



STRATEGICECONOMICS

HAYWARD AFFORDABLE HOUSING ORDINANCE STUDY

PUBLIC DRAFT REPORT

Prepared for:

City of Hayward
February 1, 2023



HAYWARD

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF FIGURES.....	2
I. EXECUTIVE SUMMARY	4
II. INTRODUCTION	9
Purpose of Study	9
Relationship Between Financial Feasibility and Affordable Housing Production.....	9
Existing AHO and Comparison to Peer Cities.....	14
III. FINANCIAL FEASIBILITY ANALYSIS APPROACH AND ASSUMPTIONS.....	21
Approach.....	21
Feasibility Analysis Assumptions.....	23
IV. FEASIBILITY ANALYSIS AND IN-LIEU FEE RESULTS.....	31
Initial Feasibility Analysis Results.....	31
Alternative Inclusionary Policies Analysis	34
In-Lieu Fee Analysis.....	37
V. SUMMARY OF POLICY DIRECTION AND ROLE OF THE AHO IN ADDRESSING DISPLACEMENT....	42
AHO Policy Support for Preventing Displacement.....	44
VI. AHO UPDATE RECOMMENDATIONS.....	44
APPENDIX A: GLOSSARY OF KEY TERMS.....	48
Definitions from Current AHO	48
Definitions of Other Key Terms	49
APPENDIX B: FEASIBILITY ANALYSIS DETAILS.....	50
Feasibility Assumptions	50
Pro Forma Results.....	51

TABLE OF FIGURES

Figure 1: Current AHO Inclusionary Requirements (Share of Total Project Units)	4
Figure 2: Recommended Changes to Inclusionary Requirements	5
Figure 3: In-Lieu Fee Recommendations.....	7
Figure 4: Components of Financial Feasibility: Project Value and Project Cost Components	11
Figure 4: Share of Households Who Are Cost Burdened in Hayward and Alameda County, by Tenure, 2021	11
Figure 5: Definition of Income Limits for Alameda County based on California Code of Regulations and HCD	12
Figure 6: Potential Impact of Inclusionary Policies on Financial Feasibility.....	13
Figure 7: Project Revenue and Development Costs for Affordable Housing Projects	14
Figure 8: Current AHO Inclusionary Requirement (Share of Total Project Units).....	15
Figure 9: Comparison of Inclusionary Requirements in Hayward vs. “Peer Cities”	17
Figure 10: Inclusionary Requirements by City and Tenure, from 2018-2021	18
Figure 11: Number of Permitted Inclusionary Housing Units in “Peer Cities,” by Type, 2018-2021 ..	18
Figure 12: Total Units Permitted, 2018-2021, by City, Income Level, and Funding Approach.....	19
Figure 13: Share of Local Funding by Source for Proposed and Entitled Affordable Housing Projects, Fremont and Hayward, To Be Completed From 2015-2023	20
Figure 14: Hayward 5th and 6th Cycle RHNA Housing Needs and 5th Cycle Permitting Progress	20
Figure 15: Overview of Prototype Assumptions	24
Figure 16: Hayward Housing Prototype Example Images.....	25
Figure 17: Hayward Housing Market Tiers and Corresponding Prices or Rents.....	26
Figure 18: Maximum Affordable Sale Price for Ownership Units, by Type, Income, and Bedrooms ...	28
Figure 19: Maximum Affordable Rent in Hayward, Effective 2022.	28
Figure 20: Hard Costs, by Prototype	29
Figure 21: Overview of Soft Cost Assumptions	29
Figure 22: City of Hayward Municipal Fees, Excluding In-Lieu Fees.....	30
Figure 23: Developer Financing Cost Assumptions.....	30
Figure 24: Site Acquisition Cost per Square foot, By Market Tier.....	31
Figure 25: Residual Land Value Results Under Existing AHO On-Site Inclusionary Requirements, By Market Tier	33

Figure 26: Residual Land Value Results for Tier Two – With and Without Current AHO Compliance Options.....	34
Figure 27: Feasibility results For Policy Alternatives – Moderate-Income Units Only.....	35
Figure 28: Feasibility Results for Policy Alternatives – with 50/50 Split Between Low and Moderate-Income Units	35
Figure 29: Tier 1 Sensitivity Analysis for Single Family and Townhomes with 17% Inclusionary Requirements – Moderate-Income Units Only.....	36
Figure 30: Tier 1 Sensitivity Analysis for Single Family and Townhomes with 12% Inclusionary Requirements – 50/50 Split between Moderate- and Low-Income Units	36
Figure 31: Affordable Unit Revenue and Costs – Ownership Prototypes.....	38
Figure 32: Affordability Gap and Equivalent In-Lieu Fees – Ownership Products	39
Figure 33: Supportable Debt per Unit – Rental Prototypes	40
Figure 34: Affordability Gap Per Unit, and Equivalent In-Lieu Fee Per Square Foot of Project.....	40
Figure 35: In-Lieu Fees or Affordable Housing Impact Fees in Hayward (Current AHO) and Peer Communities, Applied to Hayward Prototypes	41
Figure 36: Recommended Changes to Inclusionary Requirements	45
Figure 37: In-Lieu Fee recommendations	47
Figure 38: Square Feet per Unit and Share of Units by Bedroom Size Assumptions.....	50
Figure 39: Multifamily and Retail Rent and Revenue Assumptions	50
Figure 40: Financing Cost Calculations, by Prototype (in Millions of Dollars).....	50
Figure 41: Tier Two Full Pro Forma results - with Current AHO Requirements (In Millions of Dollars)	51
Figure 42: Tier One Full Pro Forma Results with Recommended Changes to AHO: Maintaining Current Requirements for Condos and Rental Products; Requiring 6% Low and 6% Mod. Units for SF and TH Products (In Millions of Dollars)	52

I. EXECUTIVE SUMMARY

The City of Hayward uses a variety of policy tools in its efforts to produce affordable housing and meet the State of California’s Regional Housing Needs Allocation (RHNA) requirements. One such tool is the City’s Affordable Housing Ordinance (AHO). The AHO seeks to increase the production of affordable housing via requirements that housing developers either include deed-restricted affordable housing units as part of their projects or provide other contributions. The primary ways developers can comply with Hayward’s AHO are by dedicating a certain percentage of their project’s units as “inclusionary” deed-restricted affordable housing, or by paying an “in-lieu” fee that the City can use to fund affordable housing programs and production. The City may also, at its discretion, approve an alternative mitigation proposed by a project developer.

The City of Hayward initiated this study of the AHO’s inclusionary and in-lieu fee requirements to ensure the AHO optimizes the production of affordable housing. Strategic Economics completed a development financial feasibility analysis to evaluate the impacts of current AHO requirements and potential changes to these requirements on a variety of housing development “prototypes” under varying submarket conditions found within Hayward. The analysis also included an “affordability gap analysis” to identify corresponding in-lieu fee levels. Another component of the analysis compared inclusionary and in-lieu fee requirements across several peer communities and examined recent affordable housing production in those communities.

The AHO study incorporated input and feedback from a variety of stakeholders and decisionmakers. A Technical Advisory Committee (TAC), consisting of five developers with local experience, met twice to vet analysis assumptions, results, and recommendations. City staff gathered community input on housing priorities via a survey activity conducted at two Fair Housing Workshops and a Housing Fair. The Homelessness-Housing Task Force (HHTF) reviewed analysis results and provided policy guidance, and the recommendations described in this report were presented to the Planning Commission for comment on December 8, 2022. The City of Hayward intends to use the results of this study to inform potential changes to the affordability requirements and in-lieu fee levels specified in its AHO.

The current Hayward AHO applies to all projects with at least two units. For ownership housing projects that are less than 35 units per acre, the AHO requires that ten percent of units in a project be dedicated to moderate-income households. For ownership housing projects at a density of 35 units per acre or greater, the AHO requires that 7.5 percent of units are dedicated to moderate-income households. For rental projects, the AHO requires that at least six percent of units in a development are designated as affordable units—split evenly between very low-income households and low-income households. These rental requirements are the same regardless of density.

FIGURE 1: CURRENT AHO INCLUSIONARY REQUIREMENTS (SHARE OF TOTAL PROJECT UNITS)

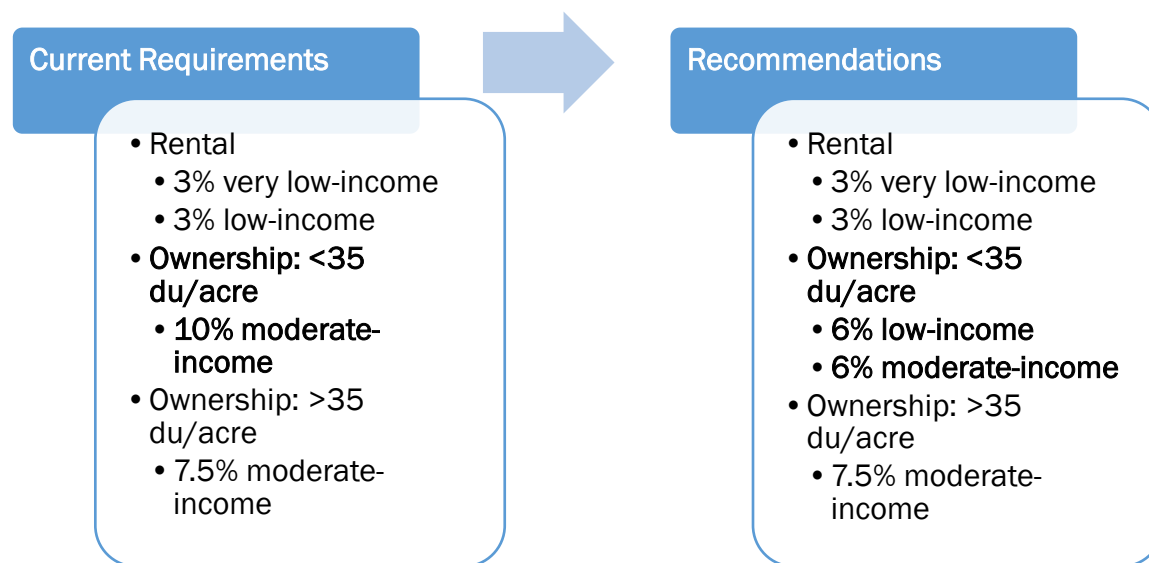
Type of Project	Required Affordability Level as a Share of Total Dwelling Units			Total Inclusionary Requirement
	Very Low	Low	Moderate	
Ownership Projects				
Less than 35 dwelling units per acre			10%	10%
35 or more dwelling units per acre			7.5%	7.5%
Rental Projects				
All densities	3%	3%		6%

Source: City of Hayward AHO, 2017; Strategic Economics, 2023.

INCLUSIONARY POLICY RECOMMENDATIONS AND RELATED CONCLUSIONS

Strategic Economics recommends maintaining current inclusionary requirements for rental products and high-density ownership products, while increasing the required inclusionary percentage and deepening affordability requirements for low-density ownership products. The recommendation for ownership projects that are less than 35 dwelling units per acre (single family homes and townhomes) is to increase the required total inclusionary percentage from ten percent to 12 percent, split evenly between low-income households and moderate-income households. This is a departure from the current AHO policy, which only requires that these ownership products provide affordable units for moderate-income households. Figure 2 summarizes these changes.

FIGURE 2: RECOMMENDED CHANGES TO INCLUSIONARY REQUIREMENTS



These recommendations were informed by the following stakeholder input and analysis conclusions:

- The majority of the analyzed rental housing prototypes are currently not feasible within Hayward, regardless of the level of AHO requirements or submarket “tier.” This aligns with current development conditions, as developers have not proposed any major market-rate rental projects since adoption of Hayward’s current AHO requirements. Reduction or elimination of affordable housing requirements is not expected to significantly improve feasibility for these multifamily products due to their wide gap between achievable revenues and construction costs.
- The recommended requirements are within a typical range of seven “peer” cities for which Strategic Economics reviewed inclusionary policies and affordable housing production outcomes.
 - As shown in the Existing AHO and Comparison to Peer Cities analysis on page 14, Hayward’s current inclusionary requirements are relatively lower than peer communities, yet these low requirements led to production of a relatively high number of affordable low- and moderate-income housing units. Inclusionary requirements should be set at a level that does not encourage developers to build projects in nearby communities instead of Hayward. Inclusionary on-site units were also the primary

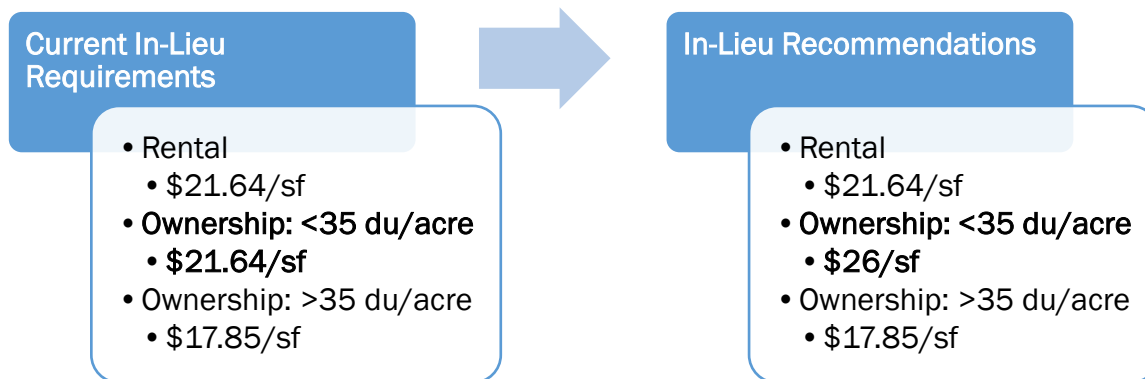
means by which Hayward and peer communities produce deed-restricted housing for moderate-income households.

- The peer cities and policy analyses also suggested the importance of maintaining inclusionary requirements at a level that supports the financial feasibility of new development.
 - Some jurisdictions, such as Fremont, may be able to sustain higher inclusionary requirements because they have higher market-rate rents that could support the cost of affordable units.
 - In Hayward, the Inclusionary Policy Alternatives Findings on page 35 indicate that single-family homes and townhomes are only marginally feasible at a 15 percent requirement—the level used by some peer communities.
- The City’s Homelessness-Housing Task Force (HHTF) expressed a preference for maintaining existing rental requirements to ensure developers are obligated to provide inclusionary or in-lieu fee contributions if development conditions improve in the future.
- A condominium prototype (a higher-density ownership product) is not currently feasible under any market tier within Hayward, and developers are not proposing condominiums in Hayward.
- Strategic Economics found through sensitivity testing that a 12 percent requirement for low and moderate-income households applicable to low-density ownership products (single-family homes and townhomes) would allow projects to maintain feasibility while also sustaining increases in construction costs of up to four percent. In contrast, a higher required percentage would result in these projects becoming infeasible with the slightest negative change in development conditions. See the Sensitivity Analysis section on page 36 for further details.
- The HHTF expressed a preference for increasing ownership requirements, but not to such a point that they block housing development if project costs and revenues shift in the near term.

IN-LIEU FEE RECOMMENDATIONS AND RELATED CONCLUSIONS

Strategic Economics recommends maintaining the current level of in-lieu fees for rental products and high-density ownership products, while increasing the fee for low-density ownership products to \$26 per habitable square foot. The goal of these recommendations is to strike a balance between generating revenue for producing affordable units while ensuring that the fee does not prevent development activity. The recommended changes represent a relatively small increase in total development costs.

FIGURE 3: IN-LIEU FEE RECOMMENDATIONS



These recommendations were informed by the following stakeholder input and analysis conclusions:

- The affordability gap analysis found that the in-lieu fee amount required to build off-site deed-restricted affordable housing equivalent to the revised inclusionary requirements would be \$29.26 per square foot for single-family homes and \$16.92 per square foot for townhomes.
- Among other considerations, in-lieu fees should be set at a level that does not encourage developers to build projects in nearby communities instead of Hayward. The maximum effective in-lieu fee for *ownership* products among Hayward’s “peer” communities is \$44 per square foot of habitable space, but the median fee is closer to Hayward’s current level.
- The maximum in-lieu fee for *rental* products among Hayward’s peer communities is approximately \$30 per square foot, while the median fee is close to Hayward’s current level.
 - Based on the affordability gap, the in-lieu fee for rental products would be between \$29 per square foot and \$40 per square foot.
 - However, rental products are largely not feasible under existing AHO requirements; maintaining a lower in-lieu fee for rental projects increases the possibility of development occurring if conditions improve in the future.
- The Homelessness-Housing Task Force supported increasing AHO requirements on low-density ownership products while maintaining consistent requirements for high-density ownership housing and rental products.
- Analysis of affordable housing funding data for Hayward and Fremont demonstrated the importance of in-lieu fee revenues as a local funding source for production of 100 percent affordable housing projects. These projects can provide a deeper level of affordability than what can be achieved through inclusionary units. These projects can also provide permanent supportive housing units and housing units for extremely low-income households—serving community members who are at high risk for displacement or homelessness.

- Lastly, TAC members noted that financial considerations for in-lieu fees or provision of on-site units differ from project to project, and that flexibility is important for ensuring that they can find a feasible approach for future projects.

The full discussion of the research and findings described in this executive summary can be found throughout the remainder of this report. The “Existing AHO and Comparison to Peer Cities” section beginning on page 14 describes Hayward’s current AHO requirements and compares Hayward’s requirements and production of inclusionary housing to nearby East Bay communities. Further explanation of feasibility results, sensitivity testing, and in-lieu fee analysis is provided in the “Feasibility Analysis and In-Lieu Fee Results” section on page 31.

In addition, this report includes two appendices. Appendix A: Glossary of Key Terms includes a glossary of key terms and definitions which are otherwise also defined throughout the report narrative. Appendix B: Feasibility Analysis Details provides detailed tables describing the feasibility assumptions and results, including unit size calculations, cost calculations, and detailed pro forma results.

II. INTRODUCTION

Purpose of Study

Hayward's Affordable Housing Ordinance (AHO) provides a framework through which developers of new market-rate housing projects are required to provide affordable housing units or support the development of affordable housing through other means. This ordinance is a type of inclusionary housing policy. Inclusionary housing policies work by requiring market-rate developers to dedicate a portion of their project's total units to be permanently affordable to moderate-, low-, or very low-income households. In most communities, developers also have the option of complying with the requirements by paying a fee instead. This fee, known as an in-lieu fee, can be used to substitute for some or all of the required affordable units in the housing project. Developers may also propose an alternative means of complying with the AHO, with approval at the City's discretion.

The goal of this study was to identify potential changes to the AHO that would help maximize the production of affordable housing in Hayward. Hayward's AHO was most recently updated in 2017. At that time, the City of Hayward increased the AHO's in-lieu fee and reduced the project size threshold to which requirements apply. However, since that time, the COVID-19 pandemic altered market conditions for housing development, meaning that the development assumptions upon which the AHO requirements were changed are no longer the same. Therefore, the purpose of this study was to identify the current market context for development feasibility and to analyze how changes to the AHO could be structured to increase production of affordable housing without curtailing market-rate housing production due to unsupportable requirements.

The remainder of the report consists of five sections:

- **II: Introduction:** The remainder of the Introduction describes approaches to affordable housing production, financial feasibility, and how inclusionary policies can be used to help produce affordable housing;
- **III: Financial Feasibility Analysis Approach and Assumptions:** This section explains the approach and assumptions used for analyzing financial feasibility of different housing types.
- **IV: Feasibility Analysis and In-Lieu Fee Results:** This section focuses on the feasibility analysis results and analysis of how policy changes would impact development feasibility for different types of housing.
- **V: Summary of Policy Direction and Role of the AHO in Addressing Displacement:** This section describes stakeholder and decisionmaker input that was used to guide the analysis and AHO recommendations, and describes the role of the AHO in addressing displacement concerns.
- **V: AHO Update Recommendations:** This section presents final recommendations for both inclusionary requirements and in-lieu fees.

Relationship Between Financial Feasibility and Affordable Housing Production

Because inclusionary housing policies like Hayward's AHO seek to leverage the activities of the private market to produce affordable housing, they are reliant on the financial feasibility of market-rate housing projects. This means inclusionary and in-lieu fee policies are reliant on some factors outside

of the City's control. Cities can control what types of housing are allowed on each parcel using land use regulation, and whether particular project proposals are approved. However, a city cannot control whether developers propose projects within those regulations, nor the exact composition of proposed projects. Developers will only propose projects that they assess as being feasible to construct.

Requirements to provide inclusionary affordable units or pay a certain level of additional fees influence development feasibility for market-rate housing developers by reducing revenues or increasing costs. Thus, for an inclusionary policy to contribute to affordable housing production, its requirements must be high enough that they result in the production of new affordable units, but not be so high that they prevent market-rate housing projects from being feasible. This makes it important to identify how different affordability requirements for inclusionary units relate to the total revenue and expenses of a project.

On the other hand, requiring deeper levels of affordability or higher in-lieu fee contributions can help Hayward meet its affordable housing development goals through multiple means of affordable housing production. Thus, the content of this section explains why financial feasibility of housing development matters for setting inclusionary policies; how "affordable" housing is defined and affects financial feasibility considerations; and how inclusionary policies fit within the context of overall affordable housing production in a community.

FINANCIAL FEASIBILITY

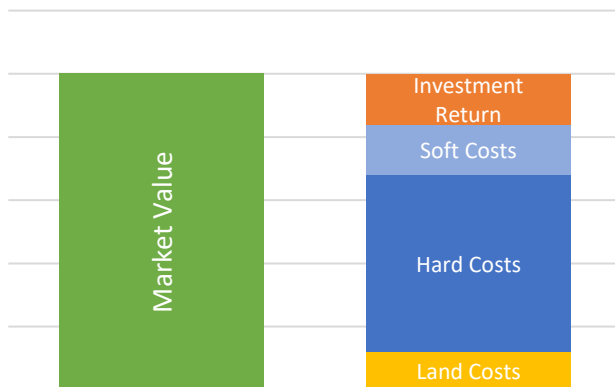
From a market-rate housing developer's perspective, development projects are only financially feasible when the market value of the project (based on total revenue) exceeds project costs and investment return. As shown in Figure 4, this is determined by the following factors.

- Total project revenue is determined by the market value of the project.
 - **For for-sale projects, the market value consists of the sales prices the units can obtain.**
 - **For rental projects, the market value of the project depends on the annual revenue it will generate and the current capitalization rate,** which reflects overall project investment risk relative to alternative investments.

- Total project costs include hard costs, soft costs, investment return, and land costs.
 - **Hard costs** include materials and labor associated with physical construction of the building.
 - **Soft costs** include indirect expenses such as architecture and engineering, taxes, insurance, financing costs, and municipal fees.
 - **Investment return** consists of the required financial return on investment that a project must achieve to attract developer and lender investment.
 - **Land costs** refer to the price the developer pays to acquire the land.

Each of these factors is very dynamic; project costs and revenues can fluctuate significantly, and many factors, such as the market-rate price of housing, are beyond the City's direct sphere of influence. Instead, the market-rate price of housing is set by local market demand—which may rise and fall according to the availability of housing supply, presence of amenities, or other factors in the market.

FIGURE 4: COMPONENTS OF FINANCIAL FEASIBILITY: PROJECT VALUE AND PROJECT COST COMPONENTS

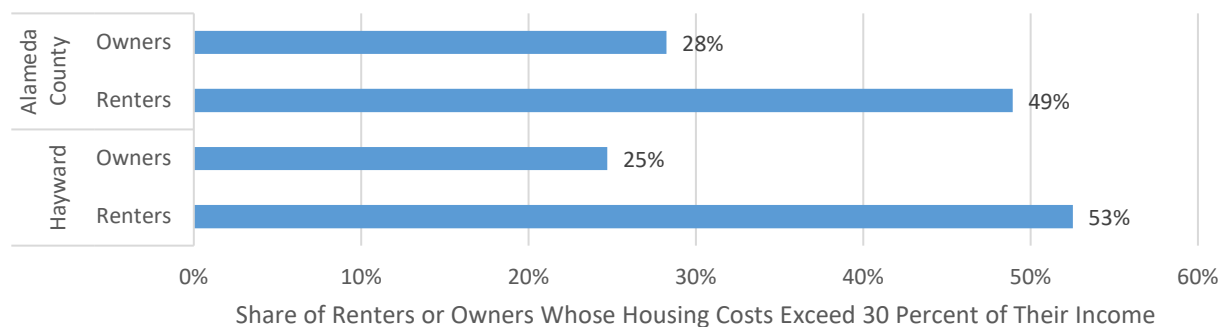


Source: Strategic Economics, 2022.

HOUSING AFFORDABILITY AND “AFFORDABLE HOUSING” DEFINITIONS

Housing prices are considered affordable if a household pays less than 30 percent of its monthly income on housing costs; in Hayward, many households’ expenses are currently exceeding this threshold. Households whose expenses are exceeding 30 percent of their income are referred to as housing “cost-burdened.” Figure 5 displays the share of households in both Alameda County and Hayward that are cost burdened. Approximately 37 percent of households in Hayward are housing cost burdened—implying that the market-rate price of housing of their current unit is too high for them to afford with their current household income.

FIGURE 5: SHARE OF HOUSEHOLDS WHO ARE COST BURDENED IN HAYWARD AND ALAMEDA COUNTY, BY TENURE, 2021



Source: U.S. Census, American Community Survey, 1-YR, 2021; Strategic Economics, 2022.
 Note: Hayward’s combined cost-burdened household percentage is 37 percent.

Deed-restricted affordable housing units help to reduce cost-burdens for households within specific income categories. In the context of this report, “affordable housing” refers to units with deed-restrictions limited to households earning certain incomes. Affordable housing units target households within select income categories, which are based on the area median income (AMI) of a region. Rents and sales prices are set at below market-rate (BMR) levels so that households pay no more than 30

percent of the targeted income level for their income category.¹ Each year, the California Department of Housing and Community Development (HCD) publishes income limits for every county corresponding to its AMI and standard affordable housing income categories. Figure 6 shows the percentage of AMI that falls into each income category in Alameda County.

FIGURE 6: DEFINITION OF INCOME LIMITS FOR ALAMEDA COUNTY BASED ON CALIFORNIA CODE OF REGULATIONS AND HCD

Income Category	AMI Level
Acutely Low-Income	0% to 15%
Extremely Low-Income	>15% to 30%
Very Low-Income	>30% to 50%
Low-Income	>50% to 76.8%
Moderate-Income	>76.8% to 120%
Above Moderate-Income	>120%

Sources: California Department of Housing and Community Development, 2022; Strategic Economics, 2022.

Note: These percentages were calculated from income limits for Alameda County that are determined by HCD and published annually in Title 25 of the California Code of Regulations, Section 6932. “Moderate-income” limits generally start at or above 80% of AMI.

AFFORDABLE HOUSING PRODUCTION TOOLS

In order to produce housing units with rents or sales prices that are below market-rates, jurisdictions often use either public or private forms of subsidy. Two of the most common types of affordable housing production tools are inclusionary housing policies—which require private subsidy—and 100 percent affordable housing programs—which primarily leverage public subsidy to produce affordable housing.

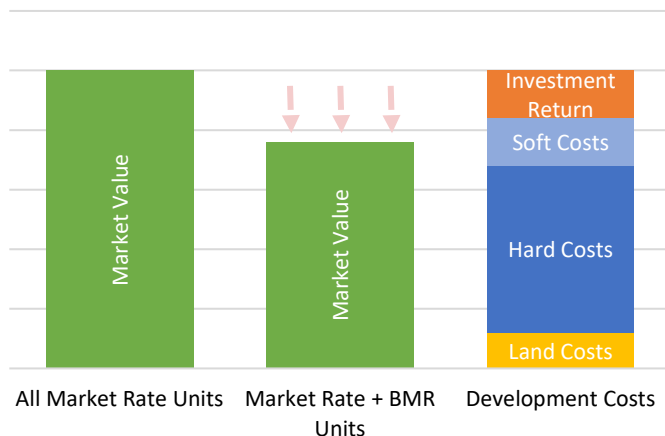
INCLUSIONARY HOUSING POLICIES

Inclusionary housing policies work by requiring market-rate housing developers to subsidize affordable housing units directly. Typically, this is done by requiring developers to set aside a certain percentage of their project’s housing units to be deed-restricted affordable housing. Alternatively, an inclusionary policy may allow developers to pay an affordable housing fee, “in-lieu” of providing on-site units, or allow them to assist with the production of affordable units in some other way. In such a policy, the goal is to use the revenue generated by market-rate housing units to cross-subsidize development of affordable units.

These policies have the benefit of potentially producing affordable housing units without requiring public subsidy, but also drive down financial feasibility by reducing the total revenue and market value of the project. Because inclusionary units generate less revenue per unit than market-rate units, requiring developers to substitute them for market-rate units will reduce the project’s total revenue. Figure 7 visualizes this impact on the project’s overall feasibility. This figure also illustrates the purpose of conducting a feasibility analysis—to identify an inclusionary requirement level that allows projects to generate enough revenue to proceed while also providing BMR units.

¹ This practice does not entirely eliminate housing cost burden for low-income households. Because maximum costs are based on a target income level for each group of households, housing cost burden can still occur in cases where the household’s income is below the target income level for their category. However, the BMR restrictions reduce the households’ housing cost burdens below the levels of market rate rents.

FIGURE 7: POTENTIAL IMPACT OF INCLUSIONARY POLICIES ON FINANCIAL FEASIBILITY



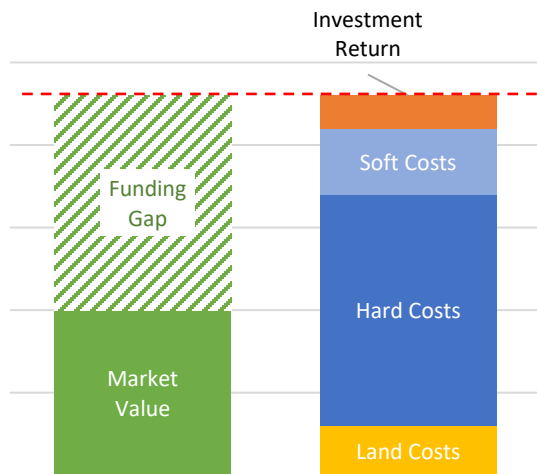
Source: Strategic Economics, 2022.

Another benefit of inclusionary policies is that they give local governments more flexibility in determining which income levels to target. Jurisdictions with inclusionary policies can choose whether the policies target moderate-, low-, or very low-income populations, and can also implement different requirements for different housing products, such as ownership or rental projects. Thus, inclusionary policies can be used to target income thresholds—such as moderate-income households—that may not typically be supported by other forms of affordable housing. This flexibility can help local jurisdictions achieve their affordable housing goals and meet state regional housing needs allocations. However, because inclusionary requirements only produce affordable housing units or fee revenues if market-rate housing developers choose to pursue projects, jurisdictions must incorporate consideration of financial feasibility impacts on future development projects when setting inclusionary requirements.

AFFORDABLE HOUSING PROJECTS

The other common approach to produce affordable housing is to use public subsidy to fund projects in which all units are affordable. These projects are typically referred to as 100 percent affordable projects. The largest source of funding for many of these projects comes from the federal Low-Income Housing Tax Credit (LIHTC), which gives investors a dollar-for-dollar credit on their tax liability in exchange for equity contributions to an affordable housing development. In a 100 percent affordable housing project, the developer must assemble a funding “stack” consisting of a variety of federal, state, local, and private funding sources to offset the costs of producing the units—which are typically much higher than the revenue that will be generated from the deed-restricted affordable units. This process is illustrated in Figure 8, which shows the funding gap these projects have because of the reduced revenue they can raise from the BMR units.

FIGURE 8: PROJECT REVENUE AND DEVELOPMENT COSTS FOR AFFORDABLE HOUSING PROJECTS



Source: Strategic Economics, 2022.

