

RESOLUTION NO. 2016-79

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA ("CITY")  
AUTHORIZING AN APPLICATION FOR STATE OF CALIFORNIA AFFORDABLE  
HOUSING AND SUSTAINABLE COMMUNITIES PROGRAM FUNDING FOR THE  
JUNSEY OAKS AFFORDABLE HOUSING PROJECT AND HOUSING RELATED  
INFRASTRUCTURE

WHEREAS, 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 January 29, 2016 (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;

WHEREAS, the Community Housing Improvement Systems and Planning Association Inc. ("CHISPA") invited the City of Marina and the Monterey-Salinas Transit District ("MST") to be co-applicants on this application to apply for AHSC Program Funds and submit the Application Package released by HCD for the AHSC Program;

WHEREAS, CHISPA's board of directors has authorized and directed its staff to apply and submit to the Department the AHSC Program Application as detailed in the AHSC NOFA dated January 29, 2016 for the 2015-16 Fiscal year in the total amount not to exceed \$6,904,121 of which \$5,365,005 is requested as a loan to CHISPA for the Junsey Oaks Affordable Housing Development ("AHSC Loan") and \$1,539,116 is requested for a grant for Housing Related Infrastructure, Sustainable Transportations Infrastructure, Transit Related Amenities and Program activities ("AHSC Grant") as defined in the AHSC Program Guidelines adopted by the SGC on December 17, 2015; and

WHEREAS, the City's portion of the \$1,539,116 AHSC Grant application package is a \$1,300,000 request for AHSC grant funds to fund construction of a round-about at the intersection of Reservation Road and DeForest Road ("Round-About"); and

WHEREAS, if awarded the AHSC Grant along with the AHSC Loan would awarded jointly and severally to the City, CHISPA and MST; and

WHEREAS, the SGC is authorized to approve funding allocations for the AHSC Program, subject to the terms of the NOFA, Program Guidelines, Application Package and the Standard Agreement and HCD is authorized to administer the approved funding allocations of the AHSC Program;

WHEREAS, the City deems it in the best interest of the City to submit the application for the AHSC Loan and the AHSC Grant as a co-applicant with MST and CHISPA on the condition that CHISPA indemnify the City for any liabilities that result from the AHSC Loan;

NOW, THEREFORE, BE IT RESOLVED:

1. That the City Council hereby authorizes the City Manager to apply as a co-applicant with CHISPA and MST for and submit the AHSC Program Application to HCD as detailed in the January 29, 2016 NOFA, for the 2015-16 Fiscal Year in a total amount not to exceed \$6,904,121, of which \$5,365,005 is requested as an Affordable Housing Development Loan (the "AHSC Loan") for the Junsey Oaks Affordable Housing Development and \$1,539,116 is requested as a grant for Sustainable Transportation Infrastructure ("STI"), Transit-Related Amenities ("TRA") or Program ("PGM") activities (the "AHSC Grant"), as defined in the AHSC Program Guidelines adopted on December 17, 2015 of which \$1,300,000 would be awarded to the City to pay for costs associated with the Round-About;

2. That if the application is approved, the City Manager is authorized and directed to enter into, execute and deliver a State of California Standard Agreement (the "Standard Agreement"), and any and all other documents required or deemed necessary or appropriate to secure AHSC Program funds from HCD, and all amendments thereto (collectively, the "AHSC Documents");
3. That the City Manager is authorized and directed to enter into an indemnification agreement by and between CHISPA and the City whereby CHISPA and the City mutually indemnify each other for any liabilities arising from each entities portion of the AHSC Loan or AHSC Grant, should the AHSC Loan and AHSC Grant be awarded.
4. That the City shall be subject to the terms and conditions specified in the Standard Agreement. Funds are to be used for allowable capital asset project expenditures to be identified in Exhibit A to the Standard Agreement. The application in full is incorporated as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the application are enforceable through the Standard Agreement. The Corporation hereby agrees to use the funds for eligible capital assets in the manner presented in the application as approved by HCD and in accordance with the NOFA and Program Guidelines and Application Package.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 7<sup>th</sup> day of June 2016, by the following votes:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

---

Bruce Delgado Mayor

ATTEST:

