

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: RACHEL EDE, DEPUTY DIRECTOR - TRANSIT
TRANSPORTATION AND PUBLIC WORKS
SUBJECT: AUTHORIZATION TO EXECUTE JOINT STANDARD
AGREEMENTS FOR THE AFFORDABLE HOUSING AND
SUSTAINABLE COMMUNITIES (AHSC) PROGRAM AND A
SEPARATE IMPLEMENTATION AND MUTUAL INDEMNITY
AGREEMENT FOR THE ROSELAND VILLAGE HOUSING
PROJECT

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Transportation and Public Works Department that the Council, by resolution, 1) authorize the City Manager to execute two State of California Standard Agreements as joint parties with MidPen Housing Corporation (MidPen) and Sonoma-Marín Area Rail Transit (SMART) for Affordable Housing and Sustainable Communities (AHSC) grant funds and loan funds for the Roseland Village Housing Project; and 2) delegate authority to the City Manager or designee to negotiate and execute a separate Implementation and Mutual Indemnity Agreement (Joint Parties Agreement) with parties that are receiving AHSC funds, including MidPen and SMART, to further allocate responsibilities, risks and liabilities amongst the AHSC grant and loan fund recipients.

EXECUTIVE SUMMARY

On January 28, 2020, the City Council approved the submittal and acceptance of grant funding through the AHSC Program for the Roseland Village Housing Project (Project), with the City partnering with a housing developer (MidPen) and SMART as co-applicants for the grant and loan funds. On July 20, 2020, the award to MidPen, SMART and the City was announced by the Department of Housing and Community Development (HCD) for a total of \$25,780,623.

Staff seeks additional authorization from Council to enter into two California Standard Agreements (HCD Standard Agreements) as joint parties with MidPen and SMART, one agreement with HCD for the AHSC grant funds and another agreement with HCD for the AHSC loan funds. The HCD Agreements impose joint and several liability on the

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City, MidPen and SMART for performance of the grant and loan obligations as parties to the agreement, so staff also recommends that Council delegate authority to the City Manager to negotiate a separate Joint Parties Agreement with AHSC recipients to further specify and allocate responsibilities, risks and liabilities under the AHSC grant amongst the recipients to try to mitigate the joint and several liability conditions of the AHSC award.

BACKGROUND

AHSC is a greenhouse gas reduction program administered by the California Strategic Growth Council (SGC) and implemented by HCD and provides funding for affordable housing projects and related transportation improvements that make it easier for residents to walk, bike, or take public transit.

The AHSC program is funded by auction proceeds from California's Cap-and-Trade emissions reduction program. The SGC and HCD had approximately \$550 million in AHSC funding in the round five program. The AHSC grant program funds housing and transportation projects that will achieve GHG emissions reductions by increasing accessibility to affordable housing and key destinations via low-carbon transportation, resulting in fewer vehicle miles traveled (VMT) and/or mode shift to transit, bicycling or walking.

Eligible activities under the ASHC grant program include the following:

- Affordable Housing Developments
- Housing-Related Infrastructure
- Sustainable Transportation Infrastructure
- Transportation-Related Amenities
- Program Costs (including active transportation, transit ridership, or workforce development programs)

The City was asked to partner with SMART and housing developer MidPen on an AHSC grant application for the Roseland Village Housing Project.

A total award of the \$25,780,623 for the Roseland Village project was announced on July 20, 2020 for the project. HCD awarded MidPen, SMART and the City loan funds in the amount of \$15,685,007 and grant funds in the amount of \$10,095,616. This award is released jointly to MidPen, SMART and the City, and the joint award includes:

- MidPen: \$16,440,623, including grant and loan funds, for completion of the Roseland Village Housing Project.

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- SMART: \$5,225,000 for completion of the Windsor SMART station and SMART pathway gap closures.
- City: \$4,115,000:
 - Transit (\$2,670,000)
 - Battery-electric bus
 - Route 15 frequency increase
 - Enhanced amenities on high-frequency transit corridors and bus-rail wayfinding program in SMART station areas
 - Bicycle and pedestrian projects (\$1,445,000)
 - Traffic signal at Third St. and SMART station
 - Pedestrian gap closures on Corby Ave

The Community Development Commission of Sonoma County (CDC) is not listed as a grant applicant or a joint party to the Standard Agreements; however, the CDC will receive some AHSC funding to complete certain infrastructure improvements for sidewalks and road widening near and around the Roseland Village Housing Project.