Affordable housing projects can often leverage more diverse funding sources and achieve deeper levels of affordability than inclusionary housing projects, but available funding can be highly competitive or difficult to obtain. Federal and state funding sources have the benefit of being less sensitive to changing market conditions than private financing. However, federal and state funding sources often have a limited pool of resources and can only be accessed through a competitive application process. In addition, they often require the use of local matching funds in order to receive funding. Inclusionary policies can be an important resource to provide local matching funds: if developers elect to comply with inclusionary policies by paying in-lieu fees instead of providing on-site units, those funds can be used to help support financing for other 100 percent affordable housing projects. In this way, inclusionary policies can be used to support both on-site affordable units and affordable units in 100 percent affordable projects—which in tandem produce more housing opportunity diversity in relation to income levels and tenure.

Existing AHO and Comparison to Peer Cities

Housing production in Hayward does not occur in a vacuum; developers often construct housing in many different areas, and differences in inclusionary requirements between regions can have an impact on where they choose to develop housing. Therefore, this section describes Hayward’s current inclusionary housing requirements and compares them to other nearby communities that could be viewed as Hayward’s “peers.” Seven communities were selected for comparison with Hayward based on their similarity to Hayward’s population size, as well as various characteristics of their housing markets: median rents, home values, age of housing, types of housing, and amount of recent construction activity.

This comparison of Hayward’s affordable housing production and developers’ use of its inclusionary policy to other Bay Area Cities revealed several key findings, described in greater detail in this section:

- **Hayward’s current inclusionary requirements are relatively lower than most “peer” communities; yet these low requirements led to production of a relatively high number of**

affordable low- and moderate-income housing units. This result implies that Hayward’s lower inclusionary requirements allowed market-rate housing development to remain financially feasible and therefore be built along with the corresponding inclusionary units.

- **Inclusionary on-site units are the primary means of producing deed-restricted housing for moderate-income households.**
 - Shifting away from moderate income requirements in an inclusionary policy would eliminate the primary means of delivering these units.
- **In-lieu fees raised from inclusionary policies are one of the primary local funding sources for communities to support 100 percent affordable projects.**
- **In order to achieve its affordable housing goals, Hayward will need to increase its production of affordable units at all income levels.**
 - The AHO is likely to be an important tool for producing both moderate and lower-income affordable units because it can produce both inclusionary units and fee revenue needed to subsidize 100 percent affordable housing.

CURRENT HAYWARD AFFORDABLE HOUSING ORDINANCE REQUIREMENTS

The current Hayward AHO establishes different requirements depending upon the tenure type, size, and residential density of a proposed housing development. Figure 9 summarizes the current requirements based on housing density and housing tenure.

- **For ownership housing projects, the AHO has different requirements depending on the residential density.**
 - For projects that are less than 35 dwelling units per acre (du/acre):
 - Ten percent of units are required to be dedicated to moderate-income households.
 - For projects at a density of 35 units per acre or more:
 - 7.5 percent of units are required to be dedicated to moderate-income households.
- **For rental projects, requirements are the same regardless of density.**
 - Three percent of units are required to be dedicated to very low-income households, and
 - Three percent of units are required to be dedicated to low-income households, for a total of six percent.

FIGURE 9: CURRENT AHO INCLUSIONARY REQUIREMENT (SHARE OF TOTAL PROJECT UNITS)

Type of Project	Required Affordability Level as a Share of Total Dwelling Units			Total Inclusionary Requirement
	Very Low	Low	Moderate	
Ownership Projects				
Less than 35 dwelling units per acre			10%	10%
35 or more dwelling units per acre			7.5%	7.5%
Rental Projects				
All densities	3%	3%		6%

Source: City of Hayward AHO, 2017; Strategic Economics, 2023.

PEER CITY INCLUSIONARY REQUIREMENTS

Hayward's current inclusionary requirements are lower than the required percentages in many of its "peer" communities, and many communities require deeper levels of affordability than Hayward. The only exceptions are Newark, which uses impact fees instead of requiring on-site units; Concord, which has a lower requirement than Hayward for ownership units; and Richmond, which uses in-lieu fees only for rental projects. Five of the six peer cities with ownership inclusionary policies require developers to provide units to both low- and moderate-households, while Hayward only requires provision of moderate-income units in its ownership projects. These requirements are shown in Figure 10.

Fremont's inclusionary requirements were among the highest among peer communities from 2015 to 2021, but were revised downwards in 2021. For-sale requirements were revised down from around 20 percent to 15 percent, while rental requirements were revised from 12 to 10 percent. City staff cited three reasons for revising the total requirements: simplifying the ordinance, becoming more comparable to other jurisdictions, and making the on-site option more realistic for developers. Staff indicated that since the ordinance was adopted in 2015, no for-sale developers had elected to build on-site inclusionary units.² Both the previous and current requirements for Fremont are shown in Figure 10.

² City of Fremont, Affordable Housing Ordinance Update Staff Report, October 2021.

FIGURE 10: COMPARISON OF INCLUSIONARY REQUIREMENTS IN HAYWARD VS. “PEER CITIES”

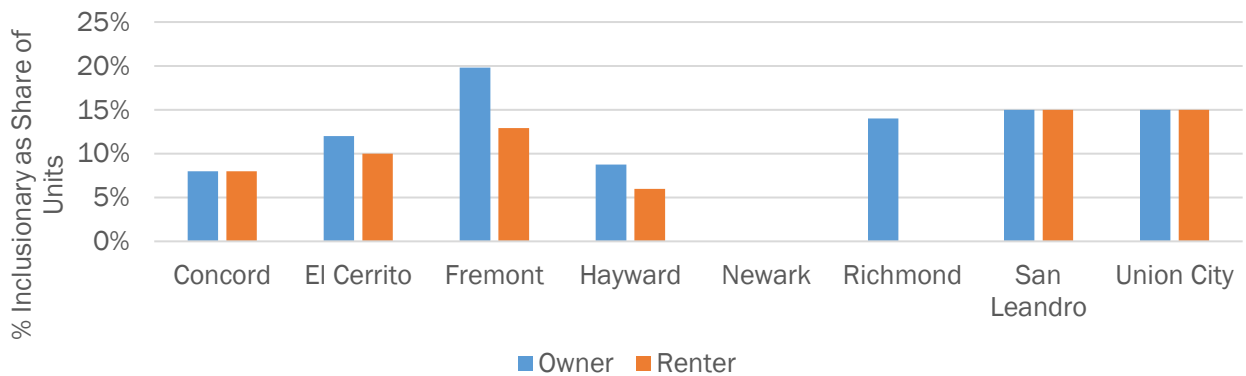
	Set-Aside Requirement by Project Size		Minimum Size Threshold	Affordability Target by Tenure		Date Enacted
	Rental	For-Sale		Rental	Ownership	
Hayward	All projects: 6%	Projects > 35 du/acre: 7.5% Projects < 35 du/acre: 10%	2 units	Very low and low-income	Moderate-income	2017
Concord	Either 10 percent at low income, or six percent at very low income	Either 10 percent at moderate income, or six percent at low income	5 units or more for all residential projects	Very low, low and moderate income	Low and Moderate-income	2021
El Cerrito	10% of units	12% of units	Rental or Combo Rental/Sale: 9 units For Sale only: 10 units	Very low and low-income	Moderate-income	2018
Fremont	All projects: 10%	15% of units: 5% moderate 10% low-income	2 units	Very low and low-income	Low and Moderate-income	2021
Fremont (old)	All projects 12.9%	18% for attached 21.6% for detached	2 units	Extremely low, very low, low, and moderate	Extremely low, very low, low, and moderate	2002
Newark	(Impact fee only)	(Impact fee only)				
Richmond	In-lieu fee is default. Developer can provide on-site units. No % specified.	One of the following: Moderate: 17% Low Income: 15% Very Low Income: 10%	10 units	Very low, low, and moderate income	Very low, low, and moderate income	2020
San Leandro	Roughly 15% - rounded to the nearest unit.	Roughly 15% - rounded to the nearest unit	4 for rental, 2 for ownership	Very low and low-income	Low and Moderate-income	2006
Union City	All projects: 15%	All projects: 15%	7	Very low and low-income	Low and Moderate-income	2018

Source: Municipal Ordinances, 2022; Strategic Economics, 2022.

COMPARISON OF HOUSING PRODUCTION OUTCOMES

Hayward has produced more inclusionary units than its peer communities in recent years, likely because Hayward has lower inclusionary requirements. Figure 11 shows the required inclusionary percentages at the time that those units were produced while Figure 12 shows the total number of inclusionary units produced by product type. While housing markets differ from city to city, these charts illustrate that many communities with higher requirements are not producing any inclusionary units at all. One exception to this trend is Fremont. However, Fremont is among the strongest residential markets in the region, meaning that residential projects can achieve higher market-rate revenues to offset losses from including greater amounts of inclusionary units. According to CoStar, the average effective monthly rent per square foot for multifamily units in Fremont was \$3.15, while the effective rent per square foot for units in Hayward was \$2.68.³

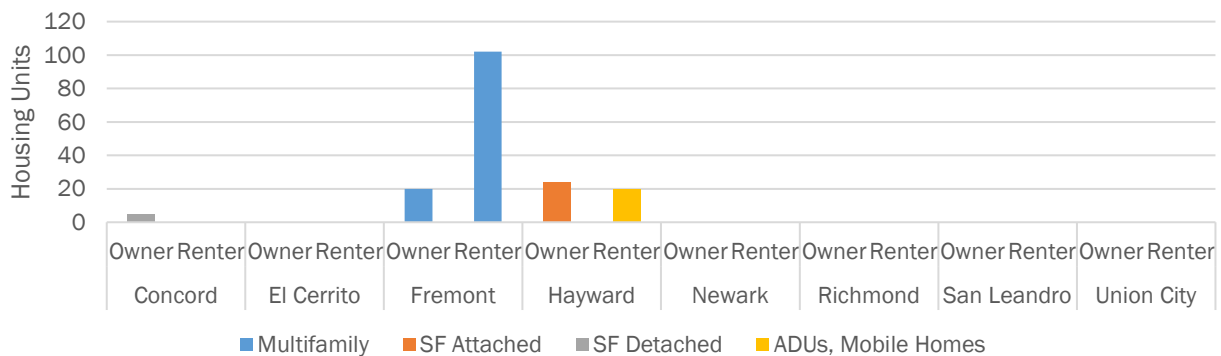
FIGURE 11: INCLUSIONARY REQUIREMENTS BY CITY AND TENURE, FROM 2018-2021



Source: Municipal Codes and Inclusionary Ordinances, 2022; Strategic Economics, 2022.

Note: In cases where the percentage depends on project density or affordability level, this chart reflects the average of all compliance options. Fremont's required inclusionary percentages changed in 2021. This chart displays the previous requirements. The required levels of affordability within these inclusionary requirements varies; see the previous table for details.

FIGURE 12: NUMBER OF PERMITTED INCLUSIONARY HOUSING UNITS IN "PEER CITIES," BY TYPE, 2018-2021



Source: California HCD, RHNA Annual Progress Report, 2022; Strategic Economics, 2022.

³ CoStar, East Bay – CA. Multi-Family Market Report, 2022.

Affordable housing projects are the primary source of production for low- and very low-income housing units; however, inclusionary policies are the primary way that Hayward and its “peer” communities are permitting deed-restricted units for moderate-income households. These types of units are not typically produced via 100 percent affordable housing projects, because projects receiving federal funding are required to target incomes at 80 percent of AMI or below—that is, low-income, very low-income, or extremely low-income households. As shown in Figure 13, the only way that deed-restricted moderate-income housing units were produced in Hayward or its peer communities from 2018 to 2021 was through inclusionary housing policies.

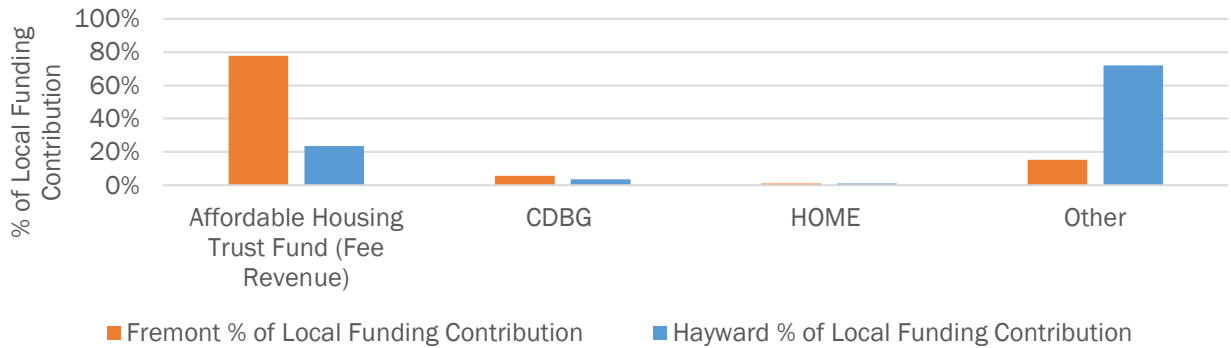
FIGURE 13: TOTAL UNITS PERMITTED, 2018-2021, BY CITY, INCOME LEVEL, AND FUNDING APPROACH



Source: California HCD, RHNA Annual Progress Report, 2022; Strategic Economics, 2022.

Inclusionary housing policies also contribute to the production of low and very low-income units in 100 percent affordable projects by providing an important source of local funding for these projects. When developers elect to pay in-lieu fees instead of providing on-site units, these fees go into affordable housing trust funds, which are a significant source of local funding for 100 percent affordable housing projects. In Hayward, over 20 percent of local funds for these projects came from affordable housing trust fund revenue since 2015—supported by in-lieu fees. The majority of remaining funds came from one-time funding sources such as Alameda County’s A-1 bond measure and public land contributions. In Fremont, the percentage of local revenue supported by in-lieu fees is even higher, at almost 80 percent. This illustrates that on-site inclusionary housing is not the only way that inclusionary housing policies like Hayward’s AHO can support the production of affordable housing.

FIGURE 14: SHARE OF LOCAL FUNDING BY SOURCE FOR PROPOSED AND ENTITLED AFFORDABLE HOUSING PROJECTS, FREMONT AND HAYWARD, TO BE COMPLETED FROM 2015-2023

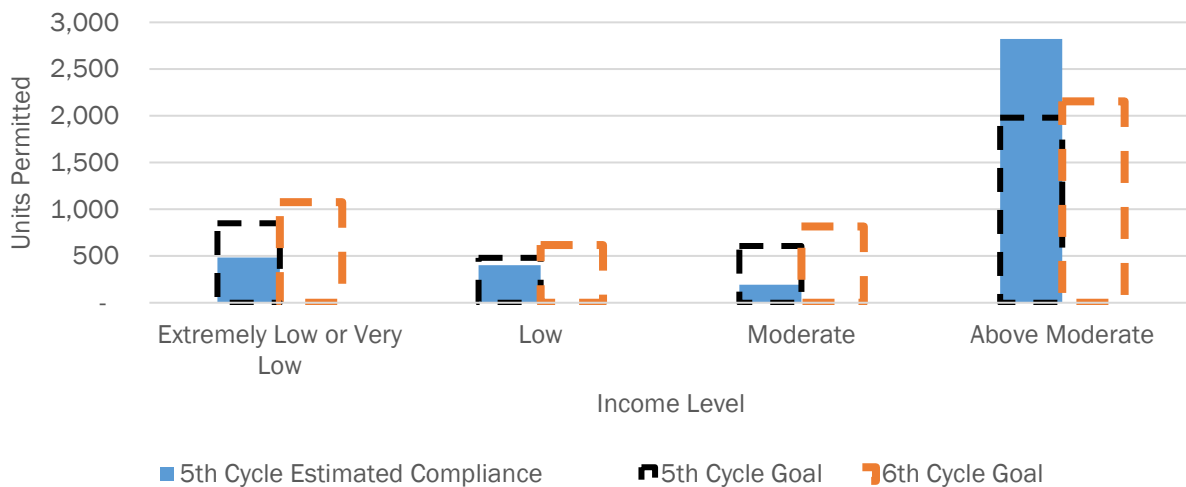


Source: City of Hayward, 2022. City of Fremont, 2022.

Note: Hayward's largest "Other" sources were Alameda County A1 bond revenue and public land contributions.

In order to achieve its affordable housing goals, Hayward will need to find ways to increase its affordable housing production overall and maximize the effectiveness of its AHO. These affordable housing goals are described in Hayward's State-mandated Regional Housing Needs Allocation (RHNA). Every eight years, California HCD uses population projections and affordable housing needs to set goals for housing production for each region of the state. These goals are allocated to each jurisdiction in the Bay Area by the Association of Bay Area Governments (ABAG). The resulting allocation is referred to as RHNA. Each eight-year period is called a "Cycle" and Hayward is currently completing its 5th Cycle, which ends on January 31st, 2023. Figure 15 summarizes Hayward's projected progress towards its 5th Cycle goals, alongside the number of housing units for each income level that the City has been allocated for the 6th Cycle—which will begin in 2023. This shows that Hayward is falling well short of its affordable housing goals—particularly for moderate-income housing. Hayward will need to substantially increase its rate of moderate-income housing production to meet its 6th Cycle RHNA goals, but the City will also need to increase production of low and extremely low or very low-income housing. This means that production of moderate-income units through on-site inclusionary requirements and in-lieu fee revenues raised through the AHO will both be important for Hayward to achieve its 6th Cycle goals.

FIGURE 15: HAYWARD 5TH AND 6TH CYCLE RHNA HOUSING NEEDS AND 5TH CYCLE PERMITTING PROGRESS



Source: City of Hayward, 2022; Strategic Economics, 2022.

Note: For 5th Cycle Estimated Compliance, this chart includes pipeline projects as well as those that had already been permitted.

III. FINANCIAL FEASIBILITY ANALYSIS APPROACH AND ASSUMPTIONS

Strategic Economics performed a financial feasibility analysis to test the extent to which different market-rate housing products can still proceed in Hayward while providing different levels of on-site inclusionary units or in-lieu fee revenues. Strategic Economics worked with City staff and analyzed information about recent projects to create development prototypes, which represent the types of new residential development projects likely to be built in Hayward. Then, Strategic Economics built a pro forma model to test the financial feasibility of different inclusionary requirements or the payment of in lieu fees on each prototype.

This analysis examined the impact of both existing AHO requirements and a variety of alternative AHO policies on feasibility outcomes for each housing prototype. Assumptions used in these analyses were informed by a review of the existing housing development pipeline, interviews with local housing developers, and feedback from the City’s Technical Advisory Committee for the AHO.

This report section describes the following:

- Approach used to develop housing prototypes;
- Approach used for testing financial feasibility;
- Assumptions for development prototypes;
- Assumptions for allowable rents or prices for affordable units within each project type; and
- Assumptions used for costs and revenues in feasibility analysis modeling.

Approach

DEFINING DEVELOPMENT PROTOTYPES

In collaboration with City staff, Strategic Economics developed seven representative but generic housing prototypes for analysis in the feasibility assessment. These prototypes represent the range of typical residential developments likely to be proposed in Hayward over the short term. Therefore, these prototypes are mostly based on recently completed projects or current development proposals in the pipeline in Hayward. They include both ownership and rental product types. Characteristics of recent projects were used to develop generalized assumptions for each prototype, which were refined to conform to City policies based on input from City staff as well as input from developers in Hayward and nearby communities. For example, though condominium developments are not common in the recent development pipeline in Hayward, this type of ownership housing was deemed important to include because it would have different requirements than other ownership projects under the existing Hayward AHO due to the project’s higher density.

FEASIBILITY ANALYSIS

FEASIBILITY METHODOLOGY

Strategic Economics measured the financial feasibility of each prototype using a static pro forma model that solves for the residual land value (RLV) of each project. A pro forma model is a tool that is commonly used to estimate the financial performance of a development project. The base static model reflects today’s market conditions such as prices/rents, construction costs, and financing costs.

Residual Land Value represents *the value remaining to pay for land after all other project costs and expected revenues are accounted for.*

Residual Land Value (RLV) is calculated in four steps:

1. Estimate the total sales revenue for ownership prototypes or the net operating income for the project's first stabilized year, and the corresponding capitalized value of each rental prototype.
2. Calculate the total supportable value of the project, based on the capitalized value of the project and the developer "target return" (i.e., the current industry standard return on costs the developer would need to pursue the project);
3. Estimate all development costs *except land cost*. These costs include direct construction costs ("hard" costs) and indirect costs ("soft" costs such as design, engineering, taxes, insurance, professional fees, municipal and development impact fees, and developer overhead, as well as financing costs and a contingency for unanticipated overruns);
4. Subtract the development costs estimated in Step 3 from the total supportable value of the project estimated in Step 2. The result is the **residual land value**. In real estate economics, the residual land value represents the maximum amount the developer can pay for land for the project to be feasible. This value is compared to prevailing site acquisition costs for each prototype to evaluate project feasibility.

FEASIBILITY ANALYSIS PROCESS

Strategic Economics performed an initial analysis of development feasibility using the requirements of the existing AHO and pro forma assumptions based on input from local developers in Hayward. In addition to conducting market research using secondary data sources, Strategic Economics gathered input from nine different developers with experience in Hayward to inform these assumptions. The final assumptions are described in the sections that follow. The initial feasibility analysis considered three different scenarios related to the current AHO:

1. Feasibility if complying with the existing AHO by providing on-site units;
2. Feasibility if complying with the existing AHO by paying an in-lieu fee instead of providing BMR units; and
3. As a control scenario, feasibility without any AHO requirements.

For each scenario, Strategic Economics identified three different housing market tiers within Hayward—allowing for analysis of development feasibility in different market contexts within the city.

Based on these results, Strategic Economics gathered input from City staff, City Council, and community members to identify AHO policy alternatives to test for additional feasibility considerations. Policies considered included reductions to AHO requirements for rental units, increases to percentage requirements for ownership units, and changes in the income levels required for affordable units. These findings, alongside feedback from the HHTF, City staff, and local stakeholders, were used to shape final recommendations.

Lastly, Strategic Economics identified the affordability gap associated with each prototype and analyzed the appropriate in-lieu fee levels based on each policy alternative. This assessment considered the gap between costs and revenue for off-site units associated with each affordability level of inclusionary requirement and what in-lieu fees would be for each prototype under "peer" city

inclusionary policies. Results from this analysis were used to make final recommendations for in-lieu fees.

Feasibility Analysis Assumptions

DEVELOPMENT PROTOTYPES

As discussed in the previous section, Strategic Economics refined development prototypes in collaboration with the City of Hayward, based on the pipeline of recent projects proposed and completed in the city. The final development prototypes represent a range of residential densities, average unit sizes, building heights, and parking formats. Technical details of these prototypes are shown in Figure 16, while Figure 17 shows example images for each prototype.

These prototypes vary based on the following characteristics:

- **Ownership Status:** Single-family, townhome, and condo prototypes are all for-sale units, while the remainder would be marketed as rental units.
- **Project Density, Mixed-Use, and Building Size**
 - The **single-family** prototype represents a project with 44 detached two-story dwelling units on five acres of land.
 - The **townhome** prototype represents a project with 106 attached units on five acres of land. Each unit is three stories in height.
 - The **condo** and **stacked flats** prototypes each contain 74 units in a four-story building on 1.5 acres of land. This equates to 49 units per acre.
 - The **small multifamily** prototype is a 20-unit, three-story apartment building on half an acre of land.
 - The **wrap** prototype includes 300 apartment units and 7,500 square feet of retail space in a five-story building on four acres of land. It has 75 dwelling units per acre.
 - The **podium** prototype has 159 units in a five-story building on roughly 2.5 acres of land. It is slightly less efficient than the wrap prototype and has 62 units per acre.
- **Unit Size**
 - The **single-family** and **townhome** prototypes have the largest units, at 2,600 and 1,700 square feet on average per unit.
 - The **small multifamily** prototype has an average unit size of 950 square feet.
 - The **condo, stacked flats, and podium** prototypes each have an average unit size of 900 square feet.
 - The **wrap** prototype has an average unit size of 800 square feet.
- **Parking Formats**
 - For the **single-family** and **townhome** prototypes, each unit has a two-car garage and a driveway for additional parking.
 - The **small multifamily** prototype uses only surface parking, in which a paved ground-level lot surrounds the residential building.
 - The **condo** and **stacked flats** prototypes use a combination of podium parking (in which housing is built on top of a concrete parking “podium” structure) and surface parking spaces
 - The **wrap** prototype uses an enclosed concrete parking garage structure with residential and retail space “wrapped” around it.

- The **podium** prototype uses a first-floor parking “podium” structure, with residential units stacked on top.
 - **This prototype is designated as a Transit Oriented Development (TOD).** Because it would be located near transit, the podium prototype includes a lower parking ratio than the rest of the rental prototypes, at 1.33 spaces per unit. This parking ratio is about average for recent five-story developments proposed in Hayward.

FIGURE 16: OVERVIEW OF PROTOTYPE ASSUMPTIONS

Prototype Characteristics	Unit of Measurement	Single Family	Townhomes	Condos	Small Multifamily	Stacked Flats	5-Story Wrap	5-Story Podium (TOD)
Tenure		Ownership	Ownership	Ownership	Rental	Rental	Rental	Rental
Parcel Acreage	acres	5.00	5.00	1.50	0.50	1.50	4.00	2.55
Building Characteristics								
Number of Stories	floors	2	3	4	3	4	5	5
Number of Units	dwelling units (du)	44	106	74	20	74	300	159
Gross Retail Area	square feet						7,500	
Residential Density	du/acre	9	21	49	40	49	75	62
Average Unit Size	square feet	2,580	1,695	900	950	900	800	900
Parking								
Parking Format		In-unit	In-unit	Podium + Surface	Surface	Podium + Surface	Wrap	Podium
Residential Parking Ratio	spaces/unit	2.0	2.0	1.5	1.5	1.5	1.5	1.33
Retail Parking Spaces	parking spaces	-	-	-	-	-	17	-

Source: Strategic Economics, 2022. Assumptions informed by examples of recent developments in Hayward.

FIGURE 17: HAYWARD HOUSING PROTOTYPE EXAMPLE IMAGES

Single Family Homes



Townhomes



Condos or Stacked Flats



Small Multifamily



5-Story Wrap



5-Story Podium



Sources: City of Hayward, 2022. Renderings produced by D.R. Horton; KTGy; LANDARC; Taylor Morrison; Humphreys & Partners Architects; and BDE Architecture.

Note: Projects are shown as examples of what the prototypes could look like, but do not reflect the exact prototypes described in the analysis.

UNIT REVENUES AND MARKET VALUE ASSUMPTIONS

Strategic Economics also compiled assumptions for project revenues to use in the pro forma analysis—based on a combination of market research, City and State policy guidelines, and input from local developers in Hayward and nearby communities. This analysis included market-rate revenues for each product type, as well as affordable unit revenue for each prototype calculated using affordable housing regulations. This section documents these assumptions and describes the analyses that informed them.

MARKET-RATE REVENUE AND MARKET TIERS

In order to identify how inclusionary requirements might impact development feasibility in all areas of the city, Strategic Economics defined three different market tiers for identifying market-rate housing prices or rents. Market rate revenues for each prototype are a function of the project’s location, the unit size, and the type of product that is for sale or for rent. Strategic Economics used data from CoStar and Redfin to identify the market tiers, based on examples of current rents and recent housing sales. Tier One represents the housing market with the highest level of demand and is highlighted in red in Figure 18. This area includes Downtown Hayward and the Mission Boulevard corridor and is where the majority of new market-rate rental housing is currently being constructed. The majority of market-rate ownership housing is currently being constructed in the Tier Two market areas, which is shaded in orange in Figure 18. The remainder of Hayward is designated as Tier Three areas, which command the lowest sales prices or market rents.

FIGURE 18: HAYWARD HOUSING MARKET TIERS AND CORRESPONDING PRICES OR RENTS

Hayward Housing Submarket Tiers

Tiers

- Tier One Submarkets
- Tier Two Submarkets
- Tier Three Submarkets

Rents and Prices by Tier

Tier One

Rental: \$3.60 per SF
 Single Family: \$600 per SF
 Townhomes: \$530 per SF
 Condos: \$615 per SF

Tier Two

Rental: \$3.10 per SF
 Single Family: \$525 per SF
 Townhomes: \$480 per SF
 Condos: \$500 per SF

Tier Three

Rental: \$2.85 per SF
 Single Family: \$475 per SF
 Townhomes: \$450 per SF
 Condos: \$400 per SF

Sources: CoStar, 2022; Redfin, 2022;
 Strategic Economics 2022.

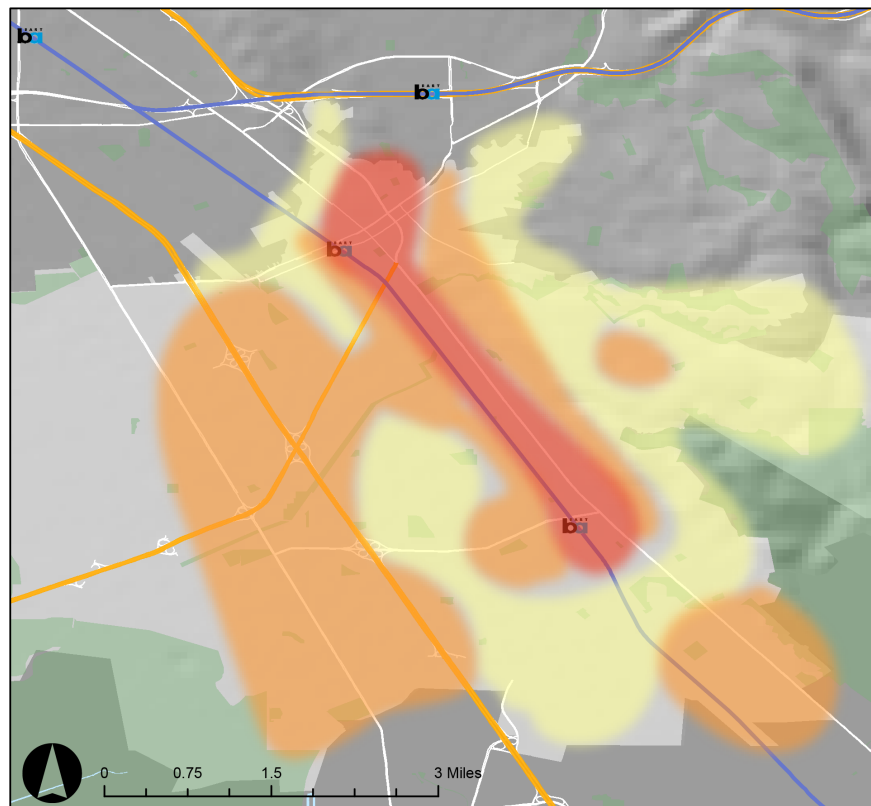


Figure 18 also lists multifamily rents per square foot and sales prices per square foot for each tier and product type. These per square foot prices were used in conjunction with assumptions about the bedroom sizes and average square foot per unit to calculate the total market-rate revenue for each unit in each tier. A full table of average bedroom counts and unit sizes is shown in the appendix in Figure 38.

For the ownership prototypes, the total project value was obtained by multiplying the per unit sale price by the total number of units. For the rental prototypes (Prototypes 4 and 5), an income capitalization approach was used. This approach first estimates the annual net operating income (NOI) of the prototype, which is the difference between project income (annual rents for residential and retail) and project expenses (operating costs and vacancies). The NOI is then divided by the current cap rate to derive total project value.⁴ Assumptions for each of these calculations are shown in the appendix in Figure 39.

AFFORDABLE UNIT REVENUES

The maximum allowable rent or sales prices for affordable units are primarily based upon the unit's number of bedrooms, the area median income, and the assigned household income level associated with the unit. However, for both ownership and rental units, there are other housing costs that factor into the maximum affordable sale price or rent. For ownership products, the current Hayward AHO allows for inclusion of mortgage principal and interest, homeowner's insurance, and homeowner or condo association fees in the calculation of maximum affordable prices. The rental cost calculation includes the monthly rent as well as a utility allowance—as determined by the Alameda County Housing Authority. These provisions ensure that households will not pay too large of a percentage of their monthly income on housing expenses, because costs that would normally be passed on to a tenant or owner are subtracted from the maximum sales price or monthly rent that is allowed under the ordinance.

