

AHSC IMPLEMENTATION AND COOPERATION AGREEMENT

THIS AHSC IMPLEMENTATION AND COOPERATION AGREEMENT (the "Agreement") is made and entered into as of _____, 2021 between the City of Stockton, a Municipal Corporation to the State of California ("City"), and Service First of Northern California, 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* (the "AHSC NOFA"), under the Affordable Housing and Sustainable Communities ("AHSC") Program established under Division 44, Part I 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 (A) construction of the The Hunter House housing project in the City of Stockton (the "Housing Project"); (B) the construction of certain sustainable transportation infrastructure along San Joaquin Street, Weber Avenue, Van Buren Street, and Hunter Street (the "STI Improvements") and the construction of certain transit related amenities (the "TRA Improvements"). These improvements are described in more detail in the Final Application to be submitted by *June 8, 2021* (collectively, the "AHSC Application").
- C. The AHSC Application seeks an award to the Developer in an aggregate amount not to exceed \$30,000,000 in AHSC Funds consisting of: (A) up to \$20,000,000 of AHSC loan Funds for a permanent loan ("AHSC Loan") which will be disbursed to the limited partnership to be formed for Project (the "Partnership"), for construction of the Housing Project; (B) up to \$10,000,000 of the AHSC grant funds for the purpose of reimbursing the cost of the STI and TRA Improvements. The AHSC grants shall be referred to collectively as the "AHSC Grants". The AHSC Loan and the AHSC Grants are collectively referred to herein as the "AHSC Financing."
- 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 FY 2019-2020 AHSC Program Guidelines dated *February 24, 2021* (the "Application Threshold Requirements"). This 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. This section of the guidelines also states that the applicants may demonstrate the requisite experience by using the past experience of work completed of 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 AHSC

Application for which funding is sought. The purpose of this Agreement is to, amongst other things, comply with the Application Threshold Requirements.

- E. The City is a non-applicant, but, as set forth herein, will have obligations to perform the following specific STI/TRA Improvements included in the AHSC Application (the "Transportation Obligations"):

BICYCLE FACILITIES

San Joaquin Street Bike Lane Improvements

- Class II Bike Lanes – Striping and Signage (between Harding Way & Miner Avenue)
- Remove Existing Travel Lane Striping and Restripe Two 7' Parking Lanes, 5' Class II Bike Lanes, Two 10' Travel Lanes and a 10' Two-Way Left Turn Lane
- Roadway Base Repair
- Slurry Seal Roadway

PEDESTRIAN FACILITIES

Weber Avenue Improvements

- North Side of Weber Avenue, West of New City Hall
 - Install New 10' Sidewalk, Curb, and Gutter
 - Install Eight Decorative Street Lights (Match Type on Miner Avenue and East Weber Avenue)
 - Plant Twenty-Six Street Trees (Pistacia Chinensis or Equivalent) in 5' Tree Wells with Decomposed Granite and Flow Bubblers
 - Install Curb Ramps

Van Buren Street – Children Museum Improvements

- West Side of Van Buren Street just South of Weber Avenue
 - Install 10' Sidewalk, Curb, Gutter
 - Install Two LED Street Lights per City Standard Plans
 - Plant Three Street Trees (Pistacia Chinensis, Lagerstroemia, or Equivalent) in 5' Tree Wells with Decomposed Granite and Low Flow Bubblers
 - Reconstruction Children's Museum Parking Lot Driveway (30' Commercial Driveway per City Standard Plans)

Hunter House Frontage Improvements

- East Side of Hunter Street, North Side of Oak Street, And West Side of San Joaquin Street
- Construct Improvements as Shown in Site Layout Plan
 - Demolish Existing Frontage Improvements
 - Construct New Sidewalk, Curb, Gutter, Tree Wells, Bulb Outs, and Driveways
 - Plant Twenty-Two Street Trees (Pistacia Chinensis, Lagerstroemia, or Equivalent) in New Tree Wells with Decomposed Granite and Low Flow Bubblers
 - Drought Tolerant Plantings at Oak Street Bulb Outs

El Dorado Street Bike Lane Improvements

Class IV Separated Bike Lanes – Install Signing and Striping (Cleveland Street to 3rd Street)

Center Street Bike Lane Improvements

Class IV Separated Bike Lanes – Install Signing and Striping (Cleveland Street to 3rd Street)

