

## MUTUAL INDEMNITY AGREEMENT (COLISEUM PLACE HOUSING AND TRANSPORTATION IMPROVEMENTS)

THIS MUTUAL INDEMNITY AGREEMENT (the “**Agreement**”), is made and entered into as of June \_\_, 2019, by and among the City of Oakland, a municipal corporation (“**City**”), 3268 San Pablo, L.P., a California limited partnership (“**Partnership**”), Alameda-Contra Costa Transit District, a California Transit District (“**AC Transit**”), and Satellite Affordable Housing Associates, a California nonprofit public benefit corporation (“**Developer**”), upon the basis of the following facts, understanding and intentions of the parties:

### RECITALS

A. The State of California, Strategic Growth Council (“**SGC**”) and Department of Housing and Community Development (“**HCD**”), issued a Notice of Funding Availability dated October 2, 2017 (the “**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. City, Developer and AC Transit, as joint applicants (the “**Applicants**”), applied for AHSC funds in response to the AHSC NOFA to provide funding for (A) the construction of the 3268 San Pablo affordable housing project in Oakland, California (the “**Housing Development**”); (B) purchase of a zero-emissions bus (the “**Bus Purchase**”) to support services expansion and Clean Corridors Plan ; (C) installation of Class 2 bike lanes and road diet on Martin Luther Jr Way, repair/replacement of curb ramp and sidewalk repairs, creation of a path of travel from the project site to Hoover Elementary, two new bike share stations for the Ford GoBike Bike Share network (the “**Infrastructure Development**”); and (D) installation of new wayfinding signage and real-time transit information, and a high-security smart bike rack system, and the provision of transit passes and Ford GoBike bike share memberships for a period of three years (the “**Transportation Program**”). These improvements are described in more detail in the AHSC Application submitted on \_\_\_\_\_ (collectively, the “**AHSC Application**”), and shall be collectively referenced as “The Project.”

C. HCD awarded the Applicants an aggregate amount of \$8,917,500 in AHSC Funds consisting of (A) \$5,500,000 of AHSC Loan Funds for a permanent loan (“**AHSC Housing Loan**”), which will be disbursed to 3268 San Pablo, L.P. (the “**Partnership**”), a California limited partnership controlled by an affiliate of Developer, for construction of the Housing Project, and (B) \$3,417,500 of AHSC Grant Funds (the “**AHSC Grant**”) shall be used for the purpose of reimbursing the cost of the Bus Purchase, Infrastructure Development and the Transportation Program. The AHSC Housing Loan, AHSC Program Grant are collectively referred to herein as the “**AHSC Financing**.”

D. The Developer is required to enter into a Standard Agreement for the AHSC Loan (the “**AHSC Loan Standard Agreement**”). The City, Developer and AC Transit are required to enter into a Standard Agreement for the AHSC Grant (the “**AHSC Grant Standard Agreement**”) and collectively with the AHSC Loan Standard Agreement, the “**AHSC Standard Agreements**”) with HCD where each will be jointly and severally liable for the full and timely performance by the parties to complete the obligations set forth in the AHSC Standard Agreements, including

completion of the Housing Development, the BRT Improvements, East Bay Greenway and the Transportation Program, as described in the AHSC Application.

E. The City shall be responsible for implementing the Infrastructure Development and all costs and expenses related thereto, AC Transit shall be responsible for implementing the Bus Purchase and all costs and expenses related thereto, and Developer, or an affiliate thereof, shall be responsible for constructing and developing the Housing Project and all costs and expenses related thereto, and for implementing the Transportation Program and all costs and expenses related thereto. Under the AHSC program guidelines, each party is jointly and severally liable for the completion of all requirements under the AHSC Documents (as defined below). City, AC Transit, and Developer each acknowledge and agree that the inability or failure by any party to fully and timely complete each party's respective improvements required by the AHSC Standard Agreements may affect the timing and right of the other parties to receive disbursement of AHSC funds due the other party notwithstanding the other party's full and timely performance of its obligations.