For affordable ownership products, monthly expenses are limited by Hayward's current AHO to 35 percent of monthly income. Strategic Economics used California HCD's annually-published definition of area median incomes by household size alongside the AHO's income limits as a share of median income to calculate the maximum monthly income for each affordability level available for housing expenses. Additional housing expenses included HOA dues, property taxes, private mortgage insurance, homeowner's insurance, and interior property insurance.⁵ Maximum affordable sales prices are shown in Figure 19.

⁴ According to a 2022 Lee & Associates market report, the current average cap rate for multifamily in the East Bay is 4.1 percent.

⁵ These assumptions were informed by data from Freddie Mac, Zillow, Property Tax Shark, JVM Lending, and QuoteWizard.

FIGURE 19: MAXIMUM AFFORDABLE SALE PRICE FOR OWNERSHIP UNITS, BY TYPE, INCOME, AND BEDROOMS

Product Type and Income	Studio	1-BD	2-BD	3-BD	4-BD	5-BD
Single-Family						
Very Low Income		\$191,345	\$213,483	\$233,009	\$242,168	
Low Income		\$238,660	\$266,699	\$292,147	\$306,027	
Moderate Income		\$475,231	\$532,777	\$587,836	\$625,321	
Townhomes						
Very Low Income		\$187,825	\$208,600	\$221,161		
Low Income		\$241,040	\$267,737	\$285,020		
Moderate Income		\$507,119	\$563,426	\$604,314		
Condos						
Very Low Income	\$155,061	\$175,246	\$192,186	\$206,087	\$204,559	
Low Income	\$196,454	\$222,561	\$245,402	\$265,225	\$268,418	
Moderate Income	\$403,415	\$459,132	\$511,480	\$560,914	\$587,712	

Source: California HCD, 2022; Strategic Economics, 2022.

Notes:

Assumes that monthly housing expenses are capped at 35 percent of monthly income for each income level. Assumes homeowner's association dues of \$0.07 per sf for single-family, \$0.24 per sf for townhomes, and \$0.37 per sf for condos. Assumes an annual effective property tax rate of 1.37% of the sales price and a private mortgage insurance premium of 0.85% of the mortgage amount. Uses a 30-year loan term with an annual interest rate of 5.22%, the current 30-year mortgage interest rate according to Freddie Mac.

Maximum monthly rents were calculated by using the AHO's income guidelines, with monthly expenses capped at 30 percent of the targeted income level. In order to calculate maximum rents based on this percentage of each income level, Strategic Economics subtracted monthly utility allowances, calculated for each unit size annually by the Alameda County Housing Authority. Resulting maximum rents are shown in Figure 20. For both ownership and rental housing, Hayward's AHO standards assume that the expected number of residents in a household is one plus the number of bedrooms. For example, rents for a studio assume a household size of one person, rents for a one-bedroom unit assume a household size of two persons, and rents for a two-bedroom unit assume a household size of three persons. These assumptions are used for calculating rent, but do not constitute an occupancy limit for each unit. An income capitalization approach was also applied to BMR units to derive total residential value of those units within inclusionary projects—using the same per-unit assumptions for operating costs as the market-rate units.

FIGURE 20: MAXIMUM AFFORDABLE RENT IN HAYWARD, EFFECTIVE 2022.

Bedroom Size	Studio	1-BR	2-BR	3-BR
Very Low	\$1,249	\$1,428	\$1,606	\$1,785
Low	\$1,499	\$1,714	\$1,928	\$2,142
Moderate	\$2,749	\$3,142	\$3,534	\$3,927

Sources: Alameda County Housing Authority, 2022; U.S. Department of Housing and Urban Development, 2022; Strategic Economics, 2022.

DEVELOPMENT COSTS

Strategic Economics compiled assumptions for development costs based on market research and input from developers in Hayward and nearby communities. As explained in the financial feasibility overview, total development costs are a combination of hard costs, soft costs, land costs, and required developer return. Hard costs refer to the construction costs associated with the physical construction

of the building, while soft costs include all “indirect” expenses required to construct the building, such as architecture, engineering, taxes, contingency, municipal fees, and financing costs.

HARD COSTS

Hard costs for each prototype differed primarily based on the materials used to construct the building and the cost of parking associated with each prototype. Assumptions for hard costs, shown in Figure 21, included estimates for basic site improvements and construction costs for residential areas, retail areas, and parking structures. For the 5-story wrap prototype, hard costs also included allowances for the retail space. This includes a higher per-square foot cost of construction for the retail shell, as well as a tenant improvement allowance for retail tenants to modify their space to fit their needs. This allowance was an additional \$70 per net square foot of retail space.

FIGURE 21: HARD COSTS, BY PROTOTYPE

Hard Costs	Single Family Development	Town-homes	Condos	Small Multifamily	Stacked Flats	5-Story Wrap	5-Story Podium (TOD)
Site Prep (per sf)	\$25	\$25	\$25	\$25	\$25	\$25	\$25
Construction Type	Type V	Type V	Type V	Type V	Type V	Type IIIA, Type I	Type IIIA, Type I
Residential (per gsf)	\$150	\$185	\$250	\$250	\$250	\$300	\$325
Retail (per gsf)						\$340	
Parking Costs (per space)							
Surface	\$6,500	\$6,500	\$6,500	\$6,500	\$6,500	\$6,500	\$6,500
Podium	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000
Wrap	\$40,000	\$40,000	\$40,000	\$40,000	\$40,000	\$40,000	\$40,000

Sources: Developer Interviews, 2022. Strategic Economics, 2022.

SOFT COSTS

Soft costs include items such as architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, developer overhead, and City fees. In addition, Strategic Economics assumed a hard cost contingency of five percent and additional soft costs of two percent; these figures provide buffers for unexpected fluctuations in hard costs or unanticipated expenses. Including City fees, these soft costs represent an approximately 25 to 30 percent addition to hard costs. Assumptions for most of these costs are shown in Figure 22.

FIGURE 22: OVERVIEW OF SOFT COST ASSUMPTIONS

Soft Costs	Unit	Value
Architecture, Engineering, Taxes, Developer Overhead	% of hard costs	12%
Other Soft Costs	% of hard costs	2%
Hard Cost Contingency	% of hard costs	5%
Municipal Fees and Permits	As Calculated by City	
Marketing Costs for Single Family	% of sales value	4%

Sources: CoStar, 2022. Developer Interviews, 2022; Strategic Economics, 2022.

Municipal fees include building permit expenses such as plan checks and inspections as well as impact fees for parks, traffic, and water. City fees were calculated for the individual prototypes by City staff. These figures are shown in Figure 23

FIGURE 23: CITY OF HAYWARD MUNICIPAL FEES, EXCLUDING IN-LIEU FEES

	Single Family	Townhomes	Condos	Small Multiplex	Stacked Flats	5-Story Wrap	5-Story Podium (TOD)
Total Municipal Fees	\$2,726,553	\$5,252,895	\$2,529,120	\$583,175	\$2,614,221	\$8,014,224	\$4,638,684
Fees per Unit	\$61,967	\$49,556	\$34,177	\$29,159	\$35,327	\$26,714	\$29,174

Source: City of Hayward, 2022; Strategic Economics, 2022.

Note: Does not include in-lieu fees.

Calculations for financing costs included considerations for amount financed, outstanding loan balances, loan fees, and annual interest rates. Assumptions for these costs are shown in Figure 24, while final calculated costs are shown in the appendix in Figure 40. Total financing costs accounted for 3.7 percent to 4.2 percent of total project hard and soft costs. Strategic Economics' calculations assumed a five percent interest rate, which is higher than typical, but reflects the fact that interest rates have risen substantially in recent years.

FIGURE 24: DEVELOPER FINANCING COST ASSUMPTIONS

Financing Costs	Units	Single Family	Townhomes	Condos	Small Multifamily	Stacked Flats	5-Story Wrap	5-Story Podium (TOD)
Amount Financed (Loan-to-cost)	% of direct + soft costs	70%	70%	65%	65%	65%	60%	60%
Average outstanding balance	% of Amt Financed	55%	55%	55%	55%	55%	55%	55%
Construction Loan Fee	% of Amt Financed	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
Construction Interest (annual)	Rate	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
Term	Months	18	18	18	18	18	24	24

Source: Developer Interviews, 2022. Strategic Economics, 2022.

LAND COSTS

Strategic Economics reviewed recent land sales prices throughout the city to estimate the site acquisition costs by market tier. Like rents and sales prices, land prices also differ based on the location and zoning characteristics of each parcel. Sales prices of individual parcels differ substantially based on site-specific conditions, but the figures in Figure 25 represent an expected average price for land within each market tier.

FIGURE 25: SITE ACQUISITION COST PER SQUARE FOOT, BY MARKET TIER

Hayward Submarket	Unit	Value
Market Tier 1	per square foot	\$75
Market Tier 2	per square foot	\$45
Market Tier 3	per square foot	\$25

Sources: CoStar, 2022. Developer Interviews, 2022.

DEVELOPER RETURN AND FEASIBILITY

Strategic Economics used input from local developers alongside market research from previous studies to refine assumptions for developer return. Developers must meet a minimum market standard for return on their investment in order for the project to be “feasible” and for them to secure financing. Though for-sale and for-rent projects often use different metrics to assess feasibility, Strategic Economics used the metric “return-on-cost” to ensure consistency in evaluating feasibility across product types. This metric is expressed as the net revenue for the project divided by the total development costs of the project. Based on feedback from local developers, a reasonable minimum standard for return on cost across project types is 20 percent.

IV. FEASIBILITY ANALYSIS AND IN-LIEU FEE RESULTS

Strategic Economics conducted the feasibility analysis in three stages. First, an initial feasibility analysis was conducted using the current requirements of the AHO. Next, Strategic Economics collaborated with City staff to identify policy alternatives to test and analyze potential changes to the AHO. Lastly, Strategic Economics used the results of the feasibility analysis to identify the affordability gap associated with each prototype and calculate in-lieu fees that would be associated with revised policy scenarios.

Initial Feasibility Analysis Results

Strategic Economics performed an initial analysis of development feasibility considering three different scenarios related to the current AHO. For each scenario, Strategic Economics identified three different housing market tiers within Hayward—allowing for analysis of development feasibility in different market contexts within the City. Scenarios considered were as follows:

1. Feasibility if complying with the existing AHO by providing on-site units;
2. Feasibility if complying with the existing AHO by paying an in-lieu fee instead of providing BMR units; and
3. As a control scenario, feasibility without any AHO requirements.

For each scenario, Strategic Economics calculated the Residual Land Value, which represents the value remaining to pay for land after all other project costs and expected revenues are accounted for. In these results, prototypes are considered feasible if their residual land value exceeds the prevailing value of land. The charts presenting results of the feasibility analysis thus display two values for comparison:

- The prevailing value of land relevant to each scenario and market tier, and

- The residual land value of each prototype in that scenario and market tier.

The section that follows presents results from all components of this initial feasibility analysis—first, by submarket for the on-site inclusionary scenario and second, by scenario for market tier two.

FEASIBILITY BY SUBMARKET

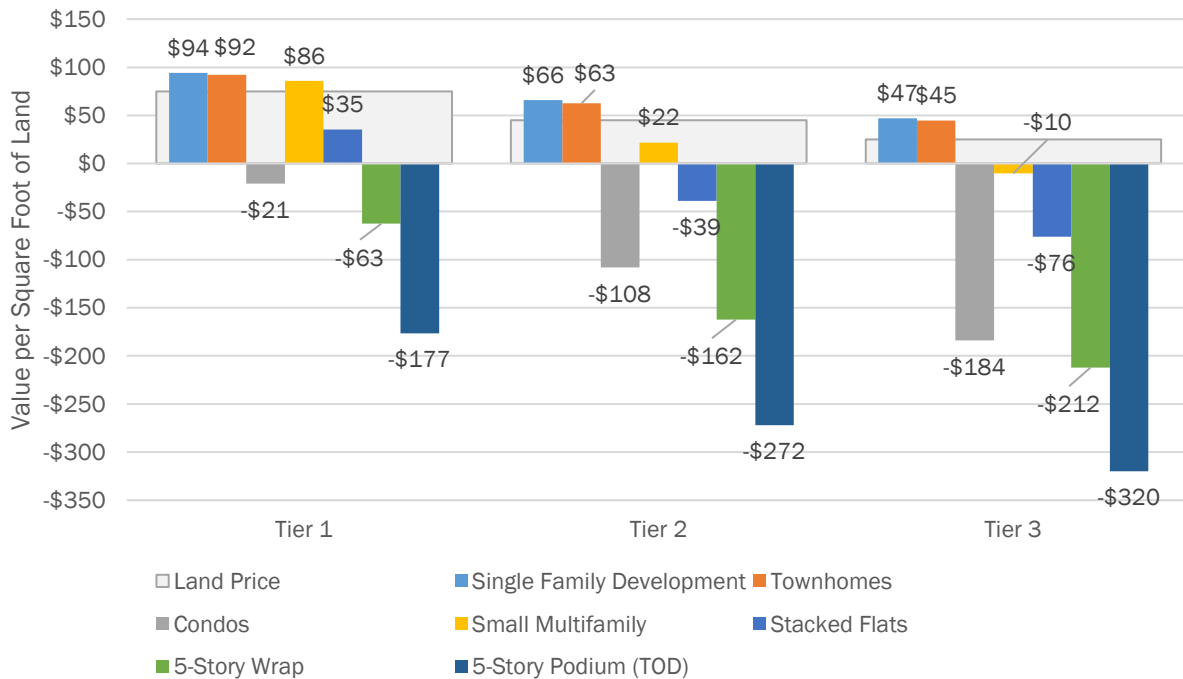
Under current AHO requirements for on-site units, only single-family developments and townhomes are consistently feasible in all Hayward market tiers. Figure 26 compares the residual land value of all prototypes under the current AHO to land prices by market tier. Other than single-family and townhome projects, the majority of prototypes are not currently feasible in any Hayward market.

The only other feasible prototype is small multifamily (rental), which is only expected to be feasible in the highest-performing markets in Hayward. Because rents are higher in these markets, rental projects are expected to generate more total revenue than elsewhere. However, because land prices are typically around \$75 per square foot in these areas, condos and the remainder of prototypical rental projects are still not expected to be feasible in Tier One market areas.

The feasibility outlook is particularly limited for five-story multifamily projects, which have a negative residual land value in all market tiers. This means that in the current development climate, these types of projects are not considered financially feasible even for a developer who has already covered the cost of their land. Based on conversations with local developers, this finding reflects the market reality that construction costs have risen substantially in the last two years without a corresponding increase in rents for these market-rate units.

While neither condominiums nor stacked flats are expected to be feasible, stacked flats are closer to being feasible in all market tiers than condominiums. Since the building type assumptions for both prototypes are the same, this result helps explain why condominium development proposals have been rare in Hayward over the past few years. The feasibility outlook for both prototypes is poor in Tiers Two and Three, but stacked flats especially are expected to come close to being feasible in the highest-value market areas of Hayward. This project type has a Tier One residual land value of \$35 per square foot, while typical land prices in this tier are \$75 per square foot.

FIGURE 26: RESIDUAL LAND VALUE RESULTS UNDER EXISTING AHO ON-SITE INCLUSIONARY REQUIREMENTS, BY MARKET TIER



Source: Strategic Economics, 2022.

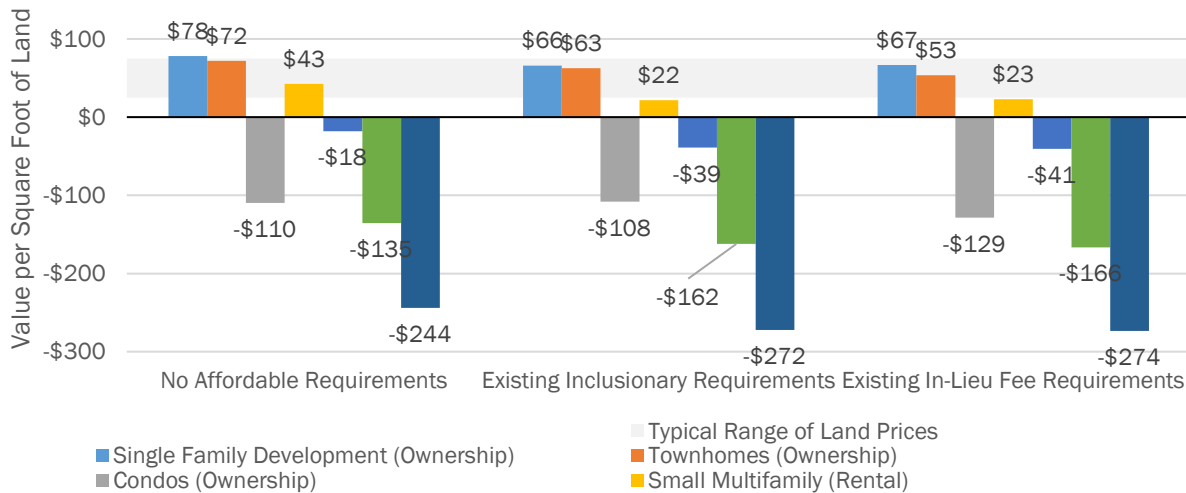
FEASIBILITY BY AHO REQUIREMENT

Only single-family homes and townhomes are consistently feasible across applications of the current AHO in Tier Two markets. Figure 27 shows feasibility results for each prototype in policy scenarios with either no affordable requirements or a varying application of the current AHO. These results correspond to Tier Two market area land prices. This means that for a project to be feasible, its residual land value must exceed \$50 per square foot of land. As shown in Figure 27, only single-family homes and townhomes exceed the price of land in all policy scenarios.

In Hayward’s Tier Two markets, the current AHO requirements do not appear to change development feasibility results for any of the seven prototypes. Most of the higher-density rental projects are currently infeasible, and are not expected to become feasible even if inclusionary housing requirements were eliminated. While eliminating AHO requirements would slightly increase the residual land value for each of the prototypical developments, most still could not afford to pay anything at all for the land on which they would be built—much less the \$50 per square foot average that is expected in Tier Two markets.

Small multifamily projects are largely infeasible under current AHO requirements, but come the closest to meeting feasibility standards of any rental project type. If the AHO requirements were removed, this project type would come close to development feasibility in Tier Two markets, with a residual land value of \$43 per square foot compared to typical land prices of \$45 per square foot.

FIGURE 27: RESIDUAL LAND VALUE RESULTS FOR TIER TWO – WITH AND WITHOUT CURRENT AHO COMPLIANCE OPTIONS



Source: Strategic Economics, 2022.

Alternative Inclusionary Policies Analysis

Strategic Economics presented results of the initial feasibility analysis to City staff, the Homelessness-Housing Task Force (HHTF), and the TAC and gathered input from each group to identify AHO policy alternatives to test for additional feasibility considerations. The City Council members of the HHTF expressed two priorities that informed the development of policy alternatives:

- That rental inclusionary requirements should not decrease, and
- That increases to ownership requirements should be modest enough that these projects would retain feasibility even if construction costs were to increase slightly.

Because the prospects for development feasibility among moderate and high-density residential prototypes were so limited and the HHTF members were not interested in alternatives that would reduce these requirements, Strategic Economics focused its policy changes analysis on alterations to the AHO requirements for single-family and townhome projects only. The policy analysis focused on the impact of policy changes on Tier One pro forma results because this was the tier in which feasibility margins for ownership projects were most limited due to the commensurate higher land values.

Feasibility testing evaluated the impacts of two policy alternatives for these low-density ownership prototypes:

1. Increasing required percentages of affordable units substantially, while maintaining a focus on moderate-income households; and
2. Increasing required percentages of affordable units slightly, while changing the level of income targeted by affordable units.

Strategic Economics also conducted analysis to assess the sensitivity of the feasibility results to a five percent change in construction costs. The section that follows describes the findings from each of these phases of alternative policy analysis.

INCLUSIONARY POLICY ALTERNATIVES FINDINGS

ALTERNATIVE ONE: MODERATE-INCOME UNITS ONLY

At current development costs, single-family and townhome projects can support a relatively large percentage of moderate-income units without becoming infeasible. Figure 28 presents the findings from policy alternative one, which tested the extent to which inclusionary requirements could increase while maintaining moderate-income requirements only for high-density ownership projects. If the AHO continues to require only moderate-income units for low-density ownership projects, these products could support a maximum of 22 percent inclusionary units while retaining feasibility for both product types.

FIGURE 28: FEASIBILITY RESULTS FOR POLICY ALTERNATIVES – MODERATE-INCOME UNITS ONLY

	Single Family Development	Townhomes
Alternative Requirements		
15% Inclusionary	Feasible	Marginally Feasible
19% Inclusionary	Marginally Feasible	Marginally Feasible
23% Inclusionary	Infeasible	Marginally Feasible
25% Inclusionary	Infeasible	Infeasible

Source: Strategic Economics, 2022.

Notes:

Projects are considered "Feasible" if Return on Cost is greater than 25%. Projects are considered "Marginally Feasible" if Return on Cost is greater than 20%. Projects are considered "Infeasible" if Return on Cost is less than 20%

ALTERNATIVE TWO: SPLIT BETWEEN LOW- AND MODERATE-INCOME UNITS

At current development costs, single-family and townhome projects can still support a small increase in inclusionary percentages if they are required to split affordable on-site units between moderate-income and low-income households. Figure 29 presents the findings from policy alternative two, which tested the extent to which inclusionary requirements could increase if low-density ownership requirements were required to provide both low- and moderate-income units. With an even split between low and moderate-income units, single-family and townhome projects can retain feasibility with up to a maximum of an 18 percent total inclusionary requirement.

FIGURE 29: FEASIBILITY RESULTS FOR POLICY ALTERNATIVES – WITH 50/50 SPLIT BETWEEN LOW AND MODERATE-INCOME UNITS

	Single Family Development	Townhomes
Alternative Requirements		
12% Inclusionary	Feasible	Marginally Feasible
15% Inclusionary	Marginally Feasible	Marginally Feasible
19% Inclusionary	Marginally Feasible	Infeasible
22% Inclusionary	Infeasible	Infeasible

Source: Strategic Economics, 2022.

Notes:

Projects are considered "Feasible" if Return on Cost is greater than 25%. Projects are considered "Marginally Feasible" if Return on Cost is greater than 20%. Projects are considered "Infeasible" if Return on Cost is less than 20%

SENSITIVITY ANALYSIS

However, the currently-supported inclusionary requirement would be highly sensitive to slight changes in construction costs. Based on HHTF feedback, Strategic Economics analyzed the sensitivity of policy alternatives to increases in construction costs, for both moderate-only policies and policies that would also require low-income units. These scenarios analyzed the impact of hard cost increases of up to five percent on the feasibility outcomes for single family and townhome prototypes for each of the policy alternatives. This five percent scenario is well within the range of expected price fluctuations in costs; TAC members expressed that annual development cost increases are often even higher than five percent.

If construction costs increased by as little as four percent, projects with only moderate-income units would be feasible at a maximum of a 17 percent inclusionary requirement. This represents the sensitivity analysis results from policy alternative one. These sensitivity analysis results are shown in Figure 30.

FIGURE 30: TIER 1 SENSITIVITY ANALYSIS FOR SINGLE FAMILY AND TOWNHOMES WITH 17% INCLUSIONARY REQUIREMENTS – MODERATE-INCOME UNITS ONLY

Scenario #	Current Costs	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Increase in Hard Costs of Construction Project Type	0%	1%	2%	3%	4%	5%
Single Family Development	Marginally Feasible	Marginally Feasible	Marginally Feasible	Marginally Feasible	Marginally Feasible	Marginally Feasible
Townhomes	Marginally Feasible	Marginally Feasible	Marginally Feasible	Marginally Feasible	Marginally Feasible	Infeasible

Source: Strategic Economics, 2022.

Notes:

Projects considered "Feasible" if Return on Cost is greater than 25%

Projects considered "Marginally Feasible" if Return on Cost is greater than 20%

Projects considered "Infeasible" if Return on Cost is less than 20%

If construction costs increased by as little as four percent, projects split evenly between low- and moderate-income households would be feasible at a maximum of a 12 percent inclusionary requirement. This represents the sensitivity analysis results from policy alternative two. These sensitivity analysis results are shown in Figure 31.

FIGURE 31: TIER 1 SENSITIVITY ANALYSIS FOR SINGLE FAMILY AND TOWNHOMES WITH 12% INCLUSIONARY REQUIREMENTS – 50/50 SPLIT BETWEEN MODERATE- AND LOW-INCOME UNITS

Scenario #	Current Costs	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Increase in Hard Costs of Construction Project Type	0%	1%	2%	3%	4%	5%
Single Family Development	Feasible	Feasible	Feasible	Marginally Feasible	Marginally Feasible	Marginally Feasible
Townhomes	Marginally Feasible	Marginally Feasible	Marginally Feasible	Marginally Feasible	Marginally Feasible	Infeasible

Source: Strategic Economics, 2022.

Notes:

Projects considered "Feasible" if Return on Cost is greater than 25%

Projects considered "Marginally Feasible" if Return on Cost is greater than 20%

Projects considered "Infeasible" if Return on Cost is less than 20%

The results of the sensitivity analysis, therefore, describe the target for inclusionary requirements suggested by the HHTF: the maximum inclusionary requirements that single family and townhome projects could support in Hayward with slight cost increases. These targets are 17 percent if requiring only moderate-income units, and 12 percent if required units are evenly split between low- and moderate-income units.

In-Lieu Fee Analysis

In an inclusionary housing policy, in-lieu fees are used to enable a City to support development of affordable housing units off-site, when they would otherwise be provided by the market-rate developer as on-site units. As in the example of a 100 percent affordable housing development explained in Figure 8, in-lieu fees are used to fill the funding gap between the market value of an affordable unit and the total development costs for an individual unit. In other words, this “affordability gap” represents the difference between the revenue generated from each affordable unit and the total cost of developing those units.

Calculating this affordability gap on the basis of off-site affordable units is a common means for determining the appropriate in-lieu fee that a City should set in an inclusionary policy. From the City’s perspective, an in-lieu fee that is set to equal the affordability gap could be relatively value neutral; the City could either obtain one affordable unit as part of an inclusionary project, or they could use the money provided by an in-lieu fee payment to build one off-site affordable unit at the same income level. However, it is not the only important factor for determining appropriate in-lieu fees.

In order to determine in-lieu fee recommendations, Strategic Economics also compared potential in-lieu fees with current fees being used by Hayward’s “peer communities.” This section presents the results of each of these analyses.

AFFORDABILITY GAP AND CORRESPONDING IN-LIEU FEES

Calculating the affordability gap for each unit is relatively simple, but must be converted to a per-square foot basis to estimate the corresponding in-lieu fee. The affordability gap is generally calculated in two simple steps: calculate the revenue that would be raised for each affordable unit, and calculate the total costs of producing each unit. In order to convert this result into an in-lieu fee per square foot, Strategic Economics multiplied the affordability gap per unit by the total number of required affordable units and divided by the square footage of the units in each project. This section presents the resulting affordability gap and in-lieu fee calculations, first for ownership products and then for rental products.

AFFORDABILITY GAP AND IN-LIEU FEE CALCULATIONS FOR OWNERSHIP UNITS

Affordability gap calculations for ownership units involve only the sales price of each unit and the cost of producing those units. The total revenue available from affordable units depends on the income level associated with the unit, but the total costs of constructing an affordable unit are the same for all income levels. Figure 32 shows the total revenue for each ownership prototype on a per-unit basis based on the required affordable income level in the inclusionary policy. This average revenue can be compared to total development costs to calculate the overall affordability gap.

FIGURE 32: AFFORDABLE UNIT REVENUE AND COSTS – OWNERSHIP PROTOTYPES

	Prototype 1: Single Family Development	Prototype 2: Townhomes	Prototype 3: Condos
Revenue			
Average Low Unit	\$290,412	\$268,925	\$237,060
Average Moderate Unit	\$585,945	\$567,270	\$493,568
50/50 Split, Low & Moderate Units	\$438,178	\$418,098	\$365,314
Costs			
Land Costs per Unit, Tier 1	\$371,250	\$154,104	\$66,223
Development Costs per Unit, Excluding Land	\$696,110	\$502,954	\$456,904
Total Development Costs	\$1,067,360	\$657,057	\$523,127

Sources: Strategic Economics, 2022. HCD, 2022. City of Hayward, 2022. CoStar, 2022.

The affordability gap and equivalent in-lieu fees were calculated for different mixes of inclusionary requirements. The results are shown in Figure 33, which defines the affordability gap per unit, and expresses this gap in the terms that in-lieu fees are structured in Hayward’s AHO—per total square foot of habitable space in each project. Because this fee is calculated on the basis of the total square feet in the entire project, calculating the total in-lieu fee per square foot requires adjusting for the total required affordable units in the project. Three steps were taken to calculate the affordability gap-based in-lieu fee on a per square-foot basis:

- Calculate the affordability gap per unit, based on the average affordable revenue and the total cost of producing a unit;
- Multiply this gap by the required number of affordable units in the project, using the percentages identified in the sensitivity analysis; and
- Divide this value by the total habitable square foot of the project as a whole.

The affordability gap per unit for an affordable housing policy that requires a mix of low and moderate-income ownership units is much larger than the gap for a policy that only requires moderate units. The results shown in Figure 33 correspond to the required percentages from the policy alternatives and sensitivity analysis results. With a 17 percent inclusionary requirement for only moderate-income units, the affordability-gap based in-lieu fee for single-family and townhome projects would be \$32 per square foot and \$9 per square foot, respectively. With a 12 percent requirement and a 50/50 split between low and moderate-income units, the affordability gap per square foot would be \$29 per square foot and \$17 per square foot, respectively.

FIGURE 33: AFFORDABILITY GAP AND EQUIVALENT IN-LIEU FEES – OWNERSHIP PRODUCTS

	Prototype 1: Single Family Development	Prototype 2: Townhomes	Prototype 3: Condos
Affordability Gap per Unit			
With 50/50 Low & Moderate Units	\$629,182	\$238,960	\$157,813
With Only Moderate Units	\$481,415	\$89,787	\$29,558
Affordability Gap per SF of Habitable Space, for Each % Inclusionary Req.			
With 50/50 Low & Moderate Units	\$2.44	\$1.41	\$1.75
With Only Moderate Units	\$1.87	\$0.53	\$0.33
In-Lieu Fee per SF With Only Moderate Units			
At 7.5% Inclusionary Req.	\$14.09	\$4.00	\$2.48
At 17% Inclusionary Req.	\$31.72	\$9.01	\$5.58
In-Lieu Fee per SF With 50/50 Low & Moderate Units			
At 12% Inclusionary Req.	\$29.26	\$16.92	\$21.04

Source: Strategic Economics, 2022.

AFFORDABILITY GAP AND IN-LIEU FEE CALCULATIONS FOR RENTAL UNITS

The total revenue that will be generated for each affordable rental unit in an off-site project is based on the amount of debt that could be supported annually from an affordable rent. This calculation is shown in Figure 34. The supportable debt per unit is calculated in three steps:

- Calculate the annual revenue for each unit, based on the maximum affordable rent corresponding to the required affordable income level;
- Calculate the net operating income for each unit, by subtracting the operating costs identified in the market-rate feasibility model; and
- Calculate the supportable debt that this level of annual net operating income could support, by assuming it is the annual payment on a 30-year loan with a six-percent interest rate and 1.15 debt coverage ratio.

FIGURE 34: SUPPORTABLE DEBT PER UNIT – RENTAL PROTOTYPES

	Prototype 4: Small Multifamily	Prototype 5: Stacked Flats	Prototype 6: 5-Story Wrap	Prototype 7: 5- Story Podium (TOD)
Annual Revenue per Affordable Unit				
Very Low	\$15,093	\$15,157	\$14,245	\$14,822
Low	\$18,798	\$18,873	\$17,673	\$18,424
Moderate	\$37,325	\$37,455	\$34,808	\$36,435
50/50 Split, Very Low & Low Units	\$16,946	\$17,015	\$15,959	\$16,623
Net Operating Income per Affordable Unit	\$3,786	\$4,500	\$4,790	\$4,122
Supportable Debt per Affordable Unit	\$45,322	\$53,866	\$57,331	\$49,334

Source: Strategic Economics, 2022.

Notes: Net Operating Income assumes 5% vacancy and equivalent operating costs to market-rate units of the same type. Supportable Debt calculation assumes 30-year term and a 6% interest rate, with a 1.15 Debt Coverage Ratio.