Since the funding announcement in July 2020, the City, MidPen, and SMART have been in discussions with HCD related to the drafting of the HCD Standard Agreements required for initiation of funded projects. The parties to the HCD Standard Agreements (City, MidPen and SMART) and the CDC have also been in discussions during that time about development of a separate Joint Parties Agreement that would allocate the joint and several liability from the Standard Agreements amongst the AHSC recipients in a manner that further specifies and allocates responsibilities, risks and liabilities for the timely and full performance of the obligations set forth in the Standard Agreements.

PRIOR CITY COUNCIL REVIEW

On January 28, 2020, the City Council, by Resolution No. RES-2020-009 authorized submission of the AHSC grant application, and to execute the Standard Agreement and any necessary documents if successfully awarded.

On January 5, 2021, the City Council, by Resolution No. RES-2021-007 repealed RES-2020-009 due to a clerical error.

On January 5, 2021, the City Council, by Resolution No. RES-2021-008 authorized submission (by way of a corrected resolution) of the AHSC grant application, and to execute the Standard Agreement and any necessary documents if successfully awarded.

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ANALYSIS

The requested action will provide the City Manager with further authority to sign two HCD Standard Agreements for the AHSC Program, including one HCD Standard Agreement for the grant funds and one HCD Standard Agreement for the loan funds.

The State requires that joint parties to the HCD Standard Agreements be held “jointly and severally” bound to the completion of all elements that are proposed for the Project, on time and on budget. As a result, if one of the parties to the HCD Standard Agreements defaults on their responsibilities for the grant or the loan, the other parties to the HCD Agreements are required to fulfill the obligations. For example, the City could be liable for the loan for the Project under the HCD Standard Agreement if MidPen does not complete the housing portion of the Project. At the same time, MidPen and SMART would be required by the HCD Standard Agreements to step in and make the transit and bicycle improvements the City is required to provide if the City fails to do so.

To address this “joint and several liability” requirement imposed by the State as a condition of the AHSC award, the parties are negotiating a separate Joint Parties Agreement. The Joint Parties Agreement seeks to further allocate responsibilities, risks and liabilities amongst the AHSC recipients to separately ensure timely and full performance of the obligations set forth in the HCD Standard Agreements. The Joint Parties Agreement will include all, or a subset of the AHSC fund recipients, including MidPen, SMART and potentially the CDC. In the event one party fails to perform under the HCD Standard Agreements, HCD will still pursue all the parties under those HCD Standard Agreements; however, the Parties will then rely on the Joint Parties Agreement amongst themselves to provide separate indemnification and protection in instances of default.

Since joint and several liability is a State of California condition for receipt of AHSC funds, the risks associated with the City needing to step in and perform for another joint party under the HCD Agreements cannot be eliminated; however, delegation of authority to the City Manager to negotiate and execute a Joint Parties Agreement with fellow AHSC recipients is designed to that mitigate risk to the extent possible. Although many of the City’s grant awards are awarded and/or disbursed separately and do not impose joint and several liability, that is simply not an option for AHSC. All prior and upcoming AHSC awards include the joint and several liability requirement and the State will not waive it. As such, for the City to accept the AHSC award and participate in the project, it must accept the joint and several liability condition and work to mitigate that risk separately, to the extent possible.

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FISCAL IMPACT

Approval of this action does not have a fiscal impact on the General Fund. All City-sponsored transportation projects identified in the AHSC proposal will be fully funded by AHSC grant funds, except for the battery-electric bus purchase, which will be matched with approximately \$460,000 of various Federal, State and local funding received by the Transit Division.

ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guidelines Section 15378. Any future project will be subject to environmental review at such time that it is initiated.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable

NOTIFICATION

Not applicable.

ATTACHMENTS

- Resolution

PRESENTER

Shawn Sosa, Administrative Analyst
Rachel Ede, Deputy Director Transit
Rob Sprinkle, Deputy Director Traffic Engineering