- F. 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 *May 2021*. Below is a list of these projects:
- a. Miner Avenue Trees and Median Greenscaping from Center Street to Aurora Street
 - b. San Joaquin Street Class II Bike Lanes from Miner Avenue to Weber Avenue
 - c. Hunter Street Class II Bike Lanes from Miner Avenue to Weber Avenue
 - d. Channel Street Greenscaping and Pedestrian Bulb Outs from hunter to Aurora Street
- G. The City shall be responsible for developing and constructing the Transportation Obligations, and for all costs and expenses related thereto, and Developer shall be responsible for constructing and developing the Housing Project (together, the "Developer Obligations"), and for all costs and expenses related thereto. In connection with the AHSC Grants and AHSC Loan, Developer is required to enter into standard agreements, disbursement agreements, and regulatory agreements with HCD where Developer will be liable for the full and timely performance by the parties to complete the obligations set forth therein, including completion of the Housing Project and completion of the STI and TRA Improvements, 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".
- H. 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 AHSC funds 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, in its sole responsibility, complete the Transportation Obligations in accordance with the terms of the AHSC Documents and the approved design and construction documents and in accordance with the terms of this Agreement. The Developer shall, in its sole responsibility, complete the Developer Obligations in accordance with the terms of the AHSC Documents and the approved design and construction documents. Each Party will provide the other Party with copies of all requisitions for work related to their respective work, the notice of completion, and other documents related to their respective work that another party may reasonably request.
2. Schedule of Performance Progress Reports. Developer and City shall comply with the schedule of performance to be mutually agreed upon, as shall be set forth in the AHSC Documents (the "Schedule of Performance"), provided, however, the City shall not be obligated to comply with any changes to the Schedule of Performance included within the AHSC Documents unless the City has consented to such changes. The City and Developer agree to give the other party a written quarterly status report on the progress toward the milestones listed in the Schedule of Performance, i.e., the Developer will report on the Developer's progress on the Developer Obligations and the City will report on the City's progress on the Transportation Obligations. If any Party anticipates not meeting the targeted construction and grant disbursement milestones as established in the AHSC Documents, that Party will promptly notify the other parties in writing and will meet with 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.
3. City Indemnity. City is 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. City shall indemnify, defend, protect, and hold harmless Developer, and its affiliates, directors, officers, partners, members, agents and employees (each, an "Developer Indemnified Party") against any and all claims, actions, suits, causes of action, losses, liabilities, injuries, costs, damages, or expenses (collectively, "Claims"), including, without limitation, any direct, indirect or consequential loss, liability, damage, or expense, COURT costs and attorneys' fees, arising out of or in connection with the City's performance of or failure to perform its obligations to complete the Transportation Obligations, in the manner and 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 Developer caused by a breach or default under the AHSC Documents that triggers a default under the AHSC Loan. However, in no event shall the Developer Indemnified Party be indemnified hereunder for any Claims resulting from such party's sole negligence or willful misconduct. City agrees to pay all of the Developer Indemnified Party's costs and expenses, including attorneys' fees, which may be incurred in any effort to enforce any term of this Agreement, including, but not limited to, all such costs and expenses which may be incurred by any Developer

Indemnified Party in any legal action, reference or arbitration proceeding brought by HCD or other third party.

4. Developer Indemnity. Developer is responsible for carrying out the Developer Obligations using AHSC grant proceeds and AHSC Loan funds in accordance with the AHSC Documents, including, but not limited to, any disbursement deadlines contained. Developer shall indemnify, defend, protect, and hold harmless the City and its affiliates, directors, officers, partners, members, 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, court costs and attorneys' fees, arising out of or in connection with Developer's performance of or failure to perform its Developer Obligations to complete construction and development of the Housing Development, in the manner and within the time periods, and to otherwise perform any covenants, set forth in the AHSC Documents. However, in no event shall the City Indemnified Party be indemnified hereunder for any Claims resulting from such party's sole negligence or willful misconduct. Developer agrees to pay all of the costs and expenses of the City Indemnified Party, including attorneys' fees, which may be incurred in any effort to enforce any term of this Agreement, including, but not limited to, all such costs and expenses which may be incurred by any City Indemnified Party in any legal action, reference or arbitration proceeding brought by HCD or other third party.
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 each 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. City shall be responsible for paying all costs required for the Transportation Obligations irrespective of whether such costs exceed the portion of the AHSC Grant designated for the Transportation Obligations.
7. Disbursement of AHSC Grant Funds. Developer and City agree that the AHSC Grants for the Transportation Obligations shall be reimbursed directly to City. The parties further agree that all of the AHSC Loan funds shall be disbursed directly to the Partnership. 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 Transportation Obligations and Developer shall timely submit such requests to HCD and immediately disburse to the City any such funds received from HCD. City shall apply any such proceeds received to pay the expenses submitted in connection with the draw request. Failure of the Developer to timely submit the City draw requests to HCD or to immediately disburse any funds received from HCD for the Transportation Obligations to the City shall be a default under this Agreement and shall excuse the City from performance of the Transportation Obligations.