The affordability gap and equivalent in-lieu fees for the rental prototypes were calculated using a six percent moderate-income requirement. Figure 35 compares the supportable debt per unit of rental prototypes with their total development costs to identify the total affordability gap per unit and evaluate how this gap translates to potential in-lieu fee levels per square foot of residential area in each project. The calculation assumed that inclusionary requirements for rental housing do not change from the existing AHO requirements. When compared to the total development costs of each unit, the affordability gap per unit for rental projects in Hayward is very large compared to ownership housing projects, but in-lieu fees per square foot are only slightly larger. The in-lieu fee per square foot based on the affordability gap ranges from \$29 for small multifamily to \$41 for the five-story podium prototype.

FIGURE 35: AFFORDABILITY GAP PER UNIT, AND EQUIVALENT IN-LIEU FEE PER SQUARE FOOT OF PROJECT

	Prototype 4: Small Multifamily	Prototype 5: Stacked Flats	Prototype 6: 5- Story Wrap	Prototype 7: 5-Story Podium (TOD)
Supportable Debt per Affordable Unit	\$45,322	\$53,866	\$57,331	\$49,334
Costs				
Land Costs per Unit, Tier 1	\$81,675	\$66,223	\$43,560	\$51,368
<u>Development Costs per Unit, Excluding Land</u>	<u>\$420,491</u>	<u>\$458,096</u>	<u>\$484,014</u>	<u>\$609,622</u>
Total Development Costs	\$502,166	\$524,319	\$527,574	\$660,990
Affordability Gap per Unit	\$456,844	\$470,453	\$470,243	\$611,657
In-Lieu Fee per SF, for each % Req.	\$4.81	\$5.23	\$5.88	\$6.80
In-Lieu Fee per SF, 6% Req.	\$28.85	\$31.36	\$35.27	\$40.78

Source: Strategic Economics, 2022.

PEER CITY IN-LIEU FEE REQUIREMENTS

Like other municipal fees, the level of in-lieu fee set by a jurisdiction can play a part in influencing where market-rate developers decide to pursue new development projects. In order to construct a realistic comparison of Hayward’s in-lieu fees with requirements in nearby communities, Strategic Economics applied the in-lieu fee structure of each “peer community” to each of the seven development prototypes.

Hayward’s current in-lieu fees are relatively on par with the peer communities, though this varies by product type. Figure 36 shows the in-lieu fee that would be required for each prototype in Hayward and each of its “peer” communities. The maximum current fee level for each prototype is shown in bold. The key findings from this analysis were as follows:

- For ownership prototypes, Hayward’s current in-lieu fee would approximately represent the median value among the seven current fee levels. This shows that there is some room for increase in Hayward’s ownership fees without exceeding the levels of its peers.
- However, Hayward’s rental in-lieu fees are already closer to the maximum fees within the peer communities. This implies that there is not as much room to increase Hayward’s rental in-lieu fees as there is for ownership housing products.

FIGURE 36: IN-LIEU FEES OR AFFORDABLE HOUSING IMPACT FEES IN HAYWARD (CURRENT AHO) AND PEER COMMUNITIES, APPLIED TO HAYWARD PROTOTYPES

	Single Family Development	Townhomes	Condos	Small Multifamily	Stacked Flats	5-Story Wrap	5-Story Podium (TOD)
Hayward	\$21.64	\$21.64	\$17.85	\$21.64	\$21.64	\$21.64	\$21.64
Concord	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
El Cerrito	\$22.88	\$22.88	\$22.88	\$18.72	\$18.72	\$18.72	\$18.72
Fremont (current)	\$44.00	\$44.00	\$27.00	\$16.19	\$16.19	\$14.88	\$16.19
<i>Fremont (old)</i>	\$26.00	\$27.00	\$27.00	\$27.00	\$27.00	\$27.00	\$27.00
Newark	\$15.51	\$18.49	\$24.02	\$23.58	\$24.02	\$24.22	\$23.66
Richmond	\$10.50	\$12.95	\$21.88	\$20.59	\$21.88	\$25.45	\$30.33
Union City	\$27.00	\$27.00	\$27.00	\$27.00	\$27.00	\$27.00	\$27.00
Maximum Fee	\$44.00	\$44.00	\$27.00	\$27.00	\$27.00	\$27.00	\$30.33
Median Fee	\$22.26	\$22.26	\$23.45	\$21.12	\$21.76	\$22.93	\$22.65

Source: Municipal Ordinances, 2022; Strategic Economics, 2022.

Note: Estimates in-lieu fee for each prototype under each City’s policies, using the project assumptions.

V. SUMMARY OF POLICY DIRECTION AND ROLE OF THE AHO IN ADDRESSING DISPLACEMENT

The recommended revisions to the AHO incorporate community input, technical feedback, decisionmaker input, and previously completed displacement analysis findings, in addition to the findings of the feasibility and affordability gap analyses. This section summarizes these sources of input and how the AHO analysis and recommendations incorporate this input. Strategic Economics and City of Hayward staff obtained feedback from a variety of stakeholders and City leaders throughout the analysis process. Engagements included a presentation of results to the City's Homelessness-Housing Task Force; a hearing with the City of Hayward Planning Commission; community input from two Fair Housing Workshops and a Housing Fair; and input from developers via two Technical Advisory Committee meetings. A total of 18 community members provided input during the community workshops, while five locally active and knowledgeable developers served on the Technical Advisory Committee.

HOMELESSNESS-HOUSING TASK FORCE

After viewing preliminary feasibility analysis results, the City of Hayward's Homelessness-Housing Task Force (HHTF) issued the following policy recommendations:

- Maintain the existing rental inclusionary requirement;
- Maintain relatively lower inclusionary requirements for high-density ownership housing products;
- Increase inclusionary requirements for single-family homes and townhomes while still accommodating potential short-term changes in development conditions; and
- General preference that projects provide on-site inclusionary units rather than pay in-lieu fees, especially for projects with 20 or more housing units.

These recommendations reflect the feasibility analysis findings that rental projects are currently not feasible with existing AHO requirements, but that single family and townhome products could accommodate a substantial increase in inclusionary requirements. The HHTF recommended that requirements for these ownership products should increase, but also encouraged Strategic Economics to anticipate potential shifts in development feasibility due to changing costs and revenues.

These recommendations were used to determine which policy alternatives to analyze as well as informing recommendations for in-lieu fees. Based on this guidance, Strategic Economics further analyzed changes to inclusionary requirements for ownership products. Strategic Economics also developed new in-lieu fee recommendations intended to provide flexibility for development projects to meet the AHO's requirements while still encouraging provision of on-site inclusionary units.

INPUT FROM COMMUNITY WORKSHOPS

Community members expressed that their top priorities were ownership housing, providing housing affordable to middle-income households, and providing housing affordable to extremely low-income households. A total of 18 community members provided input over the course of two fair housing workshops and a housing fair. Respondents selected their top housing priorities from a list of ten options. Community priorities were diverse, but the top overall priorities were as follows:

- Prioritize ownership housing

- Prioritize middle-income households (\$171,350 annual income for 4-person household)
- Prioritize extremely low-income households (\$42,850 annual income for 4-person household)
- Prioritize mixed income housing within new developments
- Prioritize rental housing

These recommendations suggest two primary uses of the inclusionary policy. First, it is important to optimize the use of the inclusionary housing policy to maintain feasibility for ownership products that would provide on-site units for moderate-income households. Second, it is important to use the inclusionary policy to generate in-lieu fee revenue that can be used to produce rental housing units that are affordable to extremely low-income households, given that housing at this affordability level requires additional outside subsidies beyond what can typically be supported through an inclusionary requirement.

TECHNICAL ADVISORY COMMITTEE

Input from the Technical Advisory Committee (TAC) was used to validate the feasibility analysis results and ensure that final recommendations for inclusionary requirements would be productive for maximizing affordable housing construction in Hayward. During the first TAC meeting, these locally knowledgeable developers of single family and multifamily projects provided the following key points of emphasis:

- Confirmed the basic assumptions and inputs applied in the feasibility analyses;
- Confirmed analysis findings that single-family homes are currently more financially feasible than multifamily developments in Hayward;
- Discussed trade-offs between the use of in-lieu fees versus providing on-site units, expressing that flexibility is necessary to ensure different projects can be delivered under different circumstances while still delivering affordable housing units or funding.

Tradeoffs between in-lieu fees and on-site inclusionary units were also a subject of discussion at the second TAC meeting. At this second meeting developers emphasized the following points:

- Flexibility is important to them for being able to figure out how to make a particular project financially feasible;
- Fees and affordable housing requirements get passed on to the residents paying market-rate costs, since these requirements necessitate higher prices and rents to achieve project feasibility;
- Construction costs are currently rising rapidly, by as much as ten percent per year; and
- The AHO should allow affordable housing developers to apply rent and income limits matching those of the Federal Low-Income Housing Tax Credit program.

Based on this feedback, Strategic Economics conducted additional sensitivity analysis of the impacts of increased construction costs on the ownership prototypes' abilities to support increased inclusionary requirements and incorporated additional analysis of development cost burdens into the in-lieu fee recommendations.

CITY OF HAYWARD PLANNING COMMISSION

Members of the City of Hayward Planning Commission raised concerns about ensuring development feasibility as conditions change and noted preferences for developers to provide on-site inclusionary housing units rather than in-lieu fees. Strategic Economics and City staff shared the analysis results

and this report’s recommendations as an informational item at the Planning Commission’s December 8, 2022 public meeting. The Planning Commissioners primarily asked questions about the analyses and the basis of the recommended revisions to the AHO’s inclusionary requirements. Areas of focus for other comments and questions included:

- Concerns about maintaining development feasibility as conditions change;
- Concerns about the infeasibility of higher density market-rate rental housing;
- Potential uses of the in-lieu fee revenue; and
- Preference that developers provide on-site inclusionary units rather than in-lieu fee revenue.

AHO Policy Support for Preventing Displacement

A recently completed displacement analysis for the City of Hayward found that there is significant need for very low-income housing in Hayward, and that on-site inclusionary housing alone will not meet the City’s affordable housing needs.⁶ In 2021, HR&A Advisors completed a displacement study analyzing trends in housing costs and residential displacement within Hayward. This study identified that rents and home values have been outpacing housing growth; housing production has not kept pace with jobs; homelessness is increasing; and low-income residents are likely undergoing displacement.⁷ The AHO update was undertaken in part to examine how policy modifications could contribute toward addressing these displacement concerns by providing additional affordable housing units and housing units at a deeper level of affordability.

AHO policy modifications can address displacement by prioritizing housing for low-income and very low-income households in Hayward and generating in-lieu fees that can be leveraged to generate relatively greater numbers of affordable housing units at deeper levels of affordability. Based on findings from the feasibility and affordability gap analyses, the AHO can support displacement prevention by modifying the income requirements for ownership housing to include low-income households (in addition to moderate-income households) and by retaining the option for developers to pay in-lieu fees instead of building on-site units. The low-income requirement will serve households at greater risk of displacement. The in-lieu fees create an opportunity for the City to partner with affordable housing developers to leverage outside funding sources such as Federal Low Income Housing Tax Credits (LIHTC) and provide more affordable housing units at a deeper level of affordability than inclusionary requirements alone could achieve.

VI. AHO UPDATE RECOMMENDATIONS

INCLUSIONARY POLICY RECOMMENDATIONS

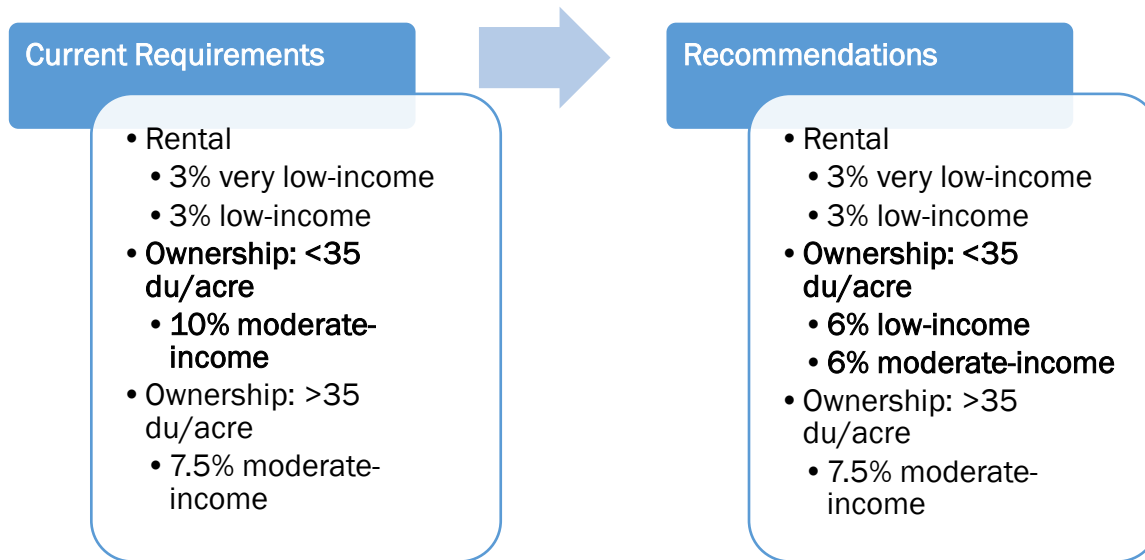
Strategic Economics recommends maintaining current inclusionary requirements for rental products and high-density ownership products, while increasing the required inclusionary percentage and deepening affordability requirements for low-density ownership products. The recommendation for

⁶ City of Hayward Assistant City Manager. (2022). Staff Report on Implementation of the Existing Affordable Housing Ordinance and Next Steps for Potential Modifications to the Ordinance.

⁷ HR&A Advisors. (2021). City of Hayward Displacement Study.

ownership projects that are less than 35 dwelling units per acres is to increase the required total inclusionary percentage from ten percent to 12 percent, split evenly between low-income households and moderate-income households. This is a departure from the current policy, which only requires that ownership projects provide affordable units for moderate-income households. Recommended changes are summarized in Figure 37.

FIGURE 37: RECOMMENDED CHANGES TO INCLUSIONARY REQUIREMENTS



These recommendations were informed by the following analysis and community input findings:

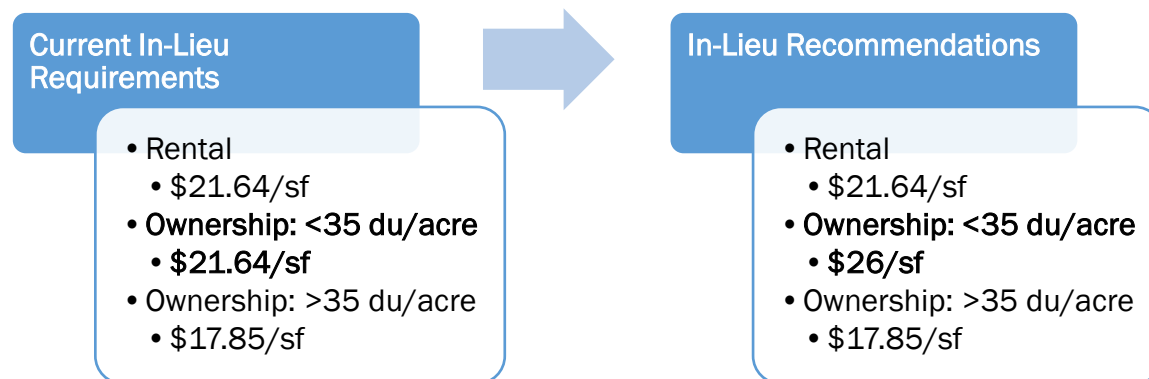
- The majority of the analyzed rental housing prototypes are currently not feasible within Hayward, regardless of the level of AHO requirements or submarket “tier.” This aligns with current development conditions, as developers have not proposed any major market-rate rental projects since adoption of the Hayward’s current AHO requirements. Reduction or elimination of affordable housing requirements is not expected to significantly improve feasibility for these multifamily products due to their wide gap between achievable revenues and construction costs.
- The recommended requirements are within a typical range of seven “peer” cities for which Strategic Economics reviewed inclusionary policies and affordable housing production outcomes.
 - As shown in the Existing AHO and Comparison to Peer Cities analysis on page 14, Hayward’s current inclusionary requirements are relatively lower than peer communities, yet these low requirements led to production of a relatively high number of affordable low- and moderate-income housing units. Inclusionary requirements should be set at a level that does not encourage developers to build projects in nearby communities instead of Hayward. Inclusionary on-site units were also the primary means by which Hayward and peer communities produce deed-restricted housing for moderate-income households.

- The peer cities analysis also suggested the importance of maintaining inclusionary requirements at a level that supports the financial feasibility of new development.
 - Some jurisdictions, such as Fremont, may be able to sustain higher inclusionary requirements because they have higher market-rate rents that could support the cost of affordable units.
 - In Hayward, the Inclusionary Policy Alternatives Findings on page 35 indicate that single-family homes and townhomes are only marginally feasible at a 15 percent requirement—the level used by some peer communities.
- The HHTF expressed a preference for maintaining existing rental requirements to ensure developers are obligated to provide inclusionary or in-lieu fee contributions if development conditions improve in the future.
- A condominium prototype (a higher-density ownership product) is not currently feasible under any market tier within Hayward, and developers are not proposing condominiums in Hayward.
- Strategic Economics found through sensitivity testing that a 12 percent requirement for low and moderate-income households applicable to low-density ownership products (single-family homes and townhomes) would allow projects to maintain feasibility while also sustaining increases in construction costs of up to four percent. In contrast, a higher required percentage would result in these projects becoming infeasible with the slightest negative change in development conditions. See the Sensitivity Analysis section on page 36 for further details.
- The HHTF expressed a preference for increasing ownership requirements, but not to such a point that they block housing development if project costs and revenues shift in the near term.

IN-LIEU FEE RECOMMENDATIONS

Strategic Economics recommends maintaining the current level of in-lieu fees for rental products and high-density ownership products, while increasing the fee for low-density ownership products to \$26 per habitable square foot. The goal of these recommendations is to strike a balance between generating revenue for producing affordable units while ensuring that the fee does not prevent development activity. The recommended changes represent a relatively small increase in total development costs.

FIGURE 38: IN-LIEU FEE RECOMMENDATIONS



These recommendations were informed by the following feasibility analysis and community input findings:

- The affordability gap analysis found that the in-lieu fee amount required to build off-site deed-restricted affordable housing equivalent to the revised inclusionary requirements would be \$29.26 per square foot for single-family homes and \$16.92 per square foot for townhomes.
- Among other considerations, in-lieu fees should be set at a level that does not encourage developers to build projects in nearby communities instead of Hayward. The maximum effective in-lieu fee for *ownership* products among Hayward’s “peer” communities is \$44 per square foot of habitable space, but the median fee is closer to Hayward’s current level.
- The maximum in-lieu fee for *rental* products among Hayward’s peer communities is approximately \$30 per square foot, while the median fee is close to Hayward’s current level.
 - Based on the affordability gap, the in-lieu fee for rental products would be between \$29 per square foot and \$40 per square foot.
 - However, rental products are largely not feasible under existing AHO requirements; maintaining a lower in-lieu fee for rental projects increases the possibility of development occurring if conditions improve in the future.
- The HHTF supported increasing AHO requirements on low-density ownership products while maintaining consistent requirements for high-density ownership housing and rental products.
- Analysis of affordable housing funding data for Hayward and Fremont demonstrated the importance of in-lieu fee revenues as a local funding source for production of 100 percent affordable housing projects. These projects can provide a deeper level of affordability than what can be achieved through inclusionary units. These projects can also provide permanent supportive housing units and housing units for extremely low-income households—serving community members who are at high risk for displacement or homelessness.
- Lastly, TAC members noted that financial considerations for in-lieu fees or provision of on-site units differ from project to project, and that flexibility is important for ensuring that they can find a feasible approach for future projects.

APPENDIX A: GLOSSARY OF KEY TERMS

Definitions from Current AHO

- **"Affordable Unit"** is defined as an ownership or rental Dwelling Unit whose price is set at an Affordable Ownership Cost or Affordable Rent as defined in this Article.
- **"Affordable Ownership Cost"** is defined as the maximum purchase price that will be affordable to a Moderate-Income Household at Presumed Occupancy Levels, based on a reasonable down payment and monthly housing payments (including mortgage principal and interest, property taxes, homeowner's insurance, and homeowner/condominium association fees where applicable) that do not exceed one hundred ten percent of Area Median Income multiplied by thirty-five percent and divided by twelve.
- **"Affordable Rent"** is defined as the maximum monthly rent, including all fees for housing services and a utility allowance as determined by the Alameda County Housing Authority, that does not exceed the following, based on Presumed Occupancy Levels:
 - For Extremely Low Income Households: thirty percent of Area Median Income multiplied by thirty percent and divided by twelve.
 - For Very Low Income Households: fifty percent of Area Median Income multiplied by thirty percent and divided by twelve.
 - For Low Income Households: sixty percent of Area Median Income multiplied by thirty percent and divided by twelve.
- **"Area Median Income (AMI)"** is defined as the median income for Alameda County, adjusted for household size, as published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development (HCD).
- **"Dwelling Unit"** is defined as a dwelling designed and intended for residential occupancy by one household.
- **"Extremely Low, Very Low, Low, and Moderate-Income Households"** are defined as households whose incomes do not exceed the extremely low, very low, low, or moderate-income limits, as applicable, established for Alameda County and adjusted for household size that are published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by HCD.
- **"Household Income"** is defined as the gross annual household income, monetary benefits, and all other sources of household income, before deductions or exemptions, and includes the income of all members of the household 18 years of age or older.
- **"Ownership Residential Project"** is defined as any Residential Development Project that creates new Dwelling Units that may be sold individually, including but not limited to condominiums, townhomes, stock cooperatives, community apartments, and attached or detached single-family homes. An Ownership Residential Project also includes any Residential Development Project with a recorded condominium plan or map and the conversion of residential property to common interest developments as described in Hayward Municipal Code [Section 10-3.370](#).
- **"Presumed Occupancy Levels"** as listed below shall be used to establish Affordable Ownership Cost and Affordable Rents, unless the Residential Development Project is financed with federal tax credits, in which case the applicable federal regulations shall determine the Presumed Occupancy Levels:
 - One person for a studio unit;

- Two people for a one bedroom unit;
- Three people for a two bedroom unit; and
- One additional person for each additional bedroom thereafter.
- **"Rental Residential Project"** is defined as any Residential Development Project that creates new Dwelling Units that cannot be sold individually.

Definitions of Other Key Terms

INCLUSIONARY HOUSING POLICY TERMS

- **"Affordability Gap"** is defined as the difference between the revenue generated from each affordable unit and the total cost of developing those units.
 - a. For ownership housing products, the affordability gap is the difference between the affordable sales price of a home and the total development cost of each unit.
 - b. For rental products, the affordability gap is based on the difference between the total debt that can be supported from affordable rental revenue and the total development cost of each unit.
- **"Inclusionary Requirement,"** or **"Inclusionary Percentage,"** as used in this report, refers to the percentage of a project's housing units that are required to be set aside as deed-restricted affordable housing at specific affordability levels.
- **"In-Lieu Fee"** is defined as a set fee, assessed per square foot of habitable space in a residential project, that can be paid to substitute for some or all of the required affordable units in a housing project.

DEVELOPMENT FEASIBILITY TERMS

- **"Hard Costs"** include materials and labor associated with physical construction of the building.
- **"Investment Return"** consists of the required financial return on investment that a project must achieve to attract developer and lender investment.
- **"Land Costs"** refer to the price the developer pays to acquire the land.
- **"Residual Land Value"** represents the value remaining to pay for land after accounting for all other project costs, expected revenues, and required investment return.
 - a. This value is compared to prevailing site acquisition costs for each prototype to evaluate project feasibility.
- **"Soft Costs"** include indirect expenses such as architecture and engineering, taxes, insurance, financing costs, and municipal fees.
- **"Total Project Revenue"** is determined by the market value of the project.
 - a. For for-sale projects, the market value consists of achievable sales prices for the housing units.
 - b. For rental projects, the market value of the project depends on the annual revenue it will generate and the current capitalization rate, which reflects overall project investment risk relative to alternative investments.

APPENDIX B: FEASIBILITY ANALYSIS DETAILS

Feasibility Assumptions

FIGURE 39: SQUARE FEET PER UNIT AND SHARE OF UNITS BY BEDROOM SIZE ASSUMPTIONS

	Single Family Development	Townhomes	Condos	Small Multifamily	Stacked Flats	5-Story Wrap	5-Story Podium (TOD)
Unit Size (sq. ft.)							
Studio	-	-	600	600	600	580	575
1-BD	-	-	750	800	750	800	800
2-BD	1,600	1,450	950	1,000	950	1,000	1,000
3-BD	1,980	1,650	1,200	1,300	1,200	1,325	1,350
4-BD	2,500	1,900	-	-	-	-	-
5-BD	3,245	-	-	-	-	-	-
Unit Share							
Studio	-	-	11	4	11	90	25
1-BD	-	-	13	3	13	135	68
2-BD	-	16	39	9	39	60	42
3-BD	9	58	11	4	11	15	24
4-BD	24	32	-	-	-	-	-
5-BD	11	-	-	-	-	-	-
Total	44	106	74	20	74	300	159

FIGURE 40: MULTIFAMILY AND RETAIL RENT AND REVENUE ASSUMPTIONS

	Units	Apartments	Retail
Operating Expenses	% of Gross Revenue	30%	0%
Vacancy Rate	% of Gross Revenue	5%	10%
Cap Rate	Net Operating Income / Total Capitalized Value	4.1%	4.1%

Sources: Strategic Economics, 2022; Developer Interviews, 2022; Lee & Associates, 2022.

Notes: Operating Expenses are assumed to be negligible for retail because rent is expressed as triple-net. Under a triple net lease (NNN) the tenant pays operating expenses, including real estate taxes, building insurance, and maintenance (the three "nets") on the property in addition to the rents.

FIGURE 41: FINANCING COST CALCULATIONS, BY PROTOTYPE (IN MILLIONS OF DOLLARS)

	Single Family	Town-homes	Condos	Small Multifamily	Stacked Flats	5-Story Wrap	5-Story Podium (TOD)
Total Development Cost (Excl. Financing)	\$39.3	\$61.1	\$35.6	\$9.1	\$35.6	\$147.2	\$97.9
Amount Financed	\$27.5	\$42.8	\$23.1	\$5.9	\$23.2	\$88.3	\$58.8
Average Outstanding Balance	\$15.1	\$23.5	\$12.7	\$3.3	\$12.7	\$48.6	\$32.3
Construction Loan Fee	\$0.4	\$0.6	\$0.3	\$0.1	\$0.3	\$1.3	\$0.9
Cost of Interest	\$1.1	\$1.8	\$1.0	\$0.2	\$1.0	\$4.9	\$3.2
Total Cost of Financing	\$1.5	\$2.4	\$1.3	\$0.3	\$1.3	\$6.2	\$4.1
Financing Cost as Share of TDC	3.9%	3.9%	3.7%	3.7%	3.7%	4.2%	4.2%

Source: Strategic Economics, 2022; Developer Interviews, 2022.

Pro Forma Results

FIGURE 42: TIER TWO FULL PRO FORMA RESULTS - WITH CURRENT AHO REQUIREMENTS (IN MILLIONS OF DOLLARS)

	Single Family	Town-homes	Condos	Small MF	Stacked Flats	5-Story Wrap	5-Story Podium (TOD)
Revenues							
For-Sale Revenue							
Gross Revenue	\$56.5	\$83.8	\$33.5				
<u>Less Marketing Costs</u>	<u>-\$2.4</u>	<u>-\$3.5</u>	<u>-\$1.3</u>				
Net Sales Revenue	\$54.1	\$80.3	\$32.2				
Rental Revenue							
Gross Income, Residential				\$0.7	\$2.4	\$8.7	\$5.2
Gross Income, Retail						\$0.2	
<u>Less Vacancy & Operating Costs</u>				<u>-\$0.2</u>	<u>-\$0.9</u>	<u>-\$3.1</u>	<u>-\$1.9</u>
Net Operating Income				\$0.4	\$1.5	\$5.6	\$3.3
Total Capitalized Value				\$10.7	\$37.8	\$140.2	\$80.9
Development Costs							
Hard Costs							
Site Prep, Demo	\$5.4	\$5.4	\$1.6	\$0.5	\$1.6	\$4.4	\$2.7
Vertical Hard Costs	\$17.0	\$33.2	\$23.7	\$5.8	\$23.7	\$105.9	\$71.6
Tenant Improvement Allowance						\$0.5	
Soft Costs							
Hard Cost Contingency	\$1.1	\$1.9	\$1.3	\$0.3	\$1.3	\$5.5	\$3.7
Arch., Eng., and Other Soft Costs	\$3.1	\$5.4	\$3.5	\$0.9	\$3.5	\$15.5	\$10.4
Municipal Fees, with AHO fees	\$2.8	\$5.3	\$2.6	\$0.6	\$2.7	\$7.9	\$4.7
Financing Costs	\$1.2	\$2.0	\$1.2	\$0.3	\$1.2	\$5.8	\$3.9
Total Development Costs	\$30.8	\$53.3	\$33.9	\$8.5	\$34.0	\$145.6	\$97.0
Feasibility Summary							
Total Market Value of Project	\$54.1	\$80.3	\$32.2	\$10.7	\$37.8	\$140.2	\$80.9
<u>Minimum Return on Cost</u>	<u>20%</u>	<u>20%</u>	<u>20%</u>	<u>20%</u>	<u>20%</u>	<u>20%</u>	<u>20%</u>
Total Supportable Value	\$45.1	\$67.0	\$26.8	\$8.9	\$31.5	\$116.8	\$67.4
<u>Less Development Costs</u>	<u>-\$30.8</u>	<u>-\$53.3</u>	<u>-\$33.9</u>	<u>-\$8.5</u>	<u>-\$34.0</u>	<u>-\$145.6</u>	<u>-\$97.0</u>
Residual Land Value of Project	\$14.4	\$13.6	-\$7.1	\$0.5	-\$2.5	-\$28.7	-\$29.6
<u>Typical Site Acquisition Cost</u>	<u>\$9.8</u>	<u>\$9.8</u>	<u>\$2.9</u>	<u>\$1.0</u>	<u>\$2.9</u>	<u>\$7.8</u>	<u>\$4.9</u>
RLV Less Typical Acquisition Cost	\$4.6	\$3.8	-\$10.0	-\$0.5	-\$5.5	-\$36.6	-\$34.5

Source: Strategic Economics, 2022.

Notes:

Gross Income and Revenue Includes BMR Units.

Municipal fees shown here are slightly different from municipal fees shown in the rest of the report, because inclusionary units are exempt from some fees. In addition, in-lieu fees were required for some prototypes, even with on-site units, in order to account for fractional units.

