

CITY OF LOS ANGELES
INTER-DEPARTMENTAL MEMORANDUM

Date: January 29, 2020

To: The Honorable City Council
c/o City Clerk, Room 395
Attention: Mike Bonin, Chair, Transportation Committee

From: Seleta J. Reynolds,  General Manager
Department of Transportation

Subject: **AUTHORITY TO SIGN COOPERATIVE AGREEMENT WITH THE COUNTY OF LOS ANGELES AND NATIONAL COMMUNITY RENAISSANCE FOR THE STRATEGIC GROWTH COUNCIL'S AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES PROGRAM ROUND 5 FUNDING OPPORTUNITY**

SUMMARY

The Los Angeles Department of Transportation (LADOT) is requesting the authority to sign a cooperative agreement with the County of Los Angeles and the National Community Renaissance (National Core) to purchase 5 battery-electric buses contingent on receiving grant funding from the Strategic Growth Council's Affordable Housing and Sustainable Communities (AHSC) Program for round 5 grant application. The AHSC applications are due February 11, 2020.

RECOMMENDATION

That the City Council, subject to the approval of the Mayor:

AUTHORIZE the LADOT General Manager, or designee, to sign the Cooperative Agreement between LADOT, County of Los Angeles, and National Core in support of an AHSC application, subject to the approval of the City Attorney as to form and legality.

BACKGROUND

The State of California, Department of Housing and Community Development (HCD) issued a Notice of Funding Availability dated November 1, 2019 (NOFA), under the AHSC Program Round 5. The County of Los Angeles and National Core (co-applicants) are requesting funding for the construction of the 3rd and Dangler affordable housing project in the unincorporated County of Los Angeles. The co-applicants are seeking an award from the AHSC Program in the amount of \$20,000,000 for the construction of the affordable housing project. Included in the request is \$1,200,000 for LADOT to purchase 5 battery-electric buses for the DASH Boyle Heights/East Los Angeles route under the Sustainable Transportation Improvements (STI) portion of the AHSC Program.

While LADOT is not a direct applicant, a cooperative agreement is necessary to meet the AHSC Program Threshold Requirement of the FY 2018-19 AHSC Program Guidelines. LADOT can demonstrate prior experience with operating transit service and has completed a number of bus procurements.

The inclusion of the marginal cost of an electric bus and a CNG bus in the AHSC application provides the co-applicants needed points for a successful project. These buses will replace existing CNG buses with battery-electric buses. If the application is successful, the funding will allow LADOT to pay for the added cost of battery-electric buses.

If the 3rd and Dangler project is awarded funding, LADOT will return to City Council for approval to accept the grant funding and authority to sign any funding agreements.

Fiscal Impact

There is no impact to the City's General Fund since the project is providing LADOT funding for replacement DASH buses and is included in the Proposition A budget.

SJR:mmd

**COOPERATIVE
AGREEMENT BETWEEN
CITY OF LOS ANGELES DEPARTMENT OF
TRANSPORTATION, THE COUNTY OF LOS
ANGELES, AND NATIONAL COMMUNITY
RENAISSANCE.**

**FOR
THE AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES PROGRAM**

This Cooperative Agreement (AGREEMENT) is entered into as of the **x** day of February, 2020, amongst City of Los Angeles Department of Transportation (LADOT), the County of Los Angeles (COUNTY), and National Community Renaissance (National CORE) (DEVELOPER) each of which is referred to herein individually as "Party" and jointly as "Parties".