F. Each party desires to enter into this Agreement to set forth its agreement to indemnify the other parties relating to performance of its respective obligations under the AHSC Application, the AHS Standard Agreements and any related funding agreements (collectively, the "**AHSC Documents**").

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein by this reference, the mutual 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. Implementation Schedule. The City, AC Transit and Partnership each acknowledge and agree that the inability or failure by a 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 parties to receive disbursement of AHSC funds due them notwithstanding their full and timely performance of their obligations. The City, AC Transit and Partnership agree to complete the tasks described on Exhibit A no later than the dates set forth on Exhibit A (or as modified upon mutual agreement). The City, AC Transit and Partnership agree to give the other party a written quarterly status report on its progress toward the milestones listed in Exhibit A (i.e., the Partnership will report on its progress on the Housing Development and Transportation Program, the City will report on its progress on the Infrastructure Development, and AC Transit will report on its progress on the Bus Purchase).

2. AC Transit Indemnity. AC Transit is responsible for using a portion of the AHSC Grant proceeds in the amount of \$1,200,000 to implement the Bus Purchase in accordance with the AHSC Grant Standard Agreement, including, but not limited to, any disbursement deadlines. AC Transit shall indemnify, defend, protect, and hold harmless the City, Partnership, and Developer and their respective affiliates, directors, officers, officials, partners, councilmembers, commissioners, agents and employees (each, a "**Local 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 AC Transit’s performance of or failure to perform its obligations to complete the Bus Purchase, in the manner and within the time periods, and to otherwise perform any covenants, set forth in the AHSC Documents, including any claims, losses or liabilities of the Partnership caused by a breach or default under the AHSC Grant documents that triggers a default under the AHSC Housing 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. AC Transit 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.

3. City Indemnity. City is responsible for using the proceeds of a portion of the AHSC Grant proceeds in the aggregate amount of \$1,072,200, and other funds documented in the AHSC Application, to fund the Infrastructure Development in accordance with the AHSC Standard Agreements. City shall indemnify, defend, protect, and hold harmless the Partnership, AC Transit and Developer, and their respective affiliates, directors, officers, partners, members, agents and employees (each, an “**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 loss, liability, damage, or expense, court costs and reasonable attorneys’ fees, arising out of or in connection with the City’s performance of or failure to perform its obligations to complete construction and development of the Infrastructure Development, in the manner and within the time periods set forth on Exhibit A attached hereto, and to otherwise perform any covenants, set forth in the AHSC Documents. However, in no event shall an Indemnified Party be indemnified hereunder for any Claims resulting from such party’s negligence or willful misconduct. City agrees to pay all of the Indemnified Parties’ costs and expenses, including reasonable 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 Indemnified Party in any legal action, reference or arbitration proceeding brought by HCD or other third party.

4. Developer Indemnity. Developer is responsible for using the proceeds of the AHSC Loan and a portion of the AHSC Grant proceeds in the amount of \$1,145,300, and other funds as documented in the AHSC Application, to fund the Housing Project and the Transportation Program in accordance with the AHSC Standard Agreements. Partnership and Developer shall indemnify, defend, protect, and hold harmless the City and AC Transit and their respective affiliates, directors, officers, officials, partners, councilmembers, commissioners, agents and employees (each, an “**Agency 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, and its agents, contractors and consultants’, performance of or failure to perform its obligations to complete construction and development of the Housing Development and its obligation to fund the Transportation Program, 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 AC Transit 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 AC Transit 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 AC Transit Indemnified Party in any legal action, reference or arbitration proceeding brought by HCD or other third party. Developer and AC Transit shall also each be referred to in this Agreement as an "Indemnitor."

5. Waiver of Consequential Damages. Notwithstanding any contrary provision contained herein, no party to this Agreement shall be liable for incidental, punitive, exemplary, indirect or consequential damages, or lost profits arising under or relating to this Agreement.