FIGURE 43: TIER ONE FULL PRO FORMA RESULTS WITH RECOMMENDED CHANGES TO AHO: MAINTAINING CURRENT REQUIREMENTS FOR CONDOS AND RENTAL PRODUCTS; REQUIRING 6% LOW AND 6% MOD. UNITS FOR SF AND TH PRODUCTS (IN MILLIONS OF DOLLARS)

	Single Family	Town- homes	Condos	Small MF	Stacked Flats	5-Story Wrap	5-Story Podium (TOD)
Revenues							
For-Sale Revenue							
Gross Revenue	\$62.4	\$89.5	\$40.7				
<u>Less Marketing Costs</u>	<u>-\$2.7</u>	<u>-\$3.8</u>	<u>-\$1.6</u>				
Net Sales Revenue	\$59.7	\$85.7	\$39.0				
Rental Revenue							
Gross Income, Residential				\$0.8	\$2.8	\$10.0	\$6.0
Gross Income, Retail						\$0.2	
<u>Less Vacancy & Operating Costs</u>				<u>-\$0.3</u>	<u>-\$1.0</u>	<u>-\$3.6</u>	<u>-\$2.2</u>
Net Operating Income				\$0.5	\$1.8	\$6.6	\$3.8
Total Capitalized Value				\$12.4	\$43.6	\$161.0	\$93.4
Development Costs							
Hard Costs							
Site Prep, Demo	\$5.4	\$5.4	\$1.6	\$0.5	\$1.6	\$4.4	\$2.7
Vertical Hard Costs	\$17.0	\$33.2	\$23.7	\$5.8	\$23.7	\$105.9	\$71.6
Tenant Improvement Allowance	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.5	\$0.0
Soft Costs							
Hard Cost Contingency	\$1.1	\$1.9	\$1.3	\$0.3	\$1.3	\$5.5	\$3.7
Arch., Eng., and Other Soft Costs	\$3.1	\$5.4	\$3.5	\$0.9	\$3.5	\$15.5	\$10.4
Municipal Fees, with AHO	\$2.8	\$5.1	\$2.6	\$0.6	\$2.7	\$7.9	\$4.7
Financing Costs	\$1.2	\$2.0	\$1.2	\$0.3	\$1.2	\$5.8	\$3.9
Total Development Costs	\$30.7	\$53.1	\$33.9	\$8.5	\$34.0	\$145.6	\$97.0
Feasibility Summary							
Total Market Value of Project	\$59.7	\$85.7	\$39.0	\$12.4	\$43.6	\$161.0	\$93.4
<u>Minimum Return on Cost</u>	<u>20%</u>	<u>20%</u>	<u>20%</u>	<u>20%</u>	<u>20%</u>	<u>20%</u>	<u>20%</u>
Total Supportable Value of Project	\$49.7	\$71.4	\$32.5	\$10.3	\$36.3	\$134.2	\$77.8
<u>Less Development Costs</u>	<u>-\$30.7</u>	<u>-\$53.1</u>	<u>-\$33.9</u>	<u>-\$8.5</u>	<u>-\$34.0</u>	<u>-\$145.6</u>	<u>-\$97.0</u>
Residual Land Value of Project	\$19.1	\$18.3	-\$1.4	\$1.9	\$2.3	-\$11.4	-\$19.2
<u>Typical Site Acquisition Cost</u>	<u>\$16.3</u>	<u>\$16.3</u>	<u>\$4.9</u>	<u>\$1.6</u>	<u>\$4.9</u>	<u>\$13.1</u>	<u>\$8.2</u>
RLV Less Typical Acquisition Cost	\$2.7	\$1.9	-\$6.3	\$0.2	-\$2.6	-\$24.5	-\$27.4

Source: Strategic Economics, 2022.

Notes:

Gross Income and Revenue Includes BMR Units.

Municipal fees shown here are slightly different from municipal fees shown in the rest of the report, because inclusionary units are exempt from some fees. In addition, in-lieu fees were required for some prototypes, even with on-site units, in order to account for fractional units.

<https://haywardca-energovpub.tylerhost.net/Apps/SelfService#/home>

Step 1. Choose Application Type

Step 2. Choose Location

H HAYWARD
e-permits

RENTAL PROGRAM INVOICES: GO TO "RV INVOICE" AND SEARCH THE INVOICE NUMBER WITH THE PREFIX "INV" (number needs to be 8 digits) Eg: INV-00000001

Dashboard Home Apply My Work Today's Inspections Map Report Fee Estimator Pay Invoices Search Q Calendar

Apply for Plan - Site Plan Review

REQUIRED

1 Locations 2 Type 3 Contacts 4 More info 5 Attachments 6 Signature 7 Review and Submit

LOCATIONS

Enter the address(es) or APNs of the project location.

Location

Add Location +

REQUIRED

Create Template Save Draft Next

City of Hayward | 777 B Street, Hayward CA, 94541 | 510.583.4000 | info@hayward-ca.gov | Visit our website

Step 3. Application Description

H HAYWARD
e-permits

RENTAL PROGRAM INVOICES: GO TO "RV INVOICE" AND SEARCH THE INVOICE NUMBER WITH THE PREFIX "INV" (number needs to be 8 digits) Eg: INV-00000001

Dashboard Home Apply My Work Today's Inspections Map Report Fee Estimator Pay Invoices Search Q Calendar

Apply for Plan - Site Plan Review

REQUIRED

1 Locations 2 Type 3 Contacts 4 More info 5 Attachments 6 Signature 7 Review and Submit

PLAN DETAILS

In the Description field provide the project name followed by a brief description of the proposed project.

* Plan Type: Site Plan Review

* Description:

Back Create Template Save Draft Next

City of Hayward | 777 B Street, Hayward CA, 94541 | 510.583.4000 | info@hayward-ca.gov | Visit our website

Step 4. Add Contact Information

RENTAL PROGRAM INVOICES: GO TO "PAY INVOICE" AND SEARCH THE INVOICE NUMBER WITH THE PREFIX "INV" (number needs to be 8 digits) E.g. INV-00000001

Dashboard Home Apply My Work Today's Inspections Map Report Fee Estimator Pay Invoices Search Q Calendar

Apply for Plan - Site Plan Review

*REQUIRED



CONTACTS

Billing Contact Leigha Schmidt (You)	Applicant Add Contact	Property Owner Add Contact	Select Type Add Contact
--	---------------------------------	--------------------------------------	----------------------------

Back Create Template Save Draft Next



City of Hayward | 777 B Street, Hayward CA 94541 | 510.583.4000 | info@hayward-ca.gov | Visit our website

Step 5. Additional Information Page

RENTAL PROGRAM INVOICES: GO TO "PAY INVOICE" AND SEARCH THE INVOICE NUMBER WITH THE PREFIX "INV" (number needs to be 8 digits) E.g. INV-00000001

Dashboard Home Apply My Work Today's Inspections Map Report Fee Estimator Pay Invoices Search Q Calendar

Apply for Plan - Site Plan Review

*REQUIRED



MORE INFO

NOTE: If your application includes entitlements requiring City Council approval (General Plan Amendment, Zoning Amendment, DC Re-zoning, etc.) please request the application process using that application type.
If not, but your application includes entitlements requiring Planning Commission approval (Major Site Plan Review, Conditional Use Permit, Temporary Tract Map, etc.), please request the application process using that application type.
If you have questions about what level of review is required for your requested entitlements, reach out to a planner at (510) 583-4215 or planning.division@hayward-ca.gov.

Project Info

Next Section | Top | Main Menu

Type of Entitlement(s) Requested	<input type="checkbox"/> Site Plan Review <input type="checkbox"/> Administrative Use Permit <input type="checkbox"/> Administrative Variance <input type="checkbox"/> Tentative Parcel Map <input type="checkbox"/> Density Bonus <input type="checkbox"/> Minor Modification of Previous Approval
Existing Land Uses	
Proposed Land Use(s)	
Amount of New Residential Square Footage	
Average Slope of Hillside Property, if applicable	
Average Slope of Hillside Property, if applicable	

Fire Department Questionnaire

Previous Section | Next Section | Top | Main Menu

Will any of the following processes occur?	<input type="checkbox"/> Combustible fiber, generation or storage <input type="checkbox"/> Dry cleaning <input type="checkbox"/> Dry ovens <input type="checkbox"/> Electroplating <input type="checkbox"/> Laboratory facility <input type="checkbox"/> Liquefied petroleum gas storage <input type="checkbox"/> Semi-conductor fabrication <input type="checkbox"/> Spray painting <input type="checkbox"/> Tire recapping or storage <input type="checkbox"/> Welding <input type="checkbox"/> Wood working shop <input type="checkbox"/> Vehicle Repair <input type="checkbox"/> Rack or pallet storage over 12 feet in height <input type="checkbox"/> Free standing storage over 15 feet in height <input type="checkbox"/> Area of storage over 1000 square feet
Will you store/transport/handle the following?	<input type="checkbox"/> Acutely hazardous materials <input type="checkbox"/> Carcinogens <input type="checkbox"/> Combustible liquids <input type="checkbox"/> Compressed gases <input type="checkbox"/> Corrosives <input type="checkbox"/> Cryogenics <input type="checkbox"/> Explosives <input type="checkbox"/> Fertilizer <input type="checkbox"/> Flammable gases <input type="checkbox"/> Flammable liquids <input type="checkbox"/> Flammable solids <input type="checkbox"/> Hazardous waste <input type="checkbox"/> Highly toxic material <input type="checkbox"/> Irritants <input type="checkbox"/> Organic coating <input type="checkbox"/> Organic peroxide

Other regulated materials

Is the project site any of the following?

- Site possibly contaminated with hazardous material
- Former service station site
- Site known to have had underground storage tanks
- Site of a former commercial nursery
- Site known to have used/stored hazardous material
- Former site use unknown

Housing (if applicable) Previous Section | Top | Main Menu

Project Type

- Single Family Homes (detached)
- Condominiums
- Townhomes
- Apartments
- Live/Work
- Senior Housing
- Mixed-Use
- Assisted Living
- Accessory Dwelling Units
- Other

Tenure

Compliance with Affordable Housing Ordinance

Number of existing units to be demolished

Date existing unit(s) last occupied by tenant

[Back](#) [Create Template](#) [Save Draft](#) [Next](#)



City of Hayward | 777 B Street, Hayward CA, 94541 | 510.583.4000 | info@hayward-ca.gov | [Visit our website](#)

Step 6. Add Project Plans



Leigha Schmitt

RENTAL PROGRAM INVOICES: GO TO "PAY INVOICE" AND SEARCH THE INVOICE NUMBER WITH THE PREFIX "INV" (number needs to be 8 digits) E.g INV-00000001

Dashboard Home Apply My Work Today's Inspections Map Report Fee Estimator Pay Invoices Search Calendar

Apply for Plan - Site Plan Review REQUIRED



Attachments

Please upload all required submittal documents as well as applicable optional documents. If you have questions about optional documents that may be required, reach out to a planner at (510) 583-4218 or planning.division@hayward-ca.gov.

The **Required Findings** for Site Plan Review can be found in Section 10-1.3025 of the Hayward Municipal Code.

A **Plan Sharing Authorization Form** is required to be submitted as part of your application.

If the property owner is not the applicant, an **Owner Authorization Letter** is also required.

Architectural Plans

Add Attachment

REQUIRED

Plan Sharing Authorization Form

Add Attachment

REQUIRED

Select Type

Add Attachment

REQUIRED

[Back](#) [Create Template](#) [Save Draft](#) [Next](#)



City of Hayward | 777 B Street, Hayward CA, 94541 | 510.583.4000 | info@hayward-ca.gov | [Visit our website](#)

Step 7. Review Submittal

H HAYWARD
e-permits

RENTAL PROGRAM INVOICES: GO TO "PAY INVOICE" AND SEARCH THE INVOICE NUMBER WITH THE PREFIX "INV" (number needs to be 8 digits) E.g INV-00000001

Dashboard Home Apply My Work Today's Inspections Map Report Fee Estimator Pay Invoices Search Q Calendar

Apply for Plan - Site Plan Review

REQUIRED

Locations Type Contacts More Info Attachments Signature Review and Submit

Submit

Locations

Location	777 B St, Hayward, CA 94541
Parcel Number	428-0079-028-01

Basic Info

Type	Site Plan Review
Description	Build a new 4 plex
Applied Date	02/20/2024

Contacts

Billing Contact	Leigha Schmidt
Applicant	Leigha Schmidt
Property Owner	Leigha Schmidt

More Info

Project Info

Type of Entitlement Requested	Site Plan Review
	Administrative Use Permit
	Administrative Variance

Next Section | Top | Main Menu

Step 8. Signature Page

H HAYWARD
e-permits

RENTAL PROGRAM INVOICES: GO TO "PAY INVOICE" AND SEARCH THE INVOICE NUMBER WITH THE PREFIX "INV" (number needs to be 8 digits) E.g INV-00000001

Dashboard Home Apply My Work Today's Inspections Map Report Fee Estimator Pay Invoices Search Q Calendar

Apply for Plan - Site Plan Review

REQUIRED

Locations Type Contacts More Info Attachments Signature Review and Submit

SIGNATURE

CERTIFICATION STATEMENT:

- I/We certify that I/we are presently the legal owner(s) of the property referenced in this application and/or have the authority of the legal owner(s) to act on their behalf(s).
- I/We acknowledge the filing of this application and certify that all the information is true and accurate and that I/we have familiarized myself/ourselves with the relevant provisions of the relevant Municipal Code.
- I/We hereby guarantee, as an authorized agent, applicant, property owner, or project sponsor, that I/we individually and jointly assume full responsibility for all costs incurred by the City in processing this application.
- I/We acknowledge that plan review and field inspections will be completed on a time and materials basis and may exceed the initial deposit amount.
- I/We understand and agree that, upon permit issuance, we may be referred to a subconsulting agency, and failure to pay all charges will result in a hold on any processing of current and/or future permits at the property.

Note: If the property owner is not the applicant, the applicant shall attach an Owner Authorization Form.

*Please type your name as consent to electronically sign this application. Leigha Schmidt

Enable Type Signature

Leigha Schmidt
February 20, 2024

X

Clear

Back Create Template Save Draft Next

Accessory Dwelling Unit - LEAP Grant Deliverables Budget and Schedule					
Task	Est. Cost	Begin	End	Deliverable	Notes
Racial Equity Analysis	\$5,000	2/1/2024	4/30/2024	Racial Equity Analysis and Report	<i>Throughout Project.</i> Review previous permits using census, neighborhood and tract data; conduct interviews and surveys; and prepare recommendations to improve resources and processes to ameliorate inequitable outcomes and development of ADUs in Hayward. Continue to apply the Racial Equity lens throughout the project.
Applicant Resources	\$14,500	2/1/2024	8/30/2024	Hand-outs, graphics, financing alternatives hand outs. All materials will be translated into Spanish or other language(s) in coordination with our Communications team.	<i>Throughout Project.</i> Develop and refine hand outs, FAQs, webpage, and hand outs. This task would also include exploring and communicating various financing options for individuals who want to build ADUs but do not have access to capital. This task require coordination between Planning, Building, Utilities, Housing, IT and Communications staff. If we cannot accomplish in house, we will hire a graphic design firm to develop visuals, graphics and other easy to understand materials to clarify the process, requirements and to translate into different languages.
Process Changes	\$44,500	4/1/2024	8/30/2024	Standard Single Family and Multi-Family ADU/JADU Checklist for Building Division; update SF and MF ADU/JADU Checklist for Planning (if needed); pre-approved plans and/or list of firms and architects that have successfully navigated the ADU process in Hayward; procedure and materials for unpermitted accessory dwelling unit program.	<i>Throughout Project.</i> Develop a standardized checklist for building permit application submittal; designate an ADU program coordinator(s) in planning and building who can expedite the permitting process; work with architects and ADU builders to develop a pre-approved plans process and update resources accordingly; and, work with Code Enforcement and Building to develop an unpermitted dwelling unit program.
Fee Audit and Update	\$5,000	7/1/2021	3/31/2022	Fee Audit Report; Schedule of Payment Options; Fee Schedule Update; Resolution	Work with Utilities, Planning and Building staff to develop options for payment of fees to make ADU development more feasible for a variety of household incomes.
Cost	\$69,000				

LOAN AGREEMENT

Between

City of Hayward

Housing Authority of the City of Hayward

And

Allied 2595 Depot, L.P.

Depot Community Apartments

ARTICLE 1 DEFINITIONS AND EXHIBITS	1
Section 1.1 Definitions.....	1
Section 1.2 Exhibits	8
ARTICLE 2 LOAN PROVISIONS	8
Section 2.1 Loan.	8
Section 2.2 Interest.....	8
Section 2.3 Use of Loan Funds.....	9
Section 2.4 Security.	9
Section 2.5 Subordination.....	9
Section 2.6 Conditions Precedent to Disbursement of Loan Funds.....	10
Section 2.7 Conditions Precedent to Disbursement of Retention.	12
Section 2.8 Repayment Schedule.....	13
Section 2.9 Reports and Accounting of Residual Receipts.....	13
Section 2.10 Non-Recourse.	14
ARTICLE 3 CONSTRUCTION OF THE DEVELOPMENT	16
Section 3.1 Permits and Approvals.....	16
Section 3.2 Construction Plans.	16
Section 3.3 Construction Contract.	16
Section 3.4 Construction Bonds.....	17
Section 3.5 Commencement of Construction.	17
Section 3.6 Completion of Construction.....	17
Section 3.7 Construction Pursuant to Plans and Laws; Prevailing Wages; Accessibility.....	17
Section 3.8 Relocation.	18
Section 3.9 Marketing Plan.....	19
Section 3.10 Equal Opportunity.....	19
Section 3.11 Minority and Women-Owned Contractors.	19
Section 3.12 Progress Reports.	19
Section 3.13 Construction Responsibilities.	20
Section 3.14 Mechanics Liens, Stop Notices, and Notices of Completion.....	20
Section 3.15 Inspections.	20
Section 3.16 Approved Development Budget; Revisions to Budget.....	21
Section 3.17 Developer Fee.	21
Section 3.18 Partnership/Asset Management Fee.....	22
ARTICLE 4 LOAN REQUIREMENTS.....	22
Section 4.1 Financial Accountings and Post-Completion Audits.....	22
Section 4.2 Annual Operating Budget.	22
Section 4.3 Information.	23
Section 4.4 Records.	23
Section 4.5 Lenders Audits.....	23
Section 4.6 Hazardous Materials.	24
Section 4.7 Maintenance and Damage.....	26
Section 4.8 Fees and Taxes.....	26

Section 4.9	Notice of Litigation.....	26
Section 4.10	Operation of Development as Affordable Housing.....	26
Section 4.11	Nondiscrimination.....	27
Section 4.12	Transfer.....	27
Section 4.13	Insurance Requirements.....	28
Section 4.14	Mandatory Language in all Subsequent Deeds, Leases and Contracts.....	30
Section 4.15	Covenants Regarding Approved Financing and Partnership Agreement.....	31
Section 4.16	Refinance/Resyndication Transaction.....	32
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER.....		32
Section 5.1	Representations and Warranties.....	32
ARTICLE 6 DEFAULT AND REMEDIES.....		34
Section 6.1	Events of Default.....	34
Section 6.2	Remedies.....	35
Section 6.3	Right of Contest.....	36
Section 6.4	Remedies Cumulative.....	36
ARTICLE 7 GENERAL PROVISIONS.....		37
Section 7.1	Relationship of Parties.....	37
Section 7.2	No Claims.....	37
Section 7.3	Amendments.....	37
Section 7.4	Indemnification.....	37
Section 7.5	Non-Liability of Lenders Officials, Employees and Agents.....	38
Section 7.6	No Third Party Beneficiaries.....	38
Section 7.7	Discretion Retained By City.....	38
Section 7.8	Conflict of Interest.....	38
Section 7.9	Notices, Demands and Communications.....	39
Section 7.10	Applicable Law and Venue.....	40
Section 7.11	Parties Bound.....	40
Section 7.12	Attorneys' Fees.....	40
Section 7.13	Severability.....	40
Section 7.14	Force Majeure.....	40
Section 7.15	Lenders Approval.....	40
Section 7.16	Waivers.....	41
Section 7.17	Title of Parts and Sections.....	41
Section 7.18	Entire Understanding of the Parties.....	41
Section 7.19	Multiple Originals; Counterpart.....	41
EXHIBIT A: Legal Description of the Property		
EXHIBIT B: Approved Development Budget		

LOAN AGREEMENT
(Depot Community Apartments)

This Loan Agreement (the "Agreement") is entered into as of October __, 2021, by and between the City of Hayward, a California charter city (the "City"), the Housing Authority of the City of Hayward, a public body, corporate and politic, acting in its capacity as the housing successor the dissolved Redevelopment Agency of the City of Hayward (the "Housing Authority, and together with the City, the "Lenders"), and Allied 2595 Depot, L.P., a California limited partnership ("Borrower"), with reference to the following facts:

A. Capitalized terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. Borrower owns that certain real property located at 2595 Depot Road, in the City of Hayward, County of Alameda, State of California, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property").

C. Borrower intends to construct one hundred twenty-five (125) units of rental housing for extremely low, very-low, low and moderate-income households and including one unrestricted manager's unit on the Property. The Property and improvements thereon shall be referred to in this Agreement as the "Development".

D. By adoption of City Council Resolution No. 18-214 and Housing Authority Resolution No 18-03, the Lenders have committed up to Five Million Eight Hundred Ten Thousand Dollars (\$5,810,000) consisting of Four Million Two Hundred Thousand (\$4,200,000) of the Housing Authority's Housing Asset Fund (established pursuant to California Health and Safety Code Section 34176(d)) monies and One Million Six Hundred Ten Thousand Dollars (\$1,610,000) of the City's Inclusionary Housing Fee proceeds to assist Borrower in the construction of the Development (collectively, the "Loan"). The Loan will be evidenced by a promissory note executed by Borrower in favor of the Lenders and secured by a deed of trust recorded against the Property.

E. Pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") and its implementing guidelines, the Development is eligible for streamlined, ministerial approval pursuant to Government Code Section 65913.4, and is therefore exempt from review pursuant to Public Resources Code Section 21080(b)(1), which states the general rule that CEQA does not apply to ministerial projects.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

- (a) "Agreement" means this Loan Agreement.
- (b) "Allied" means Allied Housing, Inc., a California nonprofit public benefit corporation.
- (c) "Annual Operating Expenses" means with respect to a particular calendar year, the following costs reasonably and actually incurred for operation and maintenance of the Development, to the extent that they are consistent with the annual operating budget for the Development approved by the City pursuant to the Regulatory Agreement and an annual independent audit performed by a certified public accountant using generally accepted accounting principles:
 - (i) property taxes and assessments imposed on the Development;
 - (ii) debt service currently due on a non-optional basis (excluding debt service due from Residual Receipts or surplus cash of the Development) on loans associated with the Development and approved by the Lenders;
 - (iii) on-site service provider fees for tenant social services, provided the Lenders have approved, in writing, the plan and budget for such services before such services begin pursuant to the Regulatory Agreement;
 - (iv) property management fees and reimbursements, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the Lenders;
 - (v) the Partnership/Asset Management Fee;
 - (vi) fees for accounting, audit, and legal services incurred by Borrower's general partner in the asset management of the Development, not to exceed amounts that are standard in the industry, to the extent such fees are not included in the Partnership/Asset Management Fee;
 - (vii) premiums for property damage and liability insurance;
 - (viii) utility services not paid for directly by tenants, including water, sewer, and trash collection;
 - (ix) maintenance and repair expenses and services;
 - (x) any annual license or Certificate of Occupancy fees required for operation of the Development;
 - (xi) security services;
 - (xii) advertising and marketing;

(xiii) monitoring fees;

(xiv) cash deposited into reserves for capital replacements of the Development in the amount set forth in Approved Development Budget;

(xv) cash deposited into an operating reserve to maintain the amount set forth in the Approved Development Budget (excluding amounts deposited to initially capitalize the account);

(xvi) cash deposited into any other reserve accounts as required by permanent lenders and investors and as approved by the Lenders;

(xvii) extraordinary operating costs specifically approved in writing by the Lenders;

(xviii) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves

(xix) payment of the priority deferred Developer Fee (without interest) not exceeding a cumulative Developer Fee in the maximum amount set forth in Section 3.17 below; and

(xx) other ordinary and reasonable operating expenses approved by the Lenders in writing and not listed above.

Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses; any amount expended from a reserve account; and any capital cost with respect to the Development, as determined by the accountant for the Development.

(d) "Applicable Governmental Approvals" means the City and other governmental permits and approvals necessary for the Construction Work and operation of the Development, including but not limited to CEQA approvals, submissions of design development review documents, detailed exterior plans, overall design and architectural review and any required operating licenses.

(e) "Approved Development Budget" means the proforma Development budget, including sources and uses of funds, as approved by the Lenders, and attached hereto and incorporated herein as Exhibit B.

(f) "Approved Financing" means sources of financing for the Development included in the Approved Development Budget which, in addition to the Loan, includes the following:

(i) a construction loan from the Bank consisting of a tax exempt portion in the approximate amount of \$32,580,441 and a taxable portion in the amount of \$1,749,426 (the "Bank Loan");

(ii) a loan from the County in the approximate amount of \$18,268,465 (the "County Loan");

(iii) a capital contribution from the Investor Limited Partner in the approximate amount of \$30,348,407 to be funded in accordance with the terms and conditions of the Partnership Agreement (the "Tax Credit Equity");

(iv) a loan from Allied of CDBG funds in the approximate amount of \$371,400 (the "Sponsor Loan");

(v) an additional general partner contribution in the approximate amount of \$1,214,866 (the "GP Equity Contribution"); and

(vi) a permanent loan of Multifamily Housing Program ("MHP") funds from HCD in the approximate amount of \$20,000,000 (the "MHP Loan").

(g) "Approved Encumbrances" means those encumbrances on title to the Property that the Lenders approve and which is set forth in the Lenders' escrow instructions prepared in connection with the Loan closing.

(h) "Authority" means the Housing Authority of the City of Hayward, a public body corporate and politic, and its successors and assigns.

(i) "Bank" means JP Morgan Chase Bank, N.A., and its successors and assigns.

(j) "Borrower" means Allied 2595 Depot, L.P., a California limited partnership, and its permitted successors and assigns.

(k) "CEQA" has the meaning set forth in Recital D

(l) "City" means the City of Hayward, a California charter city, and its successors and assigns.

(m) "County" means the County of Alameda, a political subdivision of the State of California, and its successors and assigns.

(n) "Commercial Premises" means the approximately 38,905 square foot portion of the Property including the Cronin House residential treatment center building, fourteen (14) parking spaces, outdoor space, trash enclosure, nonexclusive use of a drive aisle, and associated 1600 square foot office buildings, leased to Allied by the Partnership, and in turn leased by Allied to Horizon Services, Inc. for a period of fifty-five (55) years for the provision of residential treatment services.

(o) "Deed of Trust" means the deed of trust that will encumber the Development to secure repayment of the Loan. The form of the Deed of Trust shall be provided by the Lenders.

(p) "Default" shall have the meaning set forth in Section 6.1 below.

(q) "Default Rate" shall have the meaning set forth in Section 2.2(b).

- (r) "Developer Fee" has the meaning set forth in Section 3.17 below
- (s) "Development" has the meaning set forth in Recital C.
- (t) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.
- (u) "Final Cost Certification" has the meaning set forth in Section 4.1
- (v) "Final Development Cost" means the total of the cost of acquisition of the Property and the performance of the Construction Work as shown on the Final Cost Certification
- (w) "Force Majeure" means the occurrence of one or more of those events described in Section 7.14, permitting an extension of time for performance of obligations under this Agreement.
- (x) "Gross Revenue" means with respect to a particular calendar year all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. Gross Revenue includes, but is not limited to:
 - (i) all rents, fees and charges paid by tenants;
 - (ii) Section 8 payments or other rental subsidy payments received for the Units;
 - (iii) deposits forfeited by tenants;
 - (iv) all cancellation fees;
 - (v) price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income;
 - (vi) proceeds from vending and laundry room machines;
 - (vii) the proceeds of business interruption or similar insurance;
 - (viii) subject to the rights of Senior Lenders, the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development (or applied toward the cost of recovering such proceeds); and
 - (ix) subject to the rights of Senior Lenders, condemnation awards for a taking of part of all of the Development for a temporary period.

Gross Revenue does not include tenants' security deposits; loan proceeds; capital contributions; interest income earned on reserves, provided that the interest shall be considered reserve funds and is being used for the purposes for which the applicable reserve was established; lender impounds, provided that the interest is held by the lender and used for the purposes of the impound account; or similar advances.

(y) "Hayward's Additional Prorata Percentage" means the result, expressed as a percentage, of the total Approved Financing attributable to those lenders sharing in the Local Shared Portion of Residual Receipts, obtained by dividing (i) the amount of the Loan funds disbursed to Borrower in accordance with this Agreement, by (ii) the sum of the Loan funds disbursed in accordance with this Agreement and the amount of the County Loan funds disbursed in accordance with the documents evidencing the County Loan.

(z) "Hayward's Pro Rata Percentage" means the result, expressed as a percentage of the total Approved Financing attributable to those lenders sharing in the Lenders' Share of Residual Receipts, obtained by dividing (i) the amount of the Loan funds disbursed to Borrower in accordance with this Agreement, by (ii) the sum of: (1) the amount of the Loan funds disbursed; (2) the amount of the County Loan funds disbursed in accordance with the documents evidencing the County Loan; and (3) the amount of the MHP Loan funds disbursed in accordance with the documents evidencing the MHP Loan.

(aa) "Hayward's Share of Residual Receipts" means the sum of (i) the Hayward Prorata Percentage of Lenders' Share of Residual Receipts and (ii) the Hayward's Additional Prorata Percentage of the Local Shared Portion of Residual Receipts.

(bb) "Hazardous Materials" means: (1) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, Freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical, and (2) any waste, substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials", "toxic waste", "toxic substances," or words of similar import under any Hazardous Materials Law.

(cc) "Hazardous Materials Claim" means with respect to the Property (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any Hazardous Materials Law; and (ii) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials.

(dd) "Hazardous Materials Law" means any federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments thereto as of this date and to be added in the future and any successor statute or rule or regulation promulgated thereto.

(ee) "HCD" means the California Department of Housing and Community Development.

(ff) "Improvements" has the meaning set forth in Recital C, above.

(gg) "Investor Limited Partner" means MCC Housing, LLC, a California limited liability company, or an affiliate thereof, and its successors and assigns.

- (hh) "Lenders' Designated Representative" means the person serving as the City Manager of the City and the Executive Director of the Authority.
- (ii) "Lender's Share of Residual Receipts" means fifty percent (50%) of Residual Receipts.
- (jj) "Loan" has the meaning set forth in Recital D, above.
- (kk) "Loan Documents" means this Agreement, the Note, the Regulatory Agreement, the Deed of Trust, and the Notice of Affordability.
- (ll) "Local Shared Portion of Residual Receipts" means twenty-five percent (25%) of Residual Receipts.
- (mm) "Net Proceeds of Permanent Financing" means the amount by which Permanent Financing exceeds the Final Development Costs.
- (nn) "Note" means the promissory note that will evidence Borrower's obligation to repay the Loan. The form of the Note shall be provided by the Lenders.
- (oo) "Notice of Affordability" means that certain Notice of Affordability Restrictions on Transfer of Property, to be recorded against the Property.
- (pp) "Parties" means the Lenders and Borrower.
- (qq) "Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership executed by Allied 2595 Depot LLC, a California limited liability company, as the managing general partner, and the Investor Limited Partner, governing the operation and organization of Borrower
- (rr) "Partnership/Asset Management Fee" means (i) partnership management fees (including any asset management fees) payable pursuant to the Partnership Agreement to any partner of Borrower during the Fifteen Year Compliance Period, and (ii) after the expiration of the Fifteen Year Compliance Period asset management fees payable to Borrower or any partner of Borrower, in the amounts approved by the Lenders as set forth in Section 3.18, below.
- (ss) "Permanent Closing" means the closing of the MHP Loan and the payoff of the Bank Loan
- (tt) "Permanent Financing" means the sum of the following amounts: (1) the County Loan; (2) the Loan; (3) the Tax Credit Equity; (4) the Sponsor Loan; (5) the GP Equity Contribution; and (6) the MHP Loan.
- (uu) "Property" has the meaning set forth in Recital B.
- (vv) "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants between the Lenders and the Borrower, associated with the Loan, to be recorded against the Property.

(ww) "Residual Receipts" means in a particular calendar year the amount by which Gross Revenue exceeds Annual Operating Expenses.

(xx) "Senior Lender" has the meaning set forth in Section 2.5.

(yy) "Senior Loan" has the meaning set forth in Section 2.5.

(zz) "TCAC" means the California Tax Credit Allocation Committee.

(aaa) "Term" means the term of the Loan, commencing on the date of this Agreement and unless sooner terminated in accordance with this Agreement, continues until fifty-seventh year after the date the Deed of Trust and Regulatory Agreement are recorded against the Property.

(bbb) "Transfer" has the meaning set forth in Section 4.12 below.

(ccc) "Unit" means one (1) of the one hundred twenty-five (125) units to be constructed on the Property, including one (1) unrestricted manager's unit.

Section 1.2 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A: Legal Description of the Property

Exhibit B: Approved Development Budget

ARTICLE 2
LOAN PROVISIONS

Section 2.1 Loan.