RECITALS

WHEREAS, The State of California, Department of Housing and Community Development (HCD) issued a Notice of Funding Availability dated November 1, 2019 (NOFA), under the Affordable Housing and Sustainable Communities (AHSC) Program; and

WHEREAS, the DEVELOPER and the COUNTY are applying for AHSC Funds in response to the NOFA to provide funding for construction of the 3rd and Dangler affordable housing project ("PROJECT") in the unincorporated County of Los Angeles. The PROJECT is to be described in more detail in the Final Application (APPLICATION) to be submitted to the AHSC Program by DEVELOPER on or by February 11, 2020; and

WHEREAS, The DEVELOPER and the COUNTY are seeking an award from the AHSC Program in an aggregate amount of **\$20,000,000** for construction of the PROJECT, which includes a request for \$1,200,000 for the purchase of battery-electric buses (BUSES) under the Sustainable Transportation Improvements (STI) and the Transit Related Amenities (TRA) portions of the AHSC Program; and

WHEREAS, LADOT, the COUNTY, and DEVELOPER wish to cooperate on the submittal of the grant application to allow LADOT to be reimbursed directly for the purchase of the BUSES; and

WHEREAS, LADOT will not be a direct applicant for the AHSC funds, but, as set forth herein, and only if the APPLICATION is funded, will purchase BUSES as part of increased service on the LADOT DASH Boyle Heights/East Los Angeles route with stops within the PROJECT area; and

WHEREAS, as LADOT is not a direct applicant of the funds, the AHSC Program requires LADOT, DEVELOPER and the COUNTY to enter into this AGREEMENT under the specific AHSC Program Threshold Requirement stated in Section 106 (a) (12) (A) of the FY 2018-2019 AHSC Program Guidelines dated October 31, 2019; and

WHEREAS, the AHSC guidelines require applicants to provide 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. This section of the guidelines also states that the applicants may demonstrate the requisite experience by using the past experience of work completed by a non-applicant so long as the applicants can provide an executed agreement with that specific non-applicant for the completion of the related work in the APPLICATION for which funding is sought; and

WHEREAS, LADOT, as a non-applicant, 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, 2020, as follows:

1. LADOT has been operating fixed route bus service since 1985.
2. LADOT has completed numerous bus procurement projects, including its most recent purchase of 130 battery-electric buses in 2019.

NOW, THEREFORE, the Parties to this AGREEMENT agree as follows:

I. LADOT Responsibilities

If a grant award is received from AHSC in the amount of \$1,200,000 to procure the BUSES, LADOT shall have sole responsibility to procure 5 BUSES in accordance with the agreed upon schedule of performance and any specific award requirements related to the procurement of said BUSES.

II. DEVELOPER Responsibilities

If an award of funds is received from AHSC for the development of the PROJECT, the

DEVELOPER will have sole responsibility to complete the PROJECT in accordance with the terms of the AHSC award documents.

III. COUNTY Responsibilities

If a grant award is received from AHSC for the development of STI and TRA, the COUNTY will have the sole responsibility to complete the STI and TRA, including upgraded bus stops, STI improvements, and complete streets, in accordance with the terms of the AHSC award documents.

IV. Joint Responsibilities

All Parties will provide the other Parties with copies of the notice of completion, and other documents related to their respective work that the other Parties may reasonably request, including quarterly progress reports on each Party's work.

LADOT, DEVELOPER and the COUNTY each acknowledge and agree that the inability or failure by any Party to fully and timely meet each Party's respective responsibilities as required by the AHSC Documents may affect the timing and right of the other parties to receive disbursement of AHSC funds.

V. Implementation Agreements

In the event an award of funds is received from AHSC, LADOT, the COUNTY and the DEVELOPER recognize that each Party will need additional assurances and indemnification from the other Parties (including assurances for the PROJECT's lenders and investors) regarding the specific award before commencement of construction of the PROJECT, commencement of construction of the STI AND TRA improvements, and procurement of BUSES, implementation of OPERATIONS, and installation of SIGNAGE. The Parties agree to cooperate in amending this AGREEMENT and/or entering into Implementation Agreements or other agreements which may be necessary to provide reasonable assurances and indemnification to one another, including assurances and indemnification by LADOT related to its procurement of BUSES and any disbursement or expenditure of AHSC funds. The Parties recognize that any such amendments to this AGREEMENT or execution of additional agreements may require approval of LADOT Board of Directors, COUNTY Board of Supervisors, and the DEVELOPER'S Board of Directors, which shall not be unreasonably withheld.