6. Cost Overruns. Partnership shall be responsible for paying all costs required to complete the Housing Development and to undertake the Transportation Program, irrespective of whether such costs exceed the AHSC Housing Loan. The City shall be responsible for paying all costs required to complete the Infrastructure Development irrespective of whether such costs exceed the portion of the AHSC Program Grant designated for the Infrastructure Development. AC Transit shall be responsible for paying all costs required for the Bus Purchase irrespective of whether such costs exceed the portion of the AHSC Grant designated for the Bus Purchase and other funds allocated to the project.

7. Payment of AHSC Funds. Developer and AC Transit agree that: \$1,200,000 of the AHSC Grant shall be reimbursed directly to AC Transit for implementation of the Bus Purchase; \$1,145,300 of the AHSC Grant shall be reimbursed directly to Developer for implementation of the Transportation Program; and \$1,072,200 of the AHSC Grant shall be reimbursed directly to the City for implementation of the Infrastructure Development. The parties further agree that all of the AHSC Loan funds shall be disbursed directly to Developer or its designee.

8. 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 Oakland  
Housing and Community Development  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
Attn: Meghan Horl

Copy to: City of Oakland  
City Attorney's Office  
One Frank H. Ogawa Plaza, 6<sup>th</sup> Fl.  
Oakland, CA 94612  
Attn: Vincent L. Brown, Deputy City Attorney

Developer:  
  
Satellite Affordable Housing Associates

Attention: Chief Executive Officer  
1835 Alcatraz Ave  
Berkeley, CA 94703

Partnership:

3268 San Pablo, L.P.  
Attention: General Partner  
1835 Alcatraz Ave  
Berkeley, CA 94703

With a copy to:

Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attn: President and General Counsel

AC Transit:

Alameda Contra Costa Transit District  
Manager of Capital Planning and Grants  
1600 Franklin Street,  
Oakland, CA 94612

9. Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Agreement:

(a) An Indemnitor 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 3 above; or

(b) An Indemnitor purports to revoke this Agreement or this Agreement becomes ineffective for any reason.

(c) The Partnership and its limited partner shall be permitted to cure a default by Developer on behalf of Developer in accordance with the provisions of Section 7(a).

10. Termination. This Agreement shall terminate upon the earlier of: (i) completion of the Housing Project, Bus Purchase, Infrastructure Development and Transportation Program in accordance with all terms and conditions set forth in the AHSC Documents; or (ii) mutual agreement of the parties hereto.

11. 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.

12. 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 an Indemnitor, that alone shall not be construed as a waiver of such right or remedy. All remedies of any Indemnified Party, Local Indemnified Party or Agency Indemnified Party against an Indemnitor 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.

*[Signatures on following page]*

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement in the spaces provided below to evidence their respective agreement to the terms of this Agreement as of the date first above written.

Satellite Affordable Housing Associates,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Susan Friedland, Chief Executive Officer

Alameda-Contra Costa Transit District

By: \_\_\_\_\_  
Michael A. Hursh, General Manager

Approved as to Form and Content:

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

City:

City of Oakland,  
a municipal corporation

By: \_\_\_\_\_  
Name: Sabrina Landreth  
Its: City Administrator

Approved as to form and legality:

By: \_\_\_\_\_  
Deputy City Attorney

*[Signatures continue on following page]*

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement in the spaces provided below to evidence their respective agreement to the terms of this Agreement as of the date first above written.

AC Transit:

Alameda-Contra Costa Transit District,  
a California Transit District

By: \_\_\_\_\_  
General Manager

Approved as to Form and Content:

\_\_\_\_\_  
General Counsel



## EXHIBIT A

### Implementation Schedule: Partnership Responsibilities

Date	Task

### Implementation Schedule: City Responsibilities

Date	Task

### Implementation Schedule: AC Transit Responsibilities

Date	Task