The Lenders shall loan to the Borrower the Loan in the principal amount of Five Million Eight Hundred Ten Thousand Dollars (\$5,810,000), for the purposes set forth in Section 2.3 of this Agreement. The obligation to repay the Loan shall be evidenced by the Note in the form provided by the Lenders.

Section 2.2 Interest.

(a) Subject to the provisions of Section 2.2(b) below, the outstanding principal balance of the Loan shall accrue simple interest at the rate of one percent (1%) per annum, commencing on the date of disbursement.

(b) In the event of a Default, interest on the Loan shall begin to accrue, as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law (the "Default Rate").

Section 2.3 Use of Loan Funds.

(a) The Borrower shall use the Loan to fund the acquisition, predevelopment costs and construction of the Development, specifically excluding any costs associated with the Commercial Premises. Such funding and construction shall be consistent with the Approved Development Budget.

(b) The Borrower shall not use the Loan funds for any other purposes without the prior written consent of the Lenders.

Section 2.4 Security.

Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and recording it as a lien against the Property junior in lien priority to the Regulatory Agreement and the Approved Encumbrances. The Regulatory Agreement must be recorded senior to the Bank's deed of trust and may not be subordinated except: (1) if required by HCD's applicable regulations, to the deed of trust benefiting HCD and securing the MHP Loan and the regulatory agreement between Borrower and HCD evidencing the MHP Loan; and (2) to the regulatory agreement associated with the County Loan. Any such subordination shall be made pursuant to a subordination agreement that is acceptable to the Lenders.

Section 2.5 Subordination.

(a) Any agreement by the Lenders to subordinate the Deed of Trust to security for the Bank Loan, or any loan obtained by Borrower to refinance the Bank Loan (each a "Senior Loan"), is subject to the satisfaction of the following conditions:

(i) All of the proceeds of any proposed Senior Loan, less any transaction costs, must be used to provide construction and/or permanent financing for the Development.

(ii) The proposed lender of a Senior Loan (each a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation, or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(iii) Borrower demonstrates to the Lenders' reasonable satisfaction that subordination of the Deed of Trust is necessary to secure adequate construction and/or permanent financing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower must provide to the Lenders, in addition to any other information reasonably required by the Lenders, evidence demonstrating that the proposed amount of any Senior Loan is necessary to provide adequate acquisition, construction, and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(iv) The subordination agreement(s) must be structured to minimize the risk that the Deed of Trust would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Loan. To satisfy this requirement, the subordination agreement(s) must provide the Lenders with adequate rights to cure any defaults by Borrower, including: (i) providing the Lenders or their successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the Lenders with a cure period of at least sixty (60) days to cure any default.

(v) Any subordination of the Loan is effective only during the original term of any Senior Loan (including contemplated extension described in the documents evidencing the Senior Loan) and any additional extensions of its term that is approved in writing by the Lenders.

(vi) The subordination does not limit the effect of the Deed of Trust before a foreclosure, nor require the consent of the Senior Lender prior to the Lenders exercising any remedies available to the Lenders under the Loan Documents, unless set forth in the Subordination Agreement or expressly approved by the City in writing.

(b) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

Section 2.6 Conditions Precedent to Disbursement of Loan Funds.

(a) The maximum amount of funds to be disbursed pursuant to this Section shall not exceed Five Million Two Hundred Twenty-Nine Thousand Dollars (\$5,229,000). The Lenders shall not be obligated to make any disbursements of Loan funds for acquisition, predevelopment and construction of the Development or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to each such disbursement of Loan Funds:

(i) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.

(ii) Borrower holds fee title to the Property.

(iii) Borrower has delivered to the Lenders a copy of a corporate resolution authorizing Borrower's execution of the Loan Document.

(iv) The Borrower has furnished the Lenders with evidence of the insurance coverage meeting the requirements of Section 4.13 below.

(v) Borrower has All Applicable Governmental Approvals necessary to construct the Improvements.

(vi) Borrower has caused to be executed and delivered to the Lenders all Loan Documents and any other instruments, and policies required under the Loan Documents.

(vii) The Deed of Trust, the Regulatory Agreement, and the Notice of Affordability are recorded against Borrower's fee interest in the Property, in the Office of the Recorder of the County of Alameda.

(viii) There exists no material adverse change in the financial condition of Borrower from that shown by the financial statements and other data and information furnished by Borrower to the Lenders prior to the date of this Agreement;

(ix) Borrower has delivered to the Lenders a copy of the Partnership Agreement, in which the Investor Limited Partner is obligated to provide Borrower the Tax Credit Equity in the amount shown in the Approved Development Budget (subject to adjustment pursuant to the terms thereof) and the Lenders have approved the Partnership Agreement.

(x) Borrower has caused to be executed and delivered to the Lenders an agreement with a construction inspector as required under Section 3.15, below and Borrower has paid the construction inspection fee (if any) required to be paid.

(xi) All environmental review necessary for the Construction Work has been completed, and Borrower has provided the Lenders evidence of planned compliance with all mitigation measures applicable to construction.

(xii) The Lenders have received and approved labor and material (payment) bonds and performance bonds as required pursuant to Section 3.4 below.

(xiii) A title insurer reasonably acceptable to the Lenders is unconditionally and irrevocably committed to issuing an LP-10 2006 ALTA Lender's Policy of title insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to the Lenders, and containing such endorsements as the Lenders may reasonably require. The Borrower shall provide whatever documentation (including an indemnification agreement), deposits or surety as is reasonably required by the title company in order for the Lenders' Deed of Trust to be senior in lien priority to any mechanics liens in connection with any early start of construction.

(xiv) The Lenders have determined that the undisbursed proceeds of the Loan are not less than the amount that is necessary to pay for construction of the Development in accordance with the Approved Development Budget and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement.

(xv) The Lenders have received and approved the contract or contracts that the Borrower has entered or proposed to enter for construction of the Development as required pursuant to Section 3.3 below.

(xvi) The Lenders have received a written draw request from the Borrower, including certification that the condition set forth in Section 2.5(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

(b) When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by (i) certification reasonably acceptable to the Lenders that the work for which disbursement is requested has been completed (although the Lenders reserves the right to inspect the Property and make an independent evaluation); and (ii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the Lenders.

Section 2.7 Conditions Precedent to Disbursement of Retention.

(a) The Lenders shall not be obligated to disburse the final Five Hundred Eighty One Thousand Dollars (\$581,000) of Loan funds which comprise the retention amount of the Loan unless the following conditions precedent are satisfied:

(i) The Lenders have received a completion report from the Borrower setting forth the tenant's name, income, date of last income/eligibility certification, household size, and ethnicity of tenants of the Development and the unit size, rent amount and utility allowance for all units in the Development, in a format acceptable to the Lenders.

(ii) The Lenders have received a draft cost certification pursuant to Section 4.1.

(iii) The Lenders have received from the Borrower copies of the final notice of completion for the construction of Development and the notice of completion has been recorded against title to the Property, or other equivalent document.

(iv) The Lenders have received from the Borrower current evidence of the insurance coverage meeting the requirements of Section 4.13 below.

(v) The Lenders have received from Borrower a form of lease and marketing plan for the Development.

(vi) The Lenders have received from Borrower evidence of marketing for any vacant units in the Development such as copies of flyers, list of media ads, list of agencies and organizations receiving information on availability of units, as applicable.

(vii) The Lenders have received from Borrower all relevant contract activity information.

(viii) The Lenders have received from Borrower contact information for the property manager of the Development and the name and phone number of the on-site property manager.

(ix) If the Borrower was required to pay prevailing wages the Lenders have received from Borrower all certified payrolls, and any identified payment issues have been resolved, or the Borrower is working diligently to resolve.

(x) The Lenders have received a written draw request from the Borrower, including certification that the condition set forth in Section 2.5(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development

Budget, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. Borrower shall apply the disbursement for the purpose(s) requested.

Section 2.8 Repayment Schedule.

The Loan shall be repaid as follows:

(a) Annual Payments. Commencing on May 1, 2024, and on May 1st of each calendar year thereafter through the end of the Term, Borrower shall make repayments of the Loan equal to Hayward's Share of Residual Receipts. Payments made shall be credited first against accrued interest and then against outstanding principal. All payments received by the Lenders shall be credited pari-passu by the City and Authority. The Authority shall deposit all payments received hereunder to the Authority's Low and Moderate Income Housing Asset Fund.

(b) Net Proceeds Special Repayment.

(i) No later than ten (10) days after the date Borrower receives its final capital contribution from the Investor Limited Partner, Borrower shall pay to the Lenders as a special repayment of the Loan, an amount equal to Hayward's Additional Prorata Percentage of the Net Proceeds of Permanent Financing. If required by HCD's regulations, the amount of the Net Proceeds of Permanent Financing paid to the Lenders shall not exceed the total contingency approved by the Lenders in the Approved Development Budget.

(ii) No later than sixty (60) days following completion of the Construction Work, Borrower shall submit to the Lenders for review a preliminary calculation of the Net Proceeds of Permanent Financing and a draft of the Final Cost Certification. The Lenders shall approve or disapprove Borrower's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days after receipt. If Borrower's determination is disapproved by the Lenders, Borrower shall re-submit documentation to the Lenders until the Lenders approval is obtained.

(c) Payment in Full. All principal and interest on the Loan shall be due on the earliest of: (1) a Transfer of the Development (or any portion thereof) other than a Transfer as permitted or approved by the Lenders as provided in Section 4.11; (2) the occurrence of a Default for which the Lenders exercise their right to cause the Loan indebtedness to become immediately due and payable, or for which the Loan indebtedness is automatically specified to become immediately due and payable pursuant to applicable subsections of Section 6.1 below; or (3) the expiration of the Term.

(d) Prepayments. The Loan may be prepaid at any time without prepayment premium or penalty; provided, however, the Regulatory Agreement and Deed of Trust (as security for the Regulatory Agreement) shall remain in effect for the entire Term, regardless of any payment or prepayment.

Section 2.9 Reports and Accounting of Residual Receipts.

(a) Borrower shall keep and maintain at the principal place of business of Borrower set forth in Section 7.9 below, or elsewhere with the Lenders' written consent, full, complete and appropriate books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts and disbursements of Residual Receipts.

(b) In connection with payments of the Loan, Borrower shall furnish to the Lenders:

(i) A statement of Residual Receipts for the relevant period. The first statement of Residual Receipts will cover the period that begins on January 1, 2023 and ends on December 31st of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

(ii) A statement from the independent public accountant that audited Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of Residual Receipts, the Lenders' Share of Residual Receipts, the Local Shared Portion of Residual Receipts, and Hayward's Share of Residual Receipts is accurate based on Gross Revenue and Annual Operating Expenses; and

(iii) Any additional documentation reasonably required by the Lenders to substantiate Borrower's calculation of Residual Receipts.

(c) The receipt by the Lenders of any statement pursuant to subsection (b) above or any payment by Borrower or acceptance by the Lenders of any Loan repayment for any period does not bind the Lenders as to the correctness of such statement or payment. The Lenders may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 4.5 below.

Section 2.10 Non-Recourse.

Except as provided below, neither the Borrower nor any of its partners shall have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of the Borrower under the Deed of Trust. Following recordation of the Deed of Trust, the sole recourse of the Lenders with respect to the principal of, or interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust shall be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Lenders thereunder, or (b) be deemed in any way to impair the right of the Lenders to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of the Borrower's obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the Lenders under Sections 3.7, 3.8, 4.6, and 7.4 of this Agreement or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures

removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

ARTICLE 3
CONSTRUCTION OF THE DEVELOPMENT

Section 3.1 Permits and Approvals.

No later than the date set forth in the Schedule, the Borrower shall obtain all permits and approvals necessary for the construction of the Development, or such later date that the Lenders may approve or the Lenders, at their option, and with thirty (30) days' written notice and opportunity to cure, may declare Borrower in default hereunder.

Section 3.2 Construction Plans.

(a) Simultaneously with submission to the City building department, Borrower shall submit to the Lenders a copy of the Construction Plans for the Development. As used in this Agreement, "Construction Plans" means all documentation upon which shall be relied upon in performing the construction work.

(b) The Lenders shall, if the Construction Plans submitted conform to the provisions of this Agreement, approve in writing such Construction Plans. Unless rejected by the Lenders for their failure to comply with the foregoing requirements within thirty (30) days of submission by Borrower, said Construction Plans shall be deemed accepted. If rejected by the Lenders in whole or in part, Borrower shall submit new or corrected Construction Plans within thirty (30) days of notification of the Lenders' rejection and the reasons therefore. The Lenders shall then have thirty (30) days to review and approve Borrower's new or corrected Construction Plans. The provisions of this Section relating to time periods for approval, rejection, or resubmission of new or corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the Lenders.

Section 3.3 Construction Contract.

(a) Not later than ten (10) days prior to the proposed commencement of construction of the Development, the Borrower shall submit to the Lenders for approval the proposed contract or contracts for the construction work to be performed in accordance with this Agreement. All work and professional services shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California. Each contract that the Borrower enters for construction of the Development shall provide that at least ten percent (10%) of the costs incurred shall be payable only upon completion of the construction, subject to early release of retention or waiver of retention requirement for specified subcontractors upon approval by the Lenders. The Lenders' approval of the construction contract shall in no way be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement.

(b) Upon receipt by the Lenders of a proposed construction contract, the Lenders shall promptly review same and approve or disapprove it within five (5) working days. Lender shall approve the construction contract if submitted contract conforms to the provisions of this Agreement. If the construction contract or contract is not approved by the Lenders, the Lenders shall set forth in writing and notify the Borrower of the Lenders' reasons for withholding such

approval. The Borrower shall thereafter submit a revised construction contract for Lenders' approval, which approval shall be granted or denied in ten (10) working days in accordance with the procedures set forth above. Any contract executed by the Borrower for the performance of the construction work shall be in the form approved by the Lenders.

Section 3.4 Construction Bonds.

Prior to commencement of construction of the Development, the Borrower shall deliver to the Lenders copies of labor and material bonds and performance bonds for the construction of the Development in an amount equal to one hundred percent (100%) of the scheduled cost of the construction of the Improvements in the Approved Development Budget. Such bonds shall name the Lenders as the co-obligees.

Section 3.5 Commencement of Construction.

Borrower shall cause the commencement of construction of the Development no later than October 31, 2021, or such later date as the Lenders may approve. For the purposes of this Agreement, "Commencement of Construction" means the date set for the start of construction of the Improvements in the notice to proceed issued by Borrower to Borrower's general contractor

Section 3.6 Completion of Construction.

(a) Borrower shall diligently prosecute construction of the Development to completion, and shall cause the completion of the construction of the Development no later than October 31, 2023, or such later date that the Lenders may approve.

(b) Borrower shall record a Notice of Completion within the time set forth in Section 8182 of the California Civil Code and provide the Lenders a copy of the recorded Notice of Completion.

(c) Borrower shall provide the Lenders a copy of the Certificate of Occupancy, or equivalent permit sign-off within ten (10) days of receipt from the City.

Section 3.7 Construction Pursuant to Plans and Laws; Prevailing Wages; Accessibility.

(a) Change Orders. Borrower shall construct the Development in conformance with the Approved Development Budget and Construction Plans approved by the Lenders. Borrower shall notify the Lenders in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the Improvements and Construction Plans approved by the Lenders. A written change order authorized by the Lenders must be obtained before any of the following changes, additions, or deletions in work for the Development may be performed: (1) any change in the work the cost of which exceeds One Hundred Fifty Thousand Dollars (\$150,000); or (2) any set of changes in the work the cost of which cumulatively exceeds Five Hundred Thousand Dollars (\$500,000); or (3) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development and Construction Plans approved by the Lenders. Consent to any additions, changes, or deletions to the work shall not relieve or release Borrower from any

other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond.

(b) Compliance with Laws. Borrower shall cause work performed in connection with the Development to be performed in compliance with (i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, including without limitation state prevailing wages pursuant to Labor Code Section 1770 et seq., and the regulations pursuant thereto, as further set forth in subsection (C) below; (ii) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower shall be responsible to the Lenders for the procurement and maintenance thereof, as may be required of Borrower and all entities engaged in work on the Development.

(c) Borrower shall comply with any laws related to construction wages pursuant to Labor Code Sections 1720 et seq., and the hiring of apprentices pursuant to Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"), if and to the extent applicable to the Development. As applicable, Borrower shall and shall cause the contractor and subcontractor to pay prevailing wages, and keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Section 1720 et seq., and whether apprentices have been employed as required by Labor Code Sections 1777.5 et seq. Borrower shall also comply with the terms and provisions of the Lenders' prevailing wage policy as required by and as set forth in Ordinance Number 88-02. The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Lenders) the Lenders against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Borrower, and its contractor and subcontractors) to comply with this Section 3.7 and to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development or any other work undertaken or in connection with the Property. The requirements in this Subsection shall survive the repayment of the Loan, and the reconveyance of the Deed of Trust.

Section 3.8 Relocation.

If and to the extent that construction of the Development results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with all applicable local, state, and federal statutes and regulations, (including without limitation California Government Code Section 7260 et seq., and accompanying regulations) with respect to relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Lenders) the Lenders against any claim for damages, compensation, fines, penalties, relocation payments or other amounts arising out of the failure or alleged failure of any person or entity

(including the Borrower or the Lenders) to satisfy relocation obligations related to the acquisition and construction of the Development.

Section 3.9 Marketing Plan.

(a) Prior to issuance of a building permit for the Development the Borrower shall submit to the Lenders a preliminary marketing plan. The sooner of (i) at least one hundred twenty (120) days prior to construction completion; or (ii) sixty (60) days prior to marketing the Development, Borrower shall submit to the Lenders a final marketing plan for approval its plan for marketing the Development to income-eligible households as required pursuant to the Regulatory Agreement, including information on affirmative marketing efforts and compliance with fair housing laws. The marketing plan must include, among other items, descriptions of how the availability of the Restricted Rental Unit shall be advertised, how application shall be accepted, and applicants ranked and qualified, a draft application form, procedures for complying with fair housing laws, and a tentative timeline including an application deadline and milestones for tenant selection. The marketing plan will include procedures to affirmatively market the Restricted Rental Unit in a manner that will further fair housing. The marketing plan will provide for and the Developer will market the rental of the Restricted Rental Unit in languages other than English. The Developer, at a minimum, shall provide marketing in Spanish, Mandarin, Tagalog, and Vietnamese, or in the languages other than English as required under the City's Language Access Plan, as such may be amended from time to time.

(b) Upon receipt of the Marketing Plan, the Lenders shall promptly review the Marketing Plan and shall approve or disapprove it within fifteen (15) days after submission. If the Marketing Plan is not approved, Borrower shall submit a revised Marketing Plan within fifteen (15) days. If the Lenders do not approve the revised Marketing Plan, Borrower shall be in default hereunder.

Section 3.10 Equal Opportunity.

During the construction of the Development there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, familial status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the construction work.

Section 3.11 Minority and Women-Owned Contractors.

Borrower will use best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Development. Borrower shall, at a minimum, notify applicable minority-owned and women-owned business firms located in the City of Hayward and Alameda County of bid opportunities for the construction of the Development. Documentation of such notifications shall be maintained by Borrower and available to the Lenders as requested.

Section 3.12 Progress Reports.

Until such time as Borrower has recorded a notice of completion for the construction of the Development against the Property, Borrower shall provide the Lenders with quarterly

progress reports regarding the status of the construction of the Development, including a certification that the actual construction costs to date conform to the Approved Development Budget, as it may be amended from time to time pursuant to Section 3.16 below.

Section 3.13 Construction Responsibilities.

(a) It shall be the responsibility of Borrower to coordinate and schedule the work to be performed so that commencement and completion of the construction will take place in accordance with this Agreement.

(b) Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Development, including (but not limited to) the quality and suitability of the construction work, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the Lenders with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to the Lenders, and should not be relied upon by Borrower or by any third parties as a warranty or representation by the Lenders as to the quality of the design or construction of the Development.

Section 3.14 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on the Lenders or any other lender or other third party in connection with the Development, then Borrower shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the Lenders a surety bond in sufficient form and amount, or provide the Lenders with other assurance satisfactory to the Lenders that the claim of lien or stop notice will be paid or discharged.

(b) If Borrower fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the Lenders may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternately, the Lenders may require Borrower to immediately deposit with the Lenders the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The Lenders may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

(c) Borrower shall file a valid notice of cessation upon cessation of construction work on the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes the Lenders, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the Lenders deems necessary or desirable to protect their interest in the Development and Property.

Section 3.15 Inspections.

(a) Borrower shall permit and facilitate, and shall require the contractors to permit and facilitate, observation and inspection at the Development by the Lenders and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

(b) After the completion of an inspection, the Lenders shall deliver a copy of the inspection report to Borrower. If the Lenders determine, as a result of such inspection, that there are any life-threatening health and safety related deficiencies, Borrower has the obligation to correct such deficiencies immediately. If the Lenders determine, as a result of the inspection, that there are any deficiencies for any of the inspectable items in the Development, Borrower shall correct such deficiencies within fifteen (15) days from the delivery of the inspection report or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible. In addition, Borrower acknowledges that the Lenders may reinspect the Development to verify all deficiencies have been corrected or rely on third party documentation submitted by Borrower for non-hazardous deficiencies.

(c) Borrower shall engage a construction inspector selected or approved by the Lenders and paid for by Borrower to conduct inspections prior to, during, and after construction to ensure that work is done in accordance with applicable codes and pursuant to the terms of this Agreement. Alternatively if the lender of the Bank Loan has engaged a construction inspector, the Lenders shall have the right, but not the obligation, to agree to utilize the inspection reports prepared by such inspector in lieu of Borrower engaging a separate construction inspector as specified above, provided Lenders has the right to rely on such inspection reports without cost to the Lenders.

Section 3.16 Approved Development Budget; Revisions to Budget.

As of the date of this Agreement, the Lenders have approved the Approved Development Budget set forth in Exhibit B. Borrower shall submit any required amendments to the Approved Development Budget to the Lenders for approval within five (5) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Development Budget. Written consent of the Lenders shall be required to amend the Approved Development Budget. If rejected by the Lenders in whole or in part, Borrower shall submit a revised amendment to the Approved Development Budget within ten (10) days after notification of the Lenders' rejection and the reasons therefor. The Lenders shall then have ten (10) days to review and approve Borrower's revised amendment to the Approved Development Budget. The provisions of this Section relating to time periods for approval, rejection, or resubmission of amendments to the Approved Development Budget shall continue to apply until the amended Approved Development Budget has been approved by the Lenders. In the event of a conflict between the terms of the Approved Development Budget and the terms of the Loan Documents, the terms of the Loan Documents control.

Section 3.17 Developer Fee.

(a) For the purposes of this Agreement "Developer Fee" has the meaning set forth in California Code of Regulations, Title 4, Section 10302. The maximum cumulative developer fee (the "Developer Fee") that may be paid to any entity or entities providing development services

to the Development, whether paid up-front or on a deferred basis, shall not exceed the amount approved by the City in the Approved Development Budget. The City has approved Three Million Five Hundred Thousand Dollars (\$3,500,000) in Developer Fee, provided that any amount in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000) of the Developer Fee must be used by Borrower to benefit the Development or be deferred. Any non-priority deferred Developer Fee must be paid from Borrower's Share of Residual Receipts. The Approved Development Budget shows no deferred Developer Fee.

(b) Cost savings at completion. Subject to the rights of Senior Lenders, pursuant to Section 2.7(c), the Borrower may request to reduce the outstanding balance of the deferred Developer Fee subject to the Lenders' reasonable approval. Although the Lenders' approval is not required in order to increase the deferred Developer Fee, the Borrower shall notify the Lenders of any change to the amount of deferred Developer Fee.

Section 3.18 Partnership/Asset Management Fee.

(a) During the Fifteen Year Compliance Period, the Partnership/Asset Management Fee is not to exceed Twenty-Five Thousand Dollars (\$25,000) per year in the aggregate. After the expiration of the Fifteen Year Compliance Period, the Partnership/Asset Management Fee may continue but will convert to a Partnership/Asset Management Fee payable to Borrower or any partner of Borrower in an amount to be approved by the Lenders. Unpaid Partnership/Asset Management Fees may accrue for a period not to exceed three (3) fiscal years following the year during which they are earned.

(b) Any Partnership/Asset Management Fees above the amount approved in Subsection (a), escalators on the Partnership/Asset Management Fees, or incentive management fees if any, must be paid from Borrower's Share of Residual Receipts and are not considered Annual Operating Expenses.

ARTICLE 4
LOAN REQUIREMENTS

Section 4.1 Financial Accountings and Post-Completion Audits.

(a) No later than ninety (90) days following completion of construction of the Development, Borrower shall provide to the Lenders a financial accounting of all sources and uses of funds for the work performed in connection with the construction of the Development. No later than one hundred twenty (120) days following completion of construction of the Development, Borrower shall submit an audited financial report showing the sources and uses of all funds utilized for the construction of the Development. This requirement may be satisfied by providing the Final Cost Certification to the Lenders. "Final Cost Certification" means the Final Cost Certification Sources and Uses of Funds prepared by Borrower for the Development that: (i) Borrower submits to TCAC; and (ii) has been prepared using generally accepted accounting standards in effect in the United States of America from time to time, consistently applied.

Section 4.2 Annual Operating Budget.

At the beginning of each year of the Term, Borrower shall provide to the Lenders an annual budget for the operation of the Development. Unless rejected by the Lenders in writing, said budget shall be deemed accepted. If rejected by the Lenders in whole or in part, Borrower shall submit a new or corrected budget within thirty (30) calendar days of notification of the Lenders' rejection and the reasons therefore. The Lenders shall then have fifteen (15) calendar days to review and approve the new or corrected budget. The provisions of this Section relating to time periods for approval, rejection, or resubmission of new or corrected budget shall continue to apply until such budget has been approved by the Lenders.

Section 4.3 Information.

Borrower shall provide any information reasonably requested by the Lenders in connection with the Development, and in connection with Borrower's use of the Loan funds.

Section 4.4 Records.

(a) The Borrower shall keep and maintain at the Development, or elsewhere with the Lenders' written consent, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's compliance with the terms and provisions of this Agreement. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement. All such books, records, and accounts shall be open to and available for inspection to and copying by the Lenders, their auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the Lenders at the place that the books, records and accounts of the Borrower are kept. The Borrower shall preserve such records for a period of not less than five (5) years after the creation of such records. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then the Borrower shall retain such records until such action and all related issues are resolved. Such records shall include all invoices, receipts, other documents related to expenditures from the Loan funds, and payrolls evidencing that prevailing wages have been paid, if applicable. Records must be kept accurate and current.

(b) The Lenders shall notify Borrower of any records it deems insufficient. Borrower shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the Lenders in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

Section 4.5 Lenders Audits.

Each year, Borrower shall provide the Lenders with a copy of Borrower's annual audit, which shall include information on all of Borrower's activities and not just those pertaining to the Development. In addition, the Lenders or any designated agent or employee of the Lenders at

any time shall be entitled to audit all of Borrower's books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the Lenders shall deliver a copy of the results of such audit to Borrower.

Section 4.6 Hazardous Materials.

(a) Borrower shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any Hazardous Materials Laws. Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any Hazardous Materials, except such of the foregoing as may be customarily used in construction of projects like the Development or kept and used in and about residential Property of this type.

(b) Borrower shall immediately advise the Lenders in writing if at any time it receives written notice of (i) any and all Hazardous Materials Claims; and (iii) Borrower's discovery of any occurrence or condition on any real Property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone Property" under the provision of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) The Lenders shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have their reasonable attorneys' fees in connection therewith paid by Borrower. Borrower shall indemnify and hold harmless the Lenders and their council members, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the Lenders in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees and consultant's. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability and expenses covered by this indemnification provision, include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties). This obligation to indemnify shall survive termination of this Agreement.

(d) Without the Lenders' prior written consent, which shall not be unreasonably withheld, Borrower shall not take or permit any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement

agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the Lenders' reasonable judgment, impair the value of the Lenders' security hereunder; provided, however, that the Lenders' prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the Lenders' consent before taking such action, provided that in such event Borrower shall notify the Lenders as soon as practicable of any action so taken. The Lenders agrees not to withhold their consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Borrower will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Borrower establishes to the reasonable satisfaction of the Lenders that there is no reasonable alternative to such remedial action which would result in less impairment of the Lenders' security hereunder; or (iv) the action has been agreed to by the Lenders.

(e) Borrower hereby acknowledges and agrees that (i) this Section is intended as the Lenders' written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(f) In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Lenders' or the trustee's rights and remedies under the Deed of Trust, the Lenders may elect to exercise their rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Borrower to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Lenders' right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Borrower knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) reasonable attorneys' fees, incurred by the Lenders in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the Lenders upon their demand made at any time following the conclusion of such action.

Section 4.7 Maintenance and Damage.

(a) During the course of both construction and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving a Lenders notice of such a condition, then in addition to any other rights available to the Lenders, the Lenders shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) Subject to the requirements of senior lenders, and if economically feasible in the Lenders' reasonable judgment after consultation with the Borrower, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the Construction Plans approved by the Lenders with such changes as have been approved by the Lenders. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the Lenders in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and shall be complete within one (1) year thereafter. Subject to the rights of senior lenders, any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then Borrower shall make up the deficiency. If Borrower does not make repairs or cause such repairs to be made, then any insurance proceeds collected for such damage or destruction shall be used to repay the Loan, subject to the rights of the senior lenders.

Section 4.8 Fees and Taxes.

Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by Borrower, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the Lenders, Borrower deposits with the Lenders any funds or other forms of assurance that the Lenders in good faith from time to time determines appropriate to protect the Lenders from the consequences of the contest being unsuccessful.

Section 4.9 Notice of Litigation.

Borrower shall promptly notify the Lenders in writing of any litigation materially known to Borrower affecting Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

Section 4.10 Operation of Development as Affordable Housing.

(a) Promptly after completion of construction, the Borrower shall operate the Development as an affordable housing development consistent with (i) this Agreement, and (ii) the Regulatory Agreement.

(b) Prior to close of the Loan, the Borrower shall submit its proposed form of lease agreement for the Lenders' review and approval.

(c) Prior to close of the Loan, the Borrower must provide to the Lenders, for review and approval, the Borrower's written tenant selection plan.

(d) The Borrower must determine the income eligibility of each tenant household in Development pursuant to the Lenders' approved tenant certification procedures. For new tenants such certification will be completed within sixty (60) days before the household's expected occupancy of one of the Development's units. The Borrower shall certify each tenant household's income on an annual basis.

(e) The maximum household income of a household occupying a unit in the Development, and the total charges for rent, utilities, and related services to each household occupying the Development, shall be maintained as provided in the Regulatory Agreement.

Section 4.11 Nondiscrimination.

The Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, familial status, source of income, ancestry or national origin, Vietnam era veteran's status, political affiliation, HIV/AIDS, or any other arbitrary basis in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development, nor may Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development, or in connection with the employment of persons for the construction, operation and management of the Development. Notwithstanding the above, with respect to familial status, the above should not be construed to apply to housing for older persons as defined in Section 12955.9 of the Government Code and other applicable sections of the Civil Code as identified in Health and Safety Code Section 33050(b). The foregoing covenant runs with Borrower's interest in the land. Nothing in this Section prohibits Borrower from requiring units in the Development to be available to and occupied by eligible households in accordance with the Regulatory Agreement.

Section 4.12 Transfer.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title. "Transfer" shall exclude the leasing of any single unit in the Development to an occupant in compliance with the Regulatory Agreement. The Lenders' Designated Representative is authorized to execute assignment and assumption agreements on behalf of the Lenders to implement any approved Transfer. Notwithstanding anything herein to the contrary, a transfer pursuant to a foreclosure, deed in lieu of foreclosure, power of sale or similar action of the security instrument securing the Bank Loan and the subsequent sale to a

purchaser at a foreclosure sale shall not be deemed a "Transfer" hereunder and shall not require the prior consent of the Lenders.

(b) Except as otherwise permitted in this Section 4.12, no Transfer shall be permitted without the prior written consent of the Lenders, which the Lenders may withhold in their sole discretion. The Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the Lenders.

(c) The Lenders approve the grant of the security interests in the Property described in Section 2.4 above.