8. Implementation Agreements. The City and the Developer recognize that each party may need additional assurances from the other party regarding the AHSC Grant and AHSC Loan before commencement of construction of the Housing Project and the Transportation Obligations, including assurances for lenders and investors. The parties agree to cooperate with each other to reach mutual agreement on amendments to this Agreement, Implementation Agreements or estoppel certificates necessary to provide reasonable assurances and indemnifications. The Developer recognizes that any such amendments to this Agreement, Implementation Agreements or estoppel certificates may require City Council approval.
9. Developer Step in Rights.
 - a) The Parties each acknowledge and agree that the inability or failure by the City to fully and timely complete the Transportation Obligations required by the AHSC Documents may affect the timing and right of the Developer to receive disbursement of AHSC Grants or AHSC Loan funds notwithstanding the other party's full and timely performance of its obligations. If, at any time, the Developer determines in its reasonable discretion that City is not, or may not, be able to comply with the Schedule of Performance or its obligations hereunder, Developer shall have the right, but not the obligation, to step in and take over the performance of the Transportation Obligations, by delivering written notice to the City ("Work Takeover Notice").
 - b) Within five (5) business days of Developer delivering the Work Takeover Notice, City shall meet with Developer within fifteen (15) business days (the "Discussion Period") to discuss the cooperative steps to be taken by each Party for Developer to complete the Transportation Obligations in accordance with the Schedule of Performance. The City hereby acknowledges and agrees that Developer's right to step in and take over the performance of the Transportation Obligations shall be effective after the expiration of the Discussion Period, without the necessity of any further notice or action by either party.
 - c) If Developer takes over the performance of the Transportation Obligations under this Section 9, then from and after the expiration of the Discussion Period the following provisions shall apply:
 - i. Developer shall be entitled to prepare and submit all draw requests for AHSC Grant funds and apply such proceeds to pay invoices for such work.
 - ii. Developer shall be responsible for the performance and completion of the Transportation Obligations in accordance with the terms of the AHSC Documents and in accordance with the City's requirements for public works contracts and construction.
 - iii. Within five (5) business days following expiration of the Discussion Period, City shall fully and unconditionally assign to Developer all of the City's rights and benefits under the design and construction documents,

any and all contracts, and any and all permits and approvals related to the Transportation Obligations, and shall cooperate with commercially reasonable diligence with Developer's efforts to complete the Transportation Obligations.

- iv. Within five (5) business days following expiration of the Discussion Period, City shall fully and unconditionally assign to Developer all of City's rights and benefits with respect to any and all funds which would have been available to and used by the City to complete the Transportation Obligations.
- v. The terms of any assignment described in this Section 9(c) shall be reasonably acceptable to both City and Developer. City shall be solely responsible for obtaining any third-party consents or approvals necessary to implement the provisions of this Section 9(c), including but not limited to approvals of architects, contractors, and funding sources.

10. 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 Stockton
400 E. Main Street
Stockton, CA 95202
Attn: ED Director

To Developer: Service First of Northern California
102 W. Bianchi Road
Stockton, CA 95207
Attn: Vernell Hill, Jr.

11. Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Agreement:
- a. 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 in accordance with Section 2 above; or
 - b. A Party purports to revoke this Agreement or this Agreement becomes ineffective for any reason.
12. Termination. This Agreement shall terminate upon the earlier of: (i) completion of all obligations under the AHSC Documents related to the Transportation Obligations; or (ii) mutual agreement of the parties hereto.

13. 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 a party to this Agreement.
14. 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 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, City hereby agrees that Construction Lender shall have all of Developer's rights and interests under the Agreement. Construction Lender is hereby made an express third party beneficiary of this Section 14, and the parties hereto shall not amend, modify or terminate the Agreement without Construction Lender's express written consent.
15. 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 an Indemnitor or any other person 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 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.
 - c) 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.
 - d) 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 may be maintained in a court of competent jurisdiction located in the State of California, and consent to the jurisdiction of any such California court for the purposes connected herewith.
 - e) 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.
 - f) 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.

- g) 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.

[Signatures on following page]

EXHIBIT 1

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

Service First of Northern California a
California nonprofit public benefit
corporation

By: _____

Name: _____

Its: _____

City of Stockton, a municipal corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

City Attorney

ATTEST:

By: _____