VI. Miscellaneous

- A. Waiver. No waiver of any default or breach of any covenant of this AGREEMENT by any Party will be implied from any omission by any Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to one action does not imply consent to any future action.
- B. Events of Default. If a Party fails to perform any of its obligations under this AGREEMENT, and does not cure such failure within 30 days after written notice of such failure has been delivered to the defaulting Party, the occurrence shall constitute an Event of Default under this AGREEMENT. Upon an Event of Default, any Party may terminate this Agreement as to the defaulting Party by giving notice to the other Parties.
- C. Termination. This AGREEMENT shall terminate upon the earlier of: (i) failure to receive an AHSC award, or (ii) mutual agreement of the Parties hereto to terminate the AGREEMENT or (iii) termination pursuant to paragraph VI B, above.
- D. Assignment. No Party can assign, transfer or otherwise substitute its interest or obligations under this AGREEMENT without the written consent of the other Party. Notwithstanding the foregoing, the Parties acknowledge that DEVELOPER intends to form a limited partnership for the development and operation of the PROJECT (the "Partnership"), and the Parties hereby agree that DEVELOPER may assign its interest or obligations under this AGREEMENT to said Partnership, provided the general partner of such limited partnership is controlled by DEVELOPER.
- E. Governing Law. This AGREEMENT is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California and any action shall be venues in the County of Los Angeles.
- F. Amendments. This AGREEMENT may only be amended in writing and must be executed by all Parties.
- G. Disputes. If a question arises regarding interpretation of this AGREEMENT or its performance, or the alleged failure of a Party to perform, the Party raising the question or making the allegation must give written notice thereof to the alleged breaching Party with a copy to all Parties. The Parties will promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised, alternative

forms of dispute resolution, including mediation or binding arbitration, may be pursued by mutual agreement. It is the intent of the Parties, to the extent possible, that litigation be avoided as a method of dispute resolution.

- H. Attorneys' Fees. In the event legal proceedings are instituted to enforce any provision of this AGREEMENT, the prevailing Party or Parties in said proceedings will be entitled to its costs, including reasonable attorneys' fees, in addition to such other remedies to which it may be entitled.
- I. Relationship of the Parties. It is understood that this is an AGREEMENT by and between independent contractors and is not intended to and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractor.
- J. Warranty of Authority to Execute Agreement. Each Party to this AGREEMENT represents and warrants that each person whose signature appears hereon is duly authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a Party to this AGREEMENT.
- K. Severability. If any portion of this AGREEMENT, or the application thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining portions of this AGREEMENT, or the application thereof, will remain in full force and effect.
- L. Counterparts. This AGREEMENT may be executed in counterparts.
- M. Entire Agreement. This AGREEMENT constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the Parties on the same subject.
- N. 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 offices of the Parties as follows:

LADOT: City of Los Angeles LADOT

100 S. Main Street
Los Angeles, CA 90012
Attn: Martha D'Andrea
Martha.dandrea@lacity.org
213-928-9769

COUNTY: Allison Clark
500 W. Temple Street, #754
Los Angeles, CA 90012
Attn: Vani Dandillaya
vdandillaya@ceo.lacounty.gov
213-974-4190

With copy to: National Community Development (National CORE)
Address
Attn: Name
Email
Phone

[The remainder of this page intentionally left blank.]

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

IN WITNESS WHEREOF, the Parties have entered into this AGREEMENT as of the date first noted above.

CITY OF LOS ANGELES

By _____

Its:

Date _____

APPROVED AS TO FORM:

By:

Its:

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

IN WITNESS WHEREOF, the Parties have entered into this AGREEMENT as of the date first noted above.

County of Los Angeles

By: [REDACTED]

Its: [REDACTED]

Approved as to form:

Attorney for the County of Los Angeles

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

IN WITNESS WHEREOF, the Parties have entered into this AGREEMENT as of the date first noted above.

By: National Core Renaissance (National CORE)

By: _____
Name: _____
Title: _____