(d) The Lenders hereby approve future Transfers of the limited partner interest in the Borrower, provided that (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the Partnership Agreement approved by the Lenders; (ii) in subsequent Transfers, the initial limited partner or a wholly owned affiliate of the initial limited partner retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(e) The Lenders hereby approve a Transfer of the Property from Borrower to Allied, or a non-profit affiliate thereof, and an assumption of the Loan by such transferee at or prior to the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, (ii) the assignment and assumption agreement evidencing such Transfer requires the transferee to expressly assume the obligations of Borrower under the Loan Documents, and (iii) the Lenders are provided executed copies of all documents evidencing the Transfer.

(f) The Lenders hereby approve the Transfer of the Investor Limited Partner interest to Allied, or a non-profit affiliate of Allied, at or prior to the end of the Fifteen Year Compliance Period, provided that (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, and (ii) the Lenders are provided executed copies of all documents evidencing the Transfer.

(g) In the event the general partner of Borrower is removed by the Investor Limited Partner of Borrower for cause following default under the Partnership Agreement, the Lenders hereby approve the Transfer of the general partner interest to (i) a nonprofit corporation that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (the "Code"), or a limited liability company whose sole member is a nonprofit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, selected by the Investor Limited Partner and approved by the Lenders in writing, which approval shall not be withheld unreasonably and (ii) the Investor Limited Partner or an affiliate thereof but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above.

(h) The Lenders approve the grant of the security interests required to secure the Approved Financing.

Section 4.13 Insurance Requirements.

The Borrower shall maintain the following insurance coverage throughout the Term of the Loan:

(a) Worker's Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Comprehensive General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(d) Builders' risk insurance during the course of the construction, and, upon completion of construction, property insurance covering the Development, in form appropriate for the nature of such Property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the Lenders, naming the Lenders as Loss Payees, as their interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) Blanket Fidelity Bond covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000) naming the Lenders as Loss Payees, as their interests may appear.

The Borrower shall cause any general contractor, agent, or subcontractor working on the Development under direct contract with the Borrower, or subcontractor to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for comprehensive general liability insurance for subcontractors shall be One Million Dollars (\$1,000,000), and shall require that such insurance shall meet all of the general requirements of subsections (f), (g), and (h) below, including, without limitation, the requirement of subsection (g). .

(f) The required insurance shall be provided under an occurrence form, and Borrower shall maintain the coverage described in subsections (a) through (d) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(g) Comprehensive General Liability and Comprehensive Automobile Liability and Property insurance policies to be maintained by such contractors and agents pursuant to this Section shall be endorsed to name as additional insureds the Lenders, their officers, agents, employees and members of their governing boards.

(h) All policies and bonds shall contain (a) the agreement of the insurer to give the Lenders at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (b) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the Lenders; (c) a provision that no act or omission of the Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the Lenders and authorized parties in connection with any loss or damage thereby insured against.

Section 4.14 Mandatory Language in all Subsequent Deeds, Leases and Contracts.

All deeds, leases, or contracts entered into by the Borrower as to any portion of the Property shall contain the following language:

(a) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection,

location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 4.15 Covenants Regarding Approved Financing and Partnership Agreement.

(a) Borrower shall promptly pay the principal and interest when due on any Approved Financing.

(b) Borrower shall promptly notify the Lenders in writing of the existence of any default under any documents evidencing Approved Financing whether or not a default has been declared by the lender, and any defaults under the Partnership Agreement, and provide the Lenders copies of any notice of default.

(c) Borrower may not amend, modify, supplement, cancel or terminate the Partnership Agreement or any documents related to any loan that is part of the Approved Financing without the prior written consent of the Lenders except for amendments solely to effectuate Transfers permitted under Section 4.11 above. Borrower shall provide the Lenders copies of all amendments, modifications, and supplements to the Partnership Agreement and any document related to any loan that is part of Approved Financing.

(d) Borrower may not incur any indebtedness of any kind (other than Approved Financing) or encumber the Development with any liens (other than liens for Approved Financing approved by the Lenders, including protective advances made thereunder) without the prior written consent of the Lenders.

(e) To the extent the Partnership Agreement is inconsistent with this Agreement with respect to the repayment of the Loan including, without limitation, the Residual Receipts definition and the payment provisions of Section 2.8 above, this Agreement will control. Any payments made in conflict with the Residual Receipts definition and payment requirements of this Agreement will be considered a Default.

Section 4.16 Refinance/Resyndication Transaction

(a) If in the event of a Transfer, resyndication, or refinancing, (collectively, the "Sale" or "Refinance"), Borrower desires to withdraw excess proceeds or transfer proceeds from the Refinance ("Excess Proceeds"), the Sale, Refinance or withdrawal of Excess Proceeds is subject to the written consent of the Lenders. In approving the Sale or Refinance and the withdrawal of Excess Proceeds the Lenders will consider: (i) the effect of the Sale or Refinance and the withdrawal of Excess Proceeds on the financial viability and physical needs of the Development; and (ii) current asset management compliance, and may require; (x) an extension of the term of the Regulatory Agreement; (y) sharing the Excess Proceeds with Borrower to partially pay down the Loan; and (z) the use of the Excess Proceeds for tax exempt charitable purposes and additional affordable housing developments.

(b) Borrower shall be required to pay the Lender's reasonable staff and third-party consultant fees associated with the review and approval of a Sale or Refinance.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

Section 5.1 Representations and Warranties.

Borrower hereby represents and warrants to the Lenders as follows:

(a) Organization. Borrower is a duly organized California limited partnership validly existing and in good standing under the laws of the State of California and has the power and authority to own its Property and carry on its business as now being conducted.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly

authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or Property of Borrower, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the Lenders pursuant hereto.

(h) Title to Land. At the time of recordation of the Deed of Trust, Borrower will have good and marketable fee title to the Development and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real Property taxes and liens in favor of the Lenders and Approved Encumbrances or approved in writing by the Lenders.

(i) Financial Statements. The financial statements of Borrower and other financial data and information furnished by Borrower to the Lenders fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of Borrower from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Borrower holds sufficient funds and/or binding commitments for sufficient funds to complete the construction of the Development.

(k) Taxes. Borrower and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or the Property otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principals. There is no proposed tax assessment against Borrower or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect upon the Property, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Borrower and its subsidiaries, taken as a whole, which would be expected to result in a material impairment of the ability of Borrower to perform under any Loan Document to which it is a party, or a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

ARTICLE 6 DEFAULT AND REMEDIES

Section 6.1 Events of Default.

Each of the following shall constitute a "Default" by Borrower under this Agreement:

(a) Failure to Construct. Failure of Borrower to commence and complete construction of the Development within the times set forth in Article 3 above, subject to force majeure.

(b) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days of receipt of written notice from the Lenders that such payment is due pursuant to the Loan Documents.

(c) Breach of Covenants. Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Lenders to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

(d) Default Under Other Loans. A default is declared and all applicable cure periods have expired under any other financing for the Development by the lender of such financing.

(e) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower or Borrower's general partner (or the member of such general partner) to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or Borrower's general partner (or the member of such general

partner), or seeking any arrangement for Borrower or Borrower's general partner (or the member of such general partner), under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower or Borrower's general partner (or the member of such general partner), in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of Borrower or Borrower's general partner (or the member of such general partner), if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstated or undischarged for a period of ninety (90) calendar days; or (v) Borrower or Borrower's general partner (or the member of such general partner) shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the Lenders, the indebtedness evidenced by the Note.

(f) Assignment; Attachment. Borrower or Borrower's general partner (or the member of such general partner) shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its Property, unless the Property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) calendar days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the Lenders, the indebtedness evidenced by the Note.

(g) Suspension; Termination. Borrower or Borrower's general partner (or the member of such general partner) shall have voluntarily suspended its business.

(h) Liens on Property and the Development. There shall be filed any claim of lien (other than liens approved in writing by the Lenders) against the Development or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days, without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to the Lenders.

(i) Condemnation. The condemnation, seizure, or appropriation of all or a substantial part of the Property and the Development.

(j) Unauthorized Transfer. Any Transfer other than as permitted by Section 4.13.

(k) Representation or Warranty Incorrect. Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Lenders in connection with any of the Loan Documents, proving to have been incorrect in any material respect when made. After issuance of the certificates of occupancy for the Development, Default may be declared under this subsection only if the failure of representation or warranty also has a material adverse effect on the operation of the Development.

Section 6.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Lenders or automatically where so specified, relieve the Lenders of any obligation to make or continue the Loan and shall give the Lenders the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The Lenders shall have the right to cause all indebtedness of the Borrower to the Lenders under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The Lenders may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Lenders as creditors and secured parties under the law including the Uniform Commercial Code, including foreclosure under the Lenders Deed of Trust. The Borrower shall be liable to pay the Lenders on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the Lenders in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan or in connection with a cure by the Lenders of any financing of the Development.

(b) Specific Performance. The Lenders shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The Lenders shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the Lenders for any funds advanced by the Lenders to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the Default Rate from the date of expenditure until the date of reimbursement.

(d) Notwithstanding anything to the contrary contained herein, Lenders hereby agree that any cure of any default made or tendered by Investor Limited Partner hereunder or under any other Loan Document shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

Section 6.3 Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Lenders or the rights of the Lenders hereunder.

Section 6.4 Remedies Cumulative.

No right, power, or remedy given to the Lenders by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Lenders by the terms of any such instrument, or by any statute or

otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the Lenders to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Lenders of any such right or remedy preclude any other exercise or any further exercise of such right or remedy, or any other right or remedy.

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the Lenders and Borrower or its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. With regards to the construction and operation of the Development, Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the Lenders by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the construction or operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the construction or operation of the Development.

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties. The Lenders' Designated Representative is authorized to execute on behalf of the Lenders amendments to the Loan Documents or amended and restated Loan Documents in the event a change in the amount or terms of the Loan is approved by the Lenders, or in the event the amounts or terms of financing provided by other parties for the Development is revised, requiring conforming amendments to the Loan documents.

Section 7.4 Indemnification.

The Borrower shall indemnify, defend and hold the Lenders and their board members, supervisors, directors, officers, employees, agents, successors and assigns ("Indemnitees")

harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the purchase of the Property, Development, construction, marketing and operation of the Development, except to the extent such claim arises from the grossly negligent or willful misconduct of the Indemnitees as applicable. The provisions of this Section shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 7.5 Non-Liability of Lenders Officials, Employees and Agents.

No member, official, employee or agent of the Lenders shall be personally liable to Borrower in the event of any default or breach by the Lenders or for any amount which may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

Section 7.6 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

Section 7.7 Discretion Retained By City.

The Lenders' execution of this Agreement in no way limits the discretion of the City in the permit and approval process in connection with construction of the Development.

Section 7.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.8(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) The conflict of interest provisions of Section 7.8(a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the Lenders, or any person related within the third (3rd) degree of such person.

(c) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code section 87100 et seq., no person who is a director, officer, partner, trustee or employee or consultant of the Borrower, or immediate family member of any of the preceding, shall make or participate in a decision, made by the Lenders or Lenders' board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real Property of that person or Borrower. Interpretation of this section shall be governed by the definitions and provisions used in the

Political Reform Act, Government Code section 87100 et seq., its implementing regulations manual and codes, and Government Code section 1090.

Section 7.9 Notices, Demands and Communications.

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:

Lenders:

City of Hayward
777 - B Street
Hayward, CA 94541-5007
Attention: City Manager

Housing Authority of the City of Hayward
777 - B Street
Hayward, CA 94541-5007
Attention: Executive Director

Borrower:

Allied 2595 Depot, L.P.,
c/o Allied Housing, Inc.
40849 Fremont Boulevard
Fremont, CA 94538
Attn: Executive Director

With copies to:

MCC Housing LLC
c/o Merritt Community Capital Corporation
1970 Broadway, Suite 250
Oakland, California 94612
Attention: President & CEO

with a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP
633 West Fifth Street, 64th Floor
Los Angeles, CA 90071
Attention: Rachel Rosner

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this

Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.10 Applicable Law and Venue.

This Agreement shall be governed by California law. Any action brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Alameda, State of California. The Parties waive all provisions of law providing for a change of venue in any proceeding to any other county.

Section 7.11 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and shall bind Borrower and its successors and assigns in the Property and the Development for the entire Term, and the benefit hereof shall inure to the benefit of the Lenders and their respective successors and assigns.

Section 7.12 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 7.13 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.14 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the Lenders be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.15 Lenders Approval.

Whenever this Agreement calls for the Lenders' approval, consent, or waiver, the written approval, consent, or waiver of the Lenders' Designated Representative shall constitute the

approval, consent, or waiver of the Lenders, without further authorization required from the Lenders respective governing boards. The Lenders hereby authorize the Lenders' Designated Representative to deliver such approvals or consents as are required by this Agreement, to execute estoppel certificates concerning the status of the Loan and the existence of Borrower defaults under the Loan Documents, and to waive requirements under this Agreement, on behalf of the Lenders. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The Lenders' Designated Representative is also hereby authorized to approve, on behalf of the Lenders, requests by Borrower for reasonable extensions of time deadlines set forth in this Agreement. The Lenders shall not unreasonably delay in reviewing and approving or disapproving any proposal by Borrower made in connection with this Agreement.

Section 7.16 Waivers.

Any waiver by the Lenders of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Lenders to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Lenders to any act or omission by Borrower shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the Lenders' written consent to future waivers.

Section 7.17 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 7.18 Entire Understanding of the Parties.

This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

Section 7.19 Multiple Originals; Counterpart.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[Signature Pages Follow.]

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.


AUTHORITY:

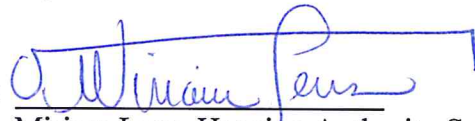
HOUSING AUTHORITY OF THE CITY OF
HAYWARD, a public body corporate and politic

By: 
Kelly McAdoo, Executive Director

APPROVED AS TO FORM:


Michael S. Lawson, Housing Authority
General Counsel

By: 
Vadim Sidelnikov, Deputy Housing
Authority General Counsel

ATTEST: 
Miriam Lens, Housing Authority Secretary

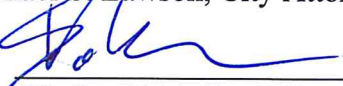
CITY:

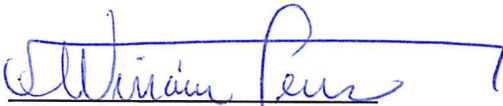
CITY OF HAYWARD, a California charter City

By: 
Kelly McAdoo, City Manager

APPROVED AS TO FORM:

Michael S. Lawson, City Attorney

By: 
Vadim Sidelnikov, Deputy City Attorney

ATTEST: 
Miriam Lens, City Clerk

BORROWER:

Allied 2595 Depot, L.P.,
a California limited partnership

By: Allied 2595 Depot LLC,
a California limited liability company,
its general partner

By: Allied Housing, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager


By: 
Jonathan White, Chief Real Estate Officer

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land is situated in the State of California, County of Alameda, and is described as follows:

EXHIBIT B

APPROVED DEVELOPMENT BUDGET

[Insert Approved Development Budget]

HOUSING AUTHORITY OF THE CITY OF HAYWARD

RESOLUTION NO. HA 18-03

Introduced by Commissioner Lamnin

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS BETWEEN THE HOUSING AUTHORITY OF THE CITY OF HAYWARD AND ALLIED HOUSING, INC., IN AN AMOUNT NOT TO EXCEED FOUR MILLION TWO HUNDRED THOUSAND DOLLARS (\$4,200,000), FOR THE 2595 DEPOT ROAD PROJECT LOCATED AT 2595 DEPOT ROAD TO BUILD APPROXIMATELY 126 UNITS OF AFFORDABLE HOUSING

WHEREAS, In November 2016, Alameda County voters passed a \$580 million Countywide Housing Bond (Measure A1) which will fund countywide housing development programs, and

WHEREAS, \$425 million of the total Housing Bond is allocated to the Rental Housing Development Fund to assist in the creation and preservation of affordable rental housing for vulnerable populations and of that \$225 million is allocated as "Base City Allocation" funding to Alameda County jurisdictions based on a geographical allocation formula, which for the City of Hayward's Base Allocation is approximately \$18.3 million, and

WHEREAS, Approximately \$18,300,000 of the Base City Allocation remains available to be committed to future affordable rental projects, and

WHEREAS, The Developer is seeking approximately \$18,300,000 of the Base City Allocation, and

WHEREAS, Alameda County requires that all projects that receive funds under the Countywide housing bond receive local match funds and approval from the local jurisdiction, and

WHEREAS, On April 30, 2018, the City of Hayward issued a Notice of Funding Availability ("NOFA") soliciting applications for funding for new construction of affordable housing development projects, and

WHEREAS, On June 29, 2018 Allied Housing, Inc. (the "Developer") submitted a proposal in response to the NOFA, and

WHEREAS, The Developer proposed to develop a 126-unit affordable rental housing project at 2595 Depot Road in the City of Hayward known as the 2595 Depot Road Project (the "Project"), and

WHEREAS, The Project is consistent with the City's project development guidelines as described in the NOFA, and

WHEREAS, The Developer has requested a commitment of \$5,810,000 from the Housing Authority of the City of Hayward ("Housing Authority") and the City as match funds to leverage Base City Allocation funds to help support the construction of 126 new affordable housing units, and

WHEREAS, \$4,200,000 are available in the Hayward Housing Authority Funds to provide match funds to the project to make the project eligible for the City Base Allocation, and

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines that the Recitals above are true and correct and by this reference makes them a part hereof.

BE IT FURTHER RESOLVED, that the Housing Authority hereby approves a loan of up to Four Million Two Hundred Thousand dollars (\$4,200,000) to the Developer, or an affiliate entity approved by the City Manager, from Hayward Housing Authority Funds, and

BE IT FURTHER RESOLVED, the Housing Authority Loan shall be subject to and specifically conditioned upon the completion of all environmental reviews and preparation and certification of all appropriate documents related thereto under the City's adopted procedures for the California Environment Quality Act ("CEQA"), and

BE IT FURTHER RESOLVED, that the loan shall be for a maximum term of 55 years, with an interest rate to be determined by the City Manager, with repayment to the Hayward Housing Authority from surplus cash flow from the Project and other available funds during the term of the loan, with the balance due at the end of the term, or on such other repayment terms and schedule as the City Manager or his or her designee determine are in the best interest of the Housing Authority and the Project, and

BE IT FURTHER RESOLVED, that the loan funds shall be reserved for a period of no more than 24 months from the date of this Resolution and shall be subject to reprogramming at the end of this period unless the Developer has secured commitments for full Project funding or provide other assurances of adequate Project funding that the City Manager deems sufficient within his or her discretion, within the reservation period, and

BE IT FURTHER RESOLVED, that the Housing Authority hereby authorizes the City Manager to conduct, negotiate, execute documents, and administer the loan, extend or modify the repayment terms, and take any other action with respect to the loan and the Project consistent with this Resolution and its basic purpose.

HAYWARD, CALIFORNIA, October 2, 2018.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COMMISSION MEMBERS: Zermeño, Márquez, Mendall, Peixoto, Lamnin, Salinas
CHAIR: Halliday

NOES: COMMISSION MEMBERS: None

ABSTAIN: COMMISSION MEMBERS: None

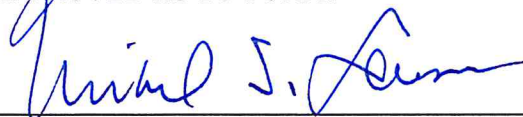
ABSENT: COMMISSION MEMBERS: None

ATTEST:



Secretary of the Housing Authority
of the City of Hayward

APPROVED AS TO FORM:



General Counsel of the Housing Authority
of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 18-212

Introduced by Council Member Lamnin

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS BETWEEN THE CITY OF HAYWARD AND EAH, INC., IN AN AMOUNT NOT TO EXCEED TWO MILLION DOLLARS (\$2,000,000), FOR MATSYA FAMILY VILLAS LOCATED AT 22648 2ND STREET TO BUILD APPROXIMATELY FIFTY-SEVEN UNITS OF AFFORDABLE HOUSING

WHEREAS, In November 2016, Alameda County voters passed a \$580 million Countywide Housing Bond (Measure A1) which will fund countywide housing development programs, and

WHEREAS, \$425 million of the total Housing Bond is allocated to the Rental Housing Development Fund to assist in the creation and preservation of affordable rental housing for vulnerable populations and of that \$200 million is allocated as "Regional Pool" funds allocated to Alameda County regions based on a geographical allocation formula, for which the Mid-County Regional Pool allocation is approximately \$200 million, and

WHEREAS, Alameda County requires that all projects that receive funds under the Countywide Housing Bond receive local match funds and approval from the local jurisdiction, and

WHEREAS, On April 30, 2018, the City of Hayward issued a Notice of Funding Availability ("NOFA") soliciting applications for funding for new construction of affordable housing development projects, and

WHEREAS, On June 29, 2018 EHA, Inc. (the "Developer") submitted a proposal in response to the NOFA, and

WHEREAS, The Developer proposed to develop a 57-unit affordable rental housing project at 22648 2nd Street in the City of Hayward known as Matsya Family Villas (the "Project"), and

WHEREAS, The Project is consistent with the City's project development guidelines as described in the NOFA, and

WHEREAS, The Developer is seeking at least \$4,700,000 of Measure A1 Bond funds, and

WHEREAS, The Developer has requested a commitment of \$2,000,000 from the City as match funds to leverage Measure A1 County Bond funds to help support the construction of 57 new affordable housing units, and

WHEREAS, Funds are available in the City's Inclusionary Housing Trust Fund to provide match funds to the project in an amount necessary to make the project eligible to compete for Mid-County Regional Pool Funds, and

WHEREAS, The Planning Commission on July 13, 2017 found that the project is categorically exempt as Infill Development (Class 32) under the City's adopted procedures for the California Environment Quality Act ("CEQA") and that no further environmental analysis is required, and

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines that the Recitals above are true and correct and by this reference makes them a part hereof, and

BE IT FURTHER RESOLVED, that the City Council hereby approves a loan of up to Two Million dollars (\$2,000,000) to the Developer, or an affiliate entity approved by the City Manager, from the Inclusionary Housing Trust Fund, and

BE IT FURTHER RESOLVED, that the City Council hereby acknowledges support of the Project in its application to Alameda County for Measure A1 Regional Pool Funds, and

BE IT FURTHER RESOLVED, that the loan shall be for a maximum term of 55 years, with an interest rate to be determined by the City Manager, with repayment to the City from surplus cash flow from the Project and other available funds during the term of the loan, with the balance due at the end of the term, or on such other repayment terms and schedule as the City Manager or his or her designee determine are in the best interest of the City and the Project, and

BE IT FURTHER RESOLVED, that the loan funds shall be reserved for a period of no more that twenty-four months from the date of this Resolution and shall be subject to reprogramming at the end of this period unless the Developer has secured commitments for full Project funding or provide other assurances of adequate Project funding that the City Manager deems sufficient within his or her discretion, within the reservation period, and

BE IT FURTHER RESOLVED, that the City hereby authorizes the City Manager to conduct, negotiate, execute documents, and administer the loan, extend or modify the repayment terms, and take any other action with respect to the loan and the Project consistent with this Resolution and its basic purpose.

IN COUNCIL, HAYWARD, CALIFORNIA October 2, 2018

ADOPTED BY THE FOLLOWING VOTE:

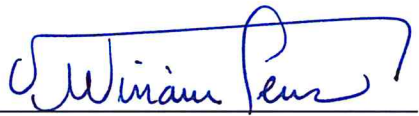
AYES: COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Peixoto, Lamnin, Salinas
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

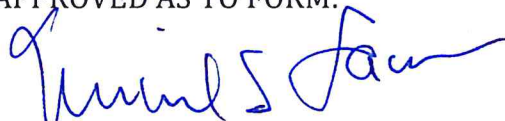
ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST:


City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 18-213

Introduced by Council Member Lamnin

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS BETWEEN THE CITY OF HAYWARD AND EAH, INC., IN AN AMOUNT NOT TO EXCEED TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000), FOR MISSION SENIOR PARADISE LOCATED AT 28000 MISSION BOULEVARD STREET TO BUILD APPROXIMATELY SEVENTY-SIX UNITS OF AFFORDABLE HOUSING

WHEREAS, In November 2016, Alameda County voters passed a \$580 million Countywide Housing Bond (Measure A1) which will fund countywide housing development programs, and

WHEREAS, \$425 million of the total Housing Bond is allocated to the Rental Housing Development Fund to assist in the creation and preservation of affordable rental housing for vulnerable populations and of that \$200 million is allocated as (“Regional Pool”) funds allocated to Alameda County regions based on a geographical allocation formula, for which the Mid-County Regional Pool allocation is approximately \$200 million, and

WHEREAS, Alameda County requires that all projects that receive funds under the Countywide Housing Bond receive local match funds and approval from the local jurisdiction, and

WHEREAS, On April 30, 2018, the City of Hayward issued a Notice of Funding Availability (“NOFA”) soliciting applications for funding for new construction of affordable housing development projects, and

WHEREAS, On June 29, 2018 EHA, Inc. (the “Developer”) submitted a proposal in response to the NOFA, and

WHEREAS, The Developer proposed to develop a 76-unit affordable rental housing project at 28000 Mission Boulevard in the City of Hayward known as Mission Senior Paradise (the “Project”), and

WHEREAS, The Project is consistent with the City’s project development guidelines as described in the NOFA, and

WHEREAS, The Developer is seeking at least \$5,600,000 of Measure A1 Bond funds, and

WHEREAS, The Developer has requested a commitment of \$2,500,000 from the City as match funds to leverage Measure A1 County Bond funds to help support the construction of 76 new affordable housing units, and

WHEREAS, Funds are available in the City's Inclusionary Housing Trust Funds, Community Development Block Grant funds, and HOME Investment Partnership Funds to provide match funds to the project in an amount necessary to make the project eligible to compete for Mid-County Regional Pool Funds, and

WHEREAS, The Planning Commission on February 22, 2018 found that the project is categorically exempt as Infill Development (Class 32) under the City's adopted procedures for the California Environment Quality Act ("CEQA") and that no further environmental analysis is required, and

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines that the Recitals above are true and correct and by this reference makes them a part hereof.

BE IT FURTHER RESOLVED, that the City Council hereby approves a loan of up to Two Million Five Hundred Thousand dollars (\$2,500,000) to the Developer, or an affiliate entity approved by the City Manager, consisting of up to Eight Hundred Thousand dollars (\$800,000) from the CDBG Funds, up to Four Hundred and Fifteen Thousand Two Hundred Eighty dollars (\$415,280) from HOME Funds; and One Million Two Hundred Eighty-Four Thousand Seven Hundred Twenty dollars (\$1,284,720) from Inclusionary Housing Trust Funds to assist the Project with eligible uses, and

BE IT FURTHER RESOLVED, the City HOME Loan shall be subject to and specifically conditioned upon the completion of all environmental reviews and preparation and certification of all appropriate documents related thereto under and in accordance with the National Environmental Policy Act (NEPA) of 1969, as implemented by the United States Department of Housing and Urban Development regulations, and

BE IT FURTHER RESOLVED, that the City Council hereby acknowledges support of the Project in its application to Alameda County for Measure A1 Regional Pool Funds; and

BE IT FURTHER RESOLVED, that the loan shall be for a maximum term of 55 years, with an interest rate to be determined by the City Manager, with repayment to the City from surplus cash flow from the Project and other available funds during the term of the loan, with the balance due at the end of the term, or on such other repayment terms and schedule as the City Manager or his or her designee determine are in the best interest of the City and the Project; and

BE IT FURTHER RESOLVED, that the loan funds shall be reserved for a period of no more than twenty-four months from the date of this Resolution and shall be subject to reprogramming at the end of this period unless the Developer has secured commitments for full Project funding or provide other assurances of adequate Project funding that the City Manager deems sufficient within his or her discretion, within the reservation period; and

BE IT FURTHER RESOLVED, that the City hereby authorizes the City Manager to conduct, negotiate, execute documents, and administer the loan, extend or modify the repayment terms, and take any other action with respect to the loan and the Project consistent with this Resolution and its basic purpose.

IN COUNCIL, HAYWARD, CALIFORNIA October 2, 2018

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Peixoto, Lamnin, Salinas
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

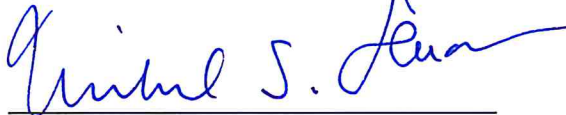
ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST:


City Clerk of the City of Hayward

APPROVED AS TO FORM:



City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 18-214

Introduced by Council Member Lamnin

RESOLUTION AUTHORIZING THE CITY MANAGER TO: 1) NEGOTIATE AND EXECUTE LOAN DOCUMENTS BETWEEN THE CITY OF HAYWARD AND ALLIED HOUSING, INC., IN AN AMOUNT NOT TO EXCEED ONE MILLION SIX HUNDRED TEN THOUSAND DOLLARS (\$1,610,000); AND 2) COMMIT UP TO EIGHTEEN MILLION THREE HUNDRED THOUSAND DOLLARS (\$18,300,000) OF THE BASE CITY ALLOCATION FOR THE 2595 DEPOT ROAD PROJECT LOCATED AT 2595 DEPOT ROAD TO BUILD APPROXIMATELY 126 UNITS OF AFFORDABLE HOUSING

WHEREAS, In November 2016, Alameda County voters passed a \$580 million Countywide Housing Bond (Measure A1) which will fund countywide housing development programs, and

WHEREAS, \$425 million of the total Housing Bond is allocated to the Rental Housing Development Fund to assist in the creation and preservation of affordable rental housing for vulnerable populations and of that \$225 million is allocated as "Base City Allocation" funding to Alameda County jurisdictions based on a geographical allocation formula, which for the City of Hayward's Base Allocation is approximately \$18.3 million, and

WHEREAS, Approximately \$18,300,000 of the Base City Allocation remains available to be committed to future affordable rental projects, and

WHEREAS, The Developer is seeking approximately \$18,300,000 of the Base City Allocation, and

WHEREAS, Alameda County requires that all projects that receive funds under the Countywide housing bond receive local match funds and approval from the local jurisdiction, and

WHEREAS, On April 30, 2018, the City of Hayward issued a Notice of Funding Availability ("NOFA") soliciting applications for funding for new construction of affordable housing development projects, and

WHEREAS, On June 29, 2018 Allied Housing, Inc. (the "Developer") submitted a proposal in response to the NOFA, and

WHEREAS, The Developer proposed to develop a 126-unit affordable rental housing project at 2595 Depot Road in the City of Hayward known as the 2595 Depot Road Project (the "Project"), and

WHEREAS, The Project is consistent with the City's project development guidelines as described in the NOFA, and

WHEREAS, The Developer has requested a commitment of \$5,810,000 from the City and Housing Authority of the City of Hayward as match funds to leverage Base City Allocation funds to help support the construction of 126 new affordable housing units, and

WHEREAS, \$1,610,000 are available in the City's Inclusionary Housing Trust Fund to provide match funds to the project to make the project eligible for the City Base Allocation, and

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines that the Recitals above are true and correct and by this reference makes them a part hereof.

BE IT FURTHER RESOLVED, that the City Council hereby approves a loan of up to One Million Six Hundred Ten Thousand dollars (\$1,610,000) to the Developer, or an affiliate entity approved by the City Manager, from Inclusionary Housing Trust Funds, and

BE IT FURTHER RESOLVED, that the City Council authorizes the commitment of up to Eighteen Million Three Hundred Thousand dollars (\$18,300,000) of the Base City Allocation to the Project, and

BE IT FURTHER RESOLVED, the City Loan shall be subject to and specifically conditioned upon the completion of all environmental reviews and preparation and certification of all appropriate documents related thereto under the City's adopted procedures for the California Environment Quality Act ("CEQA"), and

BE IT FURTHER RESOLVED, that the loan shall be for a maximum term of 55 years, with an interest rate to be determined by the City Manager, with repayment to the City from surplus cash flow from the Project and other available funds during the term of the loan, with the balance due at the end of the term, or on such other repayment terms and schedule as the City Manager or his or her designee determine are in the best interest of the City and the Project, and

BE IT FURTHER RESOLVED, that the loan funds shall be reserved for a period of no more than 24 months from the date of this Resolution and shall be subject to re-programming at the end of this period unless the Developer has secured commitments for full Project funding or provide other assurances of adequate Project funding that the City Manager deems sufficient within his or her discretion, within the reservation period; and

BE IT FURTHER RESOLVED, that the City hereby authorizes the City Manager to conduct, negotiate, execute documents, and administer the loan, extend or modify the repayment terms and take any other action with respect to the loan and the Project consistent with this Resolution and its basic purpose.