---

Anita Sharp, Deputy City Clerk

## INDEMNIFICATION AGREEMENT

This Agreement (the "Agreement") is made as of \_\_\_\_\_ 2016, by and between the City of Marina, a municipal corporation ("City") and Community Housing Improvement Systems and Planning Association Inc., a California nonprofit public benefit corporation ("CHISPA") with reference to the following facts and purposes:

### RECITALS

- 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 January 29, 2016 (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. The Community Housing Improvement Systems and Planning Association Inc. ("CHISPA") invited the City of Marina and the Monterey-Salinas Transit District ("MST") to be co-applicants on this application to apply for AHSC Program Funds and submit the Application Package released by HCD for the AHSC Program.
- C. CHISPA's Application Package requests a total amount not to exceed \$6,904,121 of which \$5,365,005 is requested as a loan to CHISPA for the Junsay Oaks Affordable Housing Development ("AHSC Loan") and \$1,539,116 is requested for a grant for Housing Related Infrastructure, Sustainable Transportations Infrastructure, Transit Related Amenities and Program activities ("AHSC Grant") as defined in the AHSC Program Guidelines adopted by the SGC on December 17, 2015.
- D. The AHSC Grant is proposed to be divided between the City and the MST with MST receiving \$200,000 to purchase a senior shuttle bus and related bus equipment ("MST Grant") and the City receiving \$1,339,116 to fund construction of a round-about at the intersection of Reservation Road and DeForest Road ("City Grant").
- E. If the AHSC Loan and AHSC Grant are awarded, the City, CHISPA and MST will be required to enter into a Standard Agreement with HCD where each will be jointly and severally liable for the AHSC Loan and AHSC Grant.
- F. In order to induce the City to agree to be co-applicants for the AHSC Loan and AHSC Grant, CHISPA has agreed to indemnify it for any claims that may result related to the AHSC Loan in accordance with the provisions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

## AGREEMENT

### 1. Indemnification.

CHISPA is responsible for using the proceeds of the AHSC Loan to fund the development of the Junsay Oaks Affordable Housing Development. CHISPA shall indemnify, defend (with counsel approved by City) and hold the City and its officers, directors, employees, agents, consultants and contractors (“Indemnitees”) harmless from and against any and all Claims arising in connection with any breach of any term or condition of the AHSC Documents, including the Standard Agreement and any related documents by CHISPA or any affiliate of CHISPA or any contractor, subcontractor, agent or employee of CHISPA or any affiliate of CHSIPA, including without limitation, any claim arising as a result of CHISPA’s failure to complete construction of the Junsay Oaks Affordable Housing Development within the timeframe required by the AHSC Documents, provided, that CHISPA’s indemnification obligations under this Agreement shall not extend to claims resulting solely from the gross negligence or willful misconduct of Indemnitees. It is further agreed that City does not and shall not waive any rights against Developer that it may have by reason of this indemnity and hold harmless agreement because of City’s acceptance, or CHISPA’s deposit with City of any of the insurance policies.

### 2. City Indemnification.

The City is responsible for using proceeds of the City Grant to fund construction of the roundabout at the intersection of Reservation Road and DeForest Road (“Public Improvements”). The City shall indemnify, defend (with counsel approved by CHISPA) and hold CHISPA and its officers, directors, employees, agents, consultants and contractors harmless from and against all claims arising in connection with any breach of any term or condition of the AHSC Documents by City or any affiliate of City or any contractor, subcontractor, agent or employee of City or any affiliate of City, including without limitation, any claim arising out of City’s failure to complete construction of the Public Improvements within the timeframe required by the AHSC Documents.

### 3. General Provisions.

3.1 Headings. The title and headings of the various Sections of this Agreement are intended for means of reference and are not intended to place any construction on the provisions of this Agreement.

3.2 Invalidity. If any provision of this Agreement shall be invalid or unenforceable the remaining provisions shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

3.3 Entire Agreement. The terms of this Agreement are intended by the Parties as a final expression of their agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. No provision of this Agreement may be amended except by an agreement in writing signed by the Parties hereto or their respective successors in interest.

The Parties were represented by attorneys with regard to the drafting of this Agreement, and neither party shall be deemed to be the drafter of this Agreement.

