the costs associated with the acquisition of the necessary property rights.

F. Any capitalized terms not specifically defined herein, shall have the same meaning as set forth in the AHSC Standard Agreements.

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:

1. Acquisition of Property Interests for Transit Hub

The City is responsible for acquiring all property interests necessary for the construction of the Transit Hub. In its acquisition of the necessary property interests, the City shall comply with all requirements set forth in the AHSC Standard Agreements.

2. Reimbursement of Acquisition Costs

The City shall be eligible to receive a total reimbursement payment from SunLine in an amount not to exceed Five Hundred Thousand Dollars (\$500,000) (“**Maximum Reimbursement Amount**”) for costs incurred by the City in its acquisition of property interests for the Transit Hub.

Upon incurring costs that are eligible for disbursement under the AHSC Standard Agreements, the City shall provide SunLine with documentation sufficient to support a Draw Request, as set forth in the AHSC Standard Agreements. After receiving sufficient documentation from the City of costs incurred, SunLine will submit a Draw Request in accordance with the AHSC Standard Agreements. SunLine and the City, and their respective employees and agents, will cooperate with each other in good faith to comply with the terms of this Agreement and the requirements of the AHSC Standard Agreements in an effort to obtain disbursements of all Acquisition Funds.

Within thirty (30) days of disbursement of all or a portion of the Acquisition Funds to SunLine by HCD (“**Acquisition Funds Disbursement**”), SunLine shall issue a reimbursement payment to the City in the same amount as the Acquisition Funds Disbursement received by SunLine from HCD. In no event shall SunLine be required to issue a reimbursement payment to the City in an amount greater than the Acquisition Funds Disbursement received by SunLine from HCD. In no event shall SunLine be required to issue a reimbursement payment to the City for any portion of a Draw Request for Acquisition Funds that is disapproved or rejected by HCD. In no event shall the total of all reimbursement payments issued to the City by SunLine exceed the Maximum Reimbursement Amount.

3. Indemnification

Each Party agrees to indemnify, defend and hold harmless the other Party, and their respective officials, officers, agents and employees from and against liability, expenses (including reasonable attorneys’ fees), losses, suits and actions, and for damages relating to suits and actions (including bodily injury, death, personal injury, or property damage) arising from its or its officials, officers, agents and employees performance or failure to perform under this Agreement, except to the extent such liability, expenses, losses, and damages are caused by the negligence or willful misconduct of the other Party, in the respective comparative amounts as established by a court of competent jurisdiction or otherwise stipulated by the parties.

4. Notification

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service only:

(a) When served personally on the party to whom notice is being given; or

(b) Within seventy-two (72) hours after mailing, when mailed to the party to whom notice is to be given by registered or certified mail, postage prepaid, and properly addressed to the party at its address set forth below, or at such different address as any party shall notify to the other parties in the manner provided in this Section.

All notices and/or correspondence are to be sent to the following addresses:

SUNLINE TRANSIT AGENCY
Attn: Lauren Skiver
CEO/General Manager
32-505 Harry Oliver Trail
Thousand Palms, CA 92276-3501

CITY OF COACHELLA
Attn: City Manager
53-990 Enterprise Way
Coachella, CA 92236

5. Termination

Either Party may terminate this Agreement, without cause, by providing thirty (30) days advance written notice to the other party.

6. Miscellaneous

(a) Governing Law, Jurisdiction and Venue. The Agreement shall be governed by and construed in accordance with the laws of the State of California. Each party agrees that all legal proceedings in connection with any dispute arising under or relating to the Agreement shall be brought in the Superior Court of the State of California, Riverside County.

(d) Non-Assignment. No party may assign this Agreement, or any part thereof, without the written consent of each party to this Agreement.

(e) Amendment. Any amendment to this Agreement must be in writing and executed by all Parties.

(f) Waiver. No failure on the part of the Parties to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

(g) Authority. Each individual executing this Agreement on behalf of one of the Parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

(h) No Third Party Beneficiary. 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.

(i) Severability. If any provision of the Agreement is determined to be invalid, illegal, or unenforceable in any respect, such determination shall not affect any other provision hereof.

(j) Execution. 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.

(k) Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and there are no other representations, promises, warranties, covenants or undertakings with respect thereto.

[Signatures on following page]

Each of the undersigned hereby executes this Agreement effective as of the date first written to evidence their respective agreement to the terms of this Agreement.

City:

CITY OF COACHELLA, a California municipal corporation

By:  _____

Name: William B. Pattison, Jr.

Title: City Manager

Approved As to Form

By:  _____

Name: Carlos Campos

Title: City of Coachella, City Attorney

SunLine:

SUNLINE TRANSIT AGENCY, a California Joint Powers Authority

By:  _____

Name: Lauren Skiver

Title: CEO/General Manager

By:  _____

Name: Eric Vail

Title: SunLine Transit Agency, General Counsel