IN COUNCIL, HAYWARD, CALIFORNIA October 2, 2018

ADOPTED BY THE FOLLOWING VOTE:

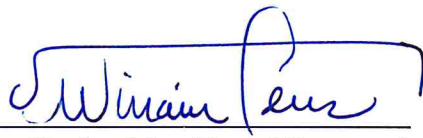
AYES: COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Peixoto, Lamnin, Salinas
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

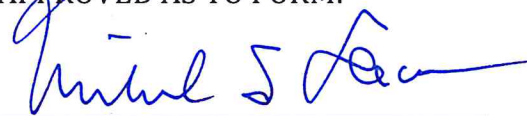
ABSENT: COUNCIL MEMBERS: None

ATTEST:



City Clerk of the City of Hayward

APPROVED AS TO FORM:



City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 21-072

Introduced by Council Member Wahab

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS BETWEEN THE CITY OF HAYWARD AND EXISTING CITY AFFORDABLE HOUSING PROJECTS IN AN AMOUNT NOT-TO-EXCEED FOUR MILLION NINE HUNDRED THOUSAND DOLLARS (\$4,900,000)

WHEREAS, the City has been actively pursuing opportunities to increase supply of affordable housing by entering into development agreements with affordable housing developers and providing development loans to subsidize the development of affordable housing; and

WHEREAS, the four projects listed in Attachment A are existing projects that require funding to improve competitiveness for state funding and help the project near construction; and

WHEREAS, the projects meet the requirements for funding under the Inclusionary Housing Trust Fund; and

WHEREAS, funds are available in the City's Inclusionary Housing Trust Fund to fund existing financing gaps; and

WHEREAS, staff continues to negotiate the minimum amount of funds necessary to close the existing housing gap for each of the projects.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby finds and determines that the Recitals above are true and correct and by this reference makes them a part hereof.

BE IT FURTHER RESOLVED that the City Loan shall be subject to and specifically conditioned upon the completion of all environmental reviews and preparation and certification of all appropriate documents related thereto under the City's adopted procedures for the California Environment Quality Act ("CEQA").

BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager to provide additional funding commitments with the developers listed on Attachment A for an aggregate amount not-to-exceed Four Million Nine Hundred Thousand Dollars (\$4,900,000) from Inclusionary Housing Trust Funds.

BE IT FURTHER RESOLVED that the loan shall be for a maximum term of 55 years, with an interest rate to be determined by the City Manager, with repayment to the City from surplus cash flow from the Project and other available funds during the term of the loan, with the balance due at the end of the term, or on such other repayment terms and schedule as the City Manager or his or her designee determine are in the best interest of the City and the Project.

BE IT FURTHER RESOLVED that the loan funds shall be reserved for a period of no more that twenty-four months from the date of this Resolution and shall be subject to reprogramming at the end of this period unless the Developer has secured commitments for full Project funding or provide other assurances of adequate Project funding that the City Manager deems sufficient within his or her discretion, within the reservation period.

BE IT FURTHER RESOLVED that the City hereby authorizes the City Manager to conduct, negotiate, execute documents, and administer the loan, extend or modify the repayment terms, and take any other action with respect to the loan and the Project consistent with this Resolution and its basic purpose.

IN COUNCIL, HAYWARD, CALIFORNIA May 4, 2021.

ADOPTED BY THE FOLLOWING VOTE:

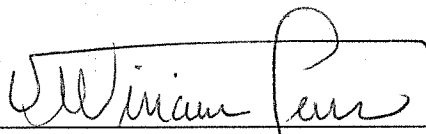
AYES: COUNCIL MEMBERS: Andrews, Lamnin, Márquez, Salinas, Wahab, Zermeño
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None


ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST:


City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward

Attachment A

Existing City Projects Requiring Funding

Project	Developer	Project Address
Parcel Group 8 Affordable Housing	Resources for Community Development	Foothill Blvd and Grove Way
Sequoia Grove	Habitat for Humanity East Bay/Silicon Valley	123-197 A Street
Pimentel Place (fka Matsya Villa)	EAH Inc.	22648 2nd Street
Mission Paradise	EAH Inc.	28000 Mission Boulevard

HAYWARD CITY COUNCIL

RESOLUTION NO. 22-253

Introduced by Council Member Wahab

RESOLUTION TO APPROVE ALLOCATION OF CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT LOCAL HOUSING TRUST FUND PROGRAM GRANT AWARD TO MISSION PARADISE IN THE AMOUNT OF \$1,150,000; AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS BETWEEN THE CITY OF HAYWARD AND EAH, INC. IN AN AMOUNT NOT TO EXCEED \$1,150,000 FOR THE DEVELOPMENT OF MISSION PARADISE

WHEREAS, the City of Hayward (the "City"), a municipal corporation, is authorized to do business in the State of California (the "State"); and

WHEREAS, the State of California Department of Housing and Community Development (the "Department") is authorized to provide up to \$57 million under the Local Housing Trust Fund ("LHTF") Program from the Veterans and Affordable Housing Bond Act of 2018 (Proposition 1) (as described in Health and Safety Code ("HSC") Section 50842.2 et seq. (Chapter 365, Statutes of 2017 (SB 3)) (the "Program")); and

WHEREAS, the Department issued a Notice of Funding Availability ("NOFA") dated Monday, May 3, 2021 under the LHTF Program; and

WHEREAS, City of Hayward established the Inclusionary Housing Trust Fund under Chapter 10, Article 17 of the Hayward Municipal Code for the purpose of increasing the supply of housing affordable to Moderate-, Low-, Very Low-, or Extremely Low-Income households; and

WHEREAS, City of Hayward is an eligible Local Housing Trust Fund applying to the LHTF Program to administer one or more eligible activities using LHTF Funds; and

WHEREAS, on July 20, 2021, the City Council authorized the City Manager to: (1) submit an application in response to the LHTF Program NOFA in an amount not to exceed \$5 million; (2) execute a Standard Agreement and any subsequent amendments, modifications, or documents necessary to participate in the LHTF Program; (3) accept and appropriate the LHTF Award in an amount not to exceed \$5 million; and (4) allocate funds if awarded to Mission Paradise and Parcel Group 8 Affordable Housing ("Eligible Projects"); and

WHEREAS, the Planning Commission on February 22, 2018 found that the Mission Paradise project is categorically exempt as Infill Development (Class 32) under the City's adopted procedures for the California Environment Quality Act ("CEQA") and that no further environmental analysis is required; and

WHEREAS, on December 23, 2021, the Department awarded the City \$3,994,906 in LHTF Program grant funds ("Awarded Funds"); and

WHEREAS, on September 26, 2022, the City entered into a Standard Agreement with the Department for the Awarded Amount; and

WHEREAS, the City wishes to allocate \$1,150,000 of the Awarded Funds and enter into a loan agreement with EAH, Inc (the "Developer") to support the development of Mission Paradise (the "Project").

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines that the Recitals above are true and correct and by this reference makes them a part hereof.

BE IT FURTHER RESOLVED, that the City Council hereby approves allocation in the amount of \$1,150,000 to the Project and authorizes the City Manager to negotiate and enter into a loan agreement in an amount not to exceed \$1,150,000 with the Developer or an affiliate entity approved by the City Manager to support the development of the Project; and

BE IT FURTHER RESOLVED, that the loan shall be for a maximum term of 55 years, with an interest rate to be determined by the City Manager, with repayment to the City from surplus cash flow from the Project and other available funds during the term of the loan, with the balance due at the end of the term, or on such other repayment terms and schedule as the City Manager or his or her designee determine are in the best interest of the City and the Project; and

BE IT FURTHER RESOLVED, that the loan funds shall be reserved for a period of no more that twenty-four months from the date of this Resolution and shall be subject to reprogramming at the end of this period unless the Developer has secured commitments for full Project funding or provide other assurances of adequate Project funding that the City Manager deems sufficient within his or her discretion, within the reservation period; and

BE IT FURTHER RESOLVED, that the City hereby authorizes the City Manager to conduct, negotiate, execute documents, and administer the loan, extend or modify the repayment terms, and take any other action with respect to the loan and the Project consistent with this Resolution and its basic purpose.

IN COUNCIL, HAYWARD, CALIFORNIA October 18, 2022.

ADOPTED BY THE FOLLOWING VOTE:

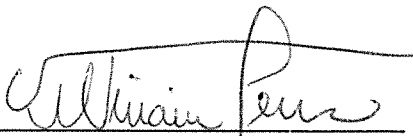
AYES: COUNCIL MEMBERS: Andrews, Lamnin, Márquez, Salinas Wahab, Zermeño
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST:


City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 22-254

Introduced by Council Member Wahab

RESOLUTION TO APPROVE ALLOCATION OF CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT LOCAL HOUSING TRUST FUND PROGRAM GRANT AWARD TO **PARCEL GROUP 8 AFFORDABLE HOUSING IN THE AMOUNT OF \$2,654,161**; AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS BETWEEN THE CITY OF HAYWARD AND RESOURCES FOR COMMUNITY DEVELOPMENT IN AN AMOUNT NOT-TO-EXCEED \$2,654,161 FOR THE DEVELOPMENT OF PARCEL GROUP 8 AFFORDABLE HOUSING

WHEREAS, the City of Hayward (the "City"), a municipal corporation, is authorized to do business in the State of California (the "State"); and

WHEREAS, the State of California Department of Housing and Community Development (the "Department") is authorized to provide up to \$57 million under the Local Housing Trust Fund ("LHTF") Program from the Veterans and Affordable Housing Bond Act of 2018 (Proposition 1) (as described in Health and Safety Code ("HSC") Section 50842.2 et seq. (Chapter 365, Statutes of 2017 (SB 3)) (the "Program"); and

WHEREAS, the Department issued a Notice of Funding Availability ("NOFA") dated Monday, May 3, 2021 under the LHTF Program; and

WHEREAS, City of Hayward established the Inclusionary Housing Trust Fund under Chapter 10, Article 17 of the Hayward Municipal Code for the purpose of increasing the supply of housing affordable to Moderate-, Low-, Very Low-, or Extremely Low-Income households; and

WHEREAS, City of Hayward is an eligible Local Housing Trust Fund applying to the LHTF Program to administer one or more eligible activities using LHTF Funds; and

WHEREAS, on July 20, 2021, the City Council authorized the City Manager to: (1) submit an application in response to the LHTF Program NOFA in an amount not to exceed \$5 million; (2) execute a Standard Agreement and any subsequent amendments, modifications, or documents necessary to participate in the LHTF Program; (3) accept and appropriate the LHTF Award in an amount not to exceed \$5 million; and (4) allocate funds if awarded to Mission Paradise and Parcel Group 8 Affordable Housing ("Eligible Projects"); and

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") Parcel Group 8 Affordable Housing is eligible for streamlined, ministerial approval pursuant to Government Code Section 65913.4, and are therefore exempt from review pursuant to Public Resources Code Section 21080(b)(1), which states the general rule that CEQA does not apply to ministerial projects; and

WHEREAS, on December 23, 2021, the Department awarded the City \$3,994,906 in LHTF Program grant funds ("Awarded Funds"); and

WHEREAS, on September 26, 2022, the City entered into a Standard Agreement with the Department for the Awarded Amount; and

WHEREAS, the City wishes to allocate \$2,654,161 of the Awarded Funds and enter into a loan agreement with Resources for Community Development (the "Developer") to support the development of Parcel Group 8 Affordable Housing (the "Project").

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines that the Recitals above are true and correct and by this reference makes them a part hereof; and

BE IT FURTHER RESOLVED, that the City Council hereby approves allocation in the amount of \$2,654,161 to the Project and authorizes the City Manager to negotiate and enter into a loan agreement with the Developer or an affiliate entity approved by the City Manager to support the development of the Project;

BE IT FURTHER RESOLVED, that the loan shall be for a maximum term of 55 years, with an interest rate to be determined by the City Manager, with repayment to the City from surplus cash flow from the Project and other available funds during the term of the loan, with the balance due at the end of the term, or on such other repayment terms and schedule as the City Manager or his or her designee determine are in the best interest of the City and the Project; and

BE IT FURTHER RESOLVED, that the loan funds shall be reserved for a period of no more than twenty-four months from the date of this Resolution and shall be subject to reprogramming at the end of this period unless the Developer has secured commitments for full Project funding or provide other assurances of adequate Project funding that the City Manager deems sufficient within his or her discretion, within the reservation period; and

BE IT FURTHER RESOLVED, that the City hereby authorizes the City Manager to conduct, negotiate, execute documents, and administer the loan, extend or modify the repayment terms, and take any other action with respect to the loan and the Project consistent with this Resolution and its basic purpose.

IN COUNCIL, HAYWARD, CALIFORNIA October 18, 2022.

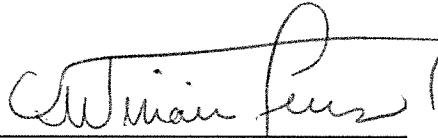
ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Andrews, Lamnin, Márquez, Salinas Wahab, Zermeño
MAYOR: Halliday

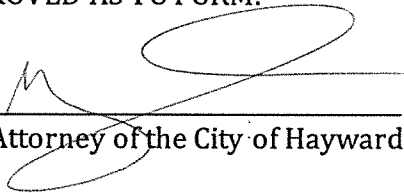
NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward

HOUSING AUTHORITY OF THE CITY OF HAYWARD

RESOLUTION NO. HA 18-03

Introduced by Commissioner Lamnin

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE LOAN DOCUMENTS BETWEEN THE HOUSING AUTHORITY OF THE CITY OF HAYWARD AND ALLIED HOUSING, INC., IN AN AMOUNT NOT TO EXCEED FOUR MILLION TWO HUNDRED THOUSAND DOLLARS (\$4,200,000), FOR THE 2595 DEPOT ROAD PROJECT LOCATED AT 2595 DEPOT ROAD TO BUILD APPROXIMATELY 126 UNITS OF AFFORDABLE HOUSING

WHEREAS, In November 2016, Alameda County voters passed a \$580 million Countywide Housing Bond (Measure A1) which will fund countywide housing development programs, and

WHEREAS, \$425 million of the total Housing Bond is allocated to the Rental Housing Development Fund to assist in the creation and preservation of affordable rental housing for vulnerable populations and of that \$225 million is allocated as "Base City Allocation" funding to Alameda County jurisdictions based on a geographical allocation formula, which for the City of Hayward's Base Allocation is approximately \$18.3 million, and

WHEREAS, Approximately \$18,300,000 of the Base City Allocation remains available to be committed to future affordable rental projects, and

WHEREAS, The Developer is seeking approximately \$18,300,000 of the Base City Allocation, and

WHEREAS, Alameda County requires that all projects that receive funds under the Countywide housing bond receive local match funds and approval from the local jurisdiction, and

WHEREAS, On April 30, 2018, the City of Hayward issued a Notice of Funding Availability ("NOFA") soliciting applications for funding for new construction of affordable housing development projects, and

WHEREAS, On June 29, 2018 Allied Housing, Inc. (the "Developer") submitted a proposal in response to the NOFA, and

WHEREAS, The Developer proposed to develop a 126-unit affordable rental housing project at 2595 Depot Road in the City of Hayward known as the 2595 Depot Road Project (the "Project"), and

WHEREAS, The Project is consistent with the City's project development guidelines as described in the NOFA, and

WHEREAS, The Developer has requested a commitment of \$5,810,000 from the Housing Authority of the City of Hayward ("Housing Authority") and the City as match funds to leverage Base City Allocation funds to help support the construction of 126 new affordable housing units, and

WHEREAS, \$4,200,000 are available in the Hayward Housing Authority Funds to provide match funds to the project to make the project eligible for the City Base Allocation, and

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines that the Recitals above are true and correct and by this reference makes them a part hereof.

BE IT FURTHER RESOLVED, that the Housing Authority hereby approves a loan of up to Four Million Two Hundred Thousand dollars (\$4,200,000) to the Developer, or an affiliate entity approved by the City Manager, from Hayward Housing Authority Funds, and

BE IT FURTHER RESOLVED, the Housing Authority Loan shall be subject to and specifically conditioned upon the completion of all environmental reviews and preparation and certification of all appropriate documents related thereto under the City's adopted procedures for the California Environment Quality Act ("CEQA"), and

BE IT FURTHER RESOLVED, that the loan shall be for a maximum term of 55 years, with an interest rate to be determined by the City Manager, with repayment to the Hayward Housing Authority from surplus cash flow from the Project and other available funds during the term of the loan, with the balance due at the end of the term, or on such other repayment terms and schedule as the City Manager or his or her designee determine are in the best interest of the Housing Authority and the Project, and

BE IT FURTHER RESOLVED, that the loan funds shall be reserved for a period of no more than 24 months from the date of this Resolution and shall be subject to reprogramming at the end of this period unless the Developer has secured commitments for full Project funding or provide other assurances of adequate Project funding that the City Manager deems sufficient within his or her discretion, within the reservation period, and

BE IT FURTHER RESOLVED, that the Housing Authority hereby authorizes the City Manager to conduct, negotiate, execute documents, and administer the loan, extend or modify the repayment terms, and take any other action with respect to the loan and the Project consistent with this Resolution and its basic purpose.

HAYWARD, CALIFORNIA, October 2, 2018.

ADOPTED BY THE FOLLOWING VOTE:

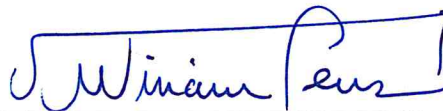
AYES: COMMISSION MEMBERS: Zermeño, Márquez, Mendall, Peixoto, Lamnin, Salinas
CHAIR: Halliday

NOES: COMMISSION MEMBERS: None

ABSTAIN: COMMISSION MEMBERS: None

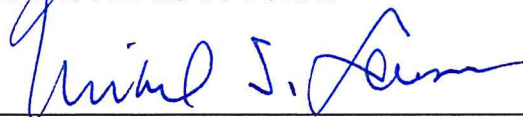
ABSENT: COMMISSION MEMBERS: None

ATTEST:



Secretary of the Housing Authority
of the City of Hayward

APPROVED AS TO FORM:



General Counsel of the Housing Authority
of the City of Hayward

12/19/2023
13:21:11

CITY OF HAYWARD
FLEXIBLE PERIOD REPORT
06955

PAGE 1
glflxrpt

FROM 2019 01 TO 2024 06

ACCOUNTS FOR:
100 GENERAL FUND

	ORIGINAL APPROP	TRANFRS/ ADJSTMTS	REVISED BUDGET	ACTUALS	ENCUMBRANCES	AVAILABLE BUDGET	PCT USED
00000 UNDEFINED							
61560 UTILITIES - MISCELLANEOUS							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	60,599	60,599	6,168.37	.00	54,430.37	10.2%
TOTAL UTILITIES - MISCELLANEOUS	0	60,599	60,599	6,168.37	.00	54,430.37	10.2%
62225 ADMINISTRATIVE COST							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	0	0	61.00	.00	-61.00	.0%
TOTAL ADMINISTRATIVE COST	0	0	0	61.00	.00	-61.00	.0%
62260 MISCELLANEOUS SERVICES							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	99,994	99,994	.00	.00	99,994.00	.0%
TOTAL MISCELLANEOUS SERVICES	0	99,994	99,994	.00	.00	99,994.00	.0%
62285 GRANTS, LOANS & CONTRIBUTION E							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	531,515	531,515	2,372,404.98	1,027,611.95	-2,868,502.42	639.7%
TOTAL GRANTS, LOANS & CONTRIBUTION E	0	531,515	531,515	2,372,404.98	1,027,611.95	-2,868,502.42	639.7%
71110 LAND & BUILDING PURCHASED FOR							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	86,950	86,950	86,950.00	.00	.00	100.0%
TOTAL LAND & BUILDING PURCHASED FOR	0	86,950	86,950	86,950.00	.00	.00	100.0%
TOTAL UNDEFINED	0	779,057	779,057	2,465,584.35	1,027,611.95	-2,714,139.05	448.4%

12/19/2023
13:21:12

CITY OF HAYWARD
FLEXIBLE PERIOD REPORT
06955

PAGE 2
glflxrpt

FROM 2019 01 TO 2024 06

ACCOUNTS FOR: 100 GENERAL FUND	ORIGINAL APPROP	TRANFRS/ ADJSTMTS	REVISED BUDGET	ACTUALS	ENCUMBRANCES	AVAILABLE BUDGET	PCT USED
31100 STREET MAINTENANCE							
62243 TEMPORARY PERSONNEL SERVICES							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	75,000	75,000	70,798.87	.00	4,201.13	94.4%
TOTAL TEMPORARY PERSONNEL SERVICES	0	75,000	75,000	70,798.87	.00	4,201.13	94.4%
TOTAL STREET MAINTENANCE	0	75,000	75,000	70,798.87	.00	4,201.13	94.4%
TOTAL GENERAL FUND	0	854,057	854,057	2,536,383.22	1,027,611.95	-2,709,937.92	417.3%
TOTAL EXPENSES	0	854,057	854,057	2,536,383.22	1,027,611.95	-2,709,937.92	

12/19/2023
13:21:13

CITY OF HAYWARD
FLEXIBLE PERIOD REPORT
06955

PAGE 3
glflxrpt

FROM 2019 01 TO 2024 06

ACCOUNTS FOR:
405 CAPITAL PROJECTS

	ORIGINAL APPROP	TRANFRS/ ADJSTMTS	REVISED BUDGET	ACTUALS	ENCUMBRANCES	AVAILABLE BUDGET	PCT USED
00000 UNDEFINED							
51110 SALARIES - REGULAR							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	10,763	10,763	-2,500.69	.00	13,264.14	-23.2%
TOTAL SALARIES - REGULAR	0	10,763	10,763	-2,500.69	.00	13,264.14	-23.2%
51210 SALARIES - LEAVE PAID							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	0	0	1,166.96	.00	-1,166.96	.0%
TOTAL SALARIES - LEAVE PAID	0	0	0	1,166.96	.00	-1,166.96	.0%
55110 RETIREMENT CONTRIBUTION							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	0	0	161.46	.00	-161.46	.0%
TOTAL RETIREMENT CONTRIBUTION	0	0	0	161.46	.00	-161.46	.0%
55111 PERS UNFUNDED ACCR LIABILITY							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	0	0	567.89	.00	-567.89	.0%
TOTAL PERS UNFUNDED ACCR LIABILITY	0	0	0	567.89	.00	-567.89	.0%
55120 FRINGE BENEFITS (VSN,LIFE,LTD)							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	0	0	6.83	.00	-6.83	.0%
TOTAL FRINGE BENEFITS (VSN,LIFE,LTD)	0	0	0	6.83	.00	-6.83	.0%
55121 MEDICAL BENEFITS							

12/19/2023
13:21:13

CITY OF HAYWARD
FLEXIBLE PERIOD REPORT
06955

PAGE 4
glflxrpt

FROM 2019 01 TO 2024 06

ACCOUNTS FOR:
405 CAPITAL PROJECTS

	ORIGINAL APPROP	TRANFRS/ ADJSTMTS	REVISED BUDGET	ACTUALS	ENCUMBRANCES	AVAILABLE BUDGET	PCT USED
06955 HAYWARD HOUSING NAVIGATION CENTER							
	0	0	0	716.41	.00	-716.41	.0%
TOTAL MEDICAL BENEFITS	0	0	0	716.41	.00	-716.41	.0%
55122 DENTAL BENEFITS							
06955 HAYWARD HOUSING NAVIGATION CENTER							
	0	0	0	52.84	.00	-52.84	.0%
TOTAL DENTAL BENEFITS	0	0	0	52.84	.00	-52.84	.0%
55130 FICA - MEDICARE							
06955 HAYWARD HOUSING NAVIGATION CENTER							
	0	0	0	40.74	.00	-40.74	.0%
TOTAL FICA - MEDICARE	0	0	0	40.74	.00	-40.74	.0%
55330 WORK COMP NON-SAFETY							
06955 HAYWARD HOUSING NAVIGATION CENTER							
	0	0	0	162.99	.00	-162.99	.0%
TOTAL WORK COMP NON-SAFETY	0	0	0	162.99	.00	-162.99	.0%
61560 UTILITIES - MISCELLANEOUS							
06955 HAYWARD HOUSING NAVIGATION CENTER							
	0	0	0	25,513.51	.00	-25,513.51	.0%
TOTAL UTILITIES - MISCELLANEOUS	0	0	0	25,513.51	.00	-25,513.51	.0%
62160 FIELD SUPPLIES							
06955 HAYWARD HOUSING NAVIGATION CENTER							
	0	10,380	10,380	9,809.95	.00	570.15	94.5%
TOTAL FIELD SUPPLIES	0	10,380	10,380	9,809.95	.00	570.15	94.5%

12/19/2023
13:21:13

CITY OF HAYWARD
FLEXIBLE PERIOD REPORT
06955

PAGE 5
glf1xrpt

FROM 2019 01 TO 2024 06

ACCOUNTS FOR:
405 CAPITAL PROJECTS

	ORIGINAL APPROP	TRANFRS/ ADJSTMTS	REVISED BUDGET	ACTUALS	ENCUMBRANCES	AVAILABLE BUDGET	PCT USED
62231 RENTAL - LAND AND BUILDING							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	110,334	110,334	238,628.20	.00	-128,293.86	216.3%
TOTAL RENTAL - LAND AND BUILDING	0	110,334	110,334	238,628.20	.00	-128,293.86	216.3%
62242 CONTRACT CONSULTING SERVICES							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	0	0	10,500.00	.00	-10,500.00	.0%
TOTAL CONTRACT CONSULTING SERVICES	0	0	0	10,500.00	.00	-10,500.00	.0%
62250 CONSTRUCTION SERVICES							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	1,170,612	1,170,612	160,581.35	1,279.58	1,008,751.29	13.8%
TOTAL CONSTRUCTION SERVICES	0	1,170,612	1,170,612	160,581.35	1,279.58	1,008,751.29	13.8%
62285 GRANTS, LOANS & CONTRIBUTION E							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	1,073,041	1,073,041	228,614.99	.00	844,426.30	21.3%
TOTAL GRANTS, LOANS & CONTRIBUTION E	0	1,073,041	1,073,041	228,614.99	.00	844,426.30	21.3%
71110 LAND & BUILDING PURCHASED FOR							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	0	0	25,409.75	.00	-25,409.75	.0%
TOTAL LAND & BUILDING PURCHASED FOR	0	0	0	25,409.75	.00	-25,409.75	.0%
71140 IMPROVEMENTS OTHER THAN BUILDI							

12/19/2023
13:21:13

CITY OF HAYWARD
FLEXIBLE PERIOD REPORT
06955

PAGE 6
glflxrpt

FROM 2019 01 TO 2024 06

ACCOUNTS FOR:	ORIGINAL APPROP	TRANFRS/ADJSTMTS	REVISED BUDGET	ACTUALS	ENCUMBRANCES	AVAILABLE BUDGET	PCT USED
405 CAPITAL PROJECTS							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	3,500	3,500	227,589.07	.00	-224,089.07	%
TOTAL IMPROVEMENTS OTHER THAN BUILDI	0	3,500	3,500	227,589.07	.00	-224,089.07	%
71170 VEHICLES							
06955 HAYWARD HOUSING NAVIGATION CENTER	0	25,234	25,234	.00	.00	25,234.08	.0%
TOTAL VEHICLES	0	25,234	25,234	.00	.00	25,234.08	.0%
TOTAL UNDEFINED	0	2,403,865	2,403,865	927,022.25	1,279.58	1,475,563.65	38.6%
TOTAL CAPITAL PROJECTS	0	2,403,865	2,403,865	927,022.25	1,279.58	1,475,563.65	38.6%
TOTAL EXPENSES	0	2,403,865	2,403,865	927,022.25	1,279.58	1,475,563.65	

12/19/2023
13:21:13

CITY OF HAYWARD
FLEXIBLE PERIOD REPORT
06955

PAGE 7
glflxrpt

FROM 2019 01 TO 2024 06

	ORIGINAL APPROP	TRANFRS/ ADJSTMTS	REVISED BUDGET	ACTUALS	ENCUMBRANCES	AVAILABLE BUDGET	PCT USED
GRAND TOTAL	0	3,257,923	3,257,923	3,463,405.47	1,028,891.53	-1,234,374.27	137.9%

REPORT OPTIONS

Sequence	Field #	Total	Page Break	
Sequence 1	1	Y	Y	From Yr/Per: 2019/ 1
Sequence 2	4	Y	N	To Yr/Per: 2024/ 6
Sequence 3	11	Y	N	Budget Year: 2019
Sequence 4	12	Y	N	Print totals only: Y

Report title: FLEXIBLE PERIOD REPORT
06955

Includes accounts exceeding 0% of budget.
Print Full or Short description: F
Print full GL account: N
Sort by full GL account: N
Print Revenues-Version headings: N
Print revenue as credit: Y
Print revenue budgets as zero: N

Format type: 1
Double space: N
Suppress zero bal accts: Y
Amounts/totals exceed 999 million dollars: N
Roll projects to object: N
Print journal detail: N
From Yr/Per: 2023/11
To Yr/Per: 2023/12
Include budget entries: Y
Incl encumb/liq entries: Y
Sort by JE # or PO #: J
Detail format option: 1
Multiyear view: D

ALAMEDA COUNTY HOME CONSORTIUM HOME PROGRAM APPLICATION

1. Jurisdiction: City of Hayward	Program: 2021 HOME Funding
Jurisdiction Contact: Amy Cole-Bloom	Title: Management Analyst II
Phone: 10-8-422	Email: amy.cole@hayward-ca.gov

2. ACTIVITY TYPE:

- Rental Housing Production Tenant Based Assistance
 Homeowner Rehabilitation First Time Homebuyer
 Rental Rehabilitation Special Needs Housing

Who will occupy the assisted units?

- Renters Owners

3. DESCRIPTION OF PROJECT:

The City proposes to use HOME funds for tenant-based rental assistance at the South Hayward Parish (SHP) Tiny Homes Village project. The project was submitted for funding to the State HCD Homekey grant, with the City's HOME TAC contribution used as a local match to provide rental subsidies. The SHP Tiny Homes project will consist of 10 ADA compliant permanent dwellings, outfitted with appliances and furniture at the time of move-in for individuals experiencing chronic homelessness. The units are designed as permanent supportive housing, with tenants receiving on-site supportive services including job training, parenting classes, financial literacy, computer training, case management, health education, and others.

The City of Hayward proposes to use its allocation of the HOME funds to cover rental subsidies, up to fair market rent, for a two-year period (July 1, 2022, through June 30, 2024). The funding will be used to pay the difference between efficiency fair market rent and the greater of 1) a minimum rent payment of \$75 per month or 2) 30% of one-twelfth of a participant's annual adjusted income not to exceed fair market rents. The funds will benefit at least ten individuals per year, with the possibility of additional participants if adult couples are placed via the Coordinated Entry System.

4. GOALS & OBJECTIVES:

- 1) Subsidize ten units at the SHP Tiny Homes Village to provide housing to very-low and extremely-low income individuals with a history of chronic homelessness
- 2) Provide rental assistance to at least ten individuals with a history of chronic homelessness
- 3) Reduce and prevent future homelessness among participants by providing permanent housing
- 4) Provide supportive services that meet residents 'where they're at' to increase stability and reduce the risk of future homelessness

5. COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS:

Describe the anticipated role of CHDOs in this program, including any technical assistance and capacity building that you will undertake and what role(s) the CHDOs will undertake. If you have identified specific CHDOs, please specify the CHDOs, their particular roles and allotment of funds.

[N/A](#)

6. PROGRAM BENEFIT:