3.4 Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

3.5 Governing Law. This Agreement shall be governed by the law of the State of California.

3.6 Execution. This Agreement may be executed in multiple counterpart originals.

3.7 Attorneys' Fees. In the event of a breach of this Agreement, the non-breaching party shall recover all attorneys' fees and litigation expenses incurred as a result of such breach and/or to enforce this Agreement, including without limitation costs of appeal.

IN WITNESS WHEREOF, the Parties have executed this Agreement on or as of the date first above written.

ATTEST: (Pursuant to Resolution No. 2016-\_\_\_)

By: \_\_\_\_\_  
City Clerk

CITY  
CITY OF MARINA  
a municipal corporation

By: \_\_\_\_\_  
Layne Long, City Manager

Approved As To Form:

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

COMMUNITY HOUSING IMPROVEMENT  
SYSTEMS AND PLANNING ASSOCIATION,  
a California nonprofit public benefit corporation

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

June 7, 2016

Item No. **8g(2)**

Honorable Mayor and Members  
of the Marina City Council

City Council Meeting  
of June 7, 2016

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016-, APPROVE  
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA  
("CITY") AUTHORIZING AN APPLICATION FOR STATE OF CALIFORNIA  
AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES PROGRAM  
FUNDING FOR THE JUNSAY OAKS AFFORDABLE HOUSING PROJECT  
AND HOUSING RELATED INFRASTRUCTURE**

**RECOMMENDATION:**

It is recommended that the City Council consider:

1. Adopting Resolution No. 2016-, authorizing an application for State of California Affordable Housing and Sustainable Communities Program Funding for the Junsay Oaks Affordable Housing Project and Housing Related Infrastructure.

**BACKGROUND:**

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 January 29, 2016 (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. The AHSC program funds derived from the cap and trade program and are to be used for eligible affordable housing projects and housing related infrastructure that reduce greenhouse gases and vehicle miles traveled. Community Housing Improvement Systems and Planning Association Inc. ("CHISPA") submitted a concept proposal in response to the AHSC NOFA for the Junsay Oaks project, a 47 unit affordable housing project planned for the site located at Reservation Road and DeForest. The concept proposal is the first step in the very competitive application process. In order to increase the competitiveness of its application, CHISPA's concept proposal included the City and the Monterey Salinas Transit District ("MST") as co-applicants with a request for funding for the City's round-about planned a Reservation Road and DeForest Road and funding for MST to acquire a senior shuttle bus. CHISPA's concept proposal was approved to proceed to the next round in the application process which involves submission of a complete application. Full applications are due on June 20<sup>th</sup>. One of the requirements of the full application is that all co-applicants must submit a resolution approving the submission of the application.

CHISPA's full application requests a total of \$6,904,121 in AHSC funds. \$5,365,005 of the funds are being requested as a loan to CHISPA for the Junsay Oaks Affordable Housing Development ("AHSC Loan") and \$1,539,116 is requested for a grant for Housing Related Infrastructure, Sustainable Transportations Infrastructure, Transit Related Amenities and Program activities ("AHSC Grant"). Of the AHSC Grant, \$1,300,000 would be designated for the Reservation Road round-about. \$200,000 is being requested for the senior shuttle bus and related equipment to be purchased by MST. The remaining AHSC Grant funds are designated for bus passes for the residents of the Junsay Oaks Project.

Under the AHSC program regulations, all co-applicants are jointly and severally liable to the State for the full amount of the AHSC funding. However, the program regulations allow the co-applicants to enter into indemnification agreements indemnifying each other for liability related to particular portions of the funding award. As a condition to the City agreeing to be a co-applicant for the AHSC funds, CHISPA has agreed to enter into an indemnification agreement with the City whereby CHISPA will indemnify the City for any liability related to the AHSC Loan. The City will indemnify CHISPA for any liability associated with the City's portion of the AHSC Grant. If the application is successful the indemnification agreement will provide the City with protection in the event that CHISPA were to default on the loan.

**FISCAL IMPACT:**

If the AHSC funding application is successful, the City will receive funding for the Reservation Road Round-about at DeForest Road in the amount of \$1,300,000.

**CONCLUSION:**

This request is submitted for the City Council consideration and approval.

Respectfully submitted,

---

Layne Long  
City Manager  
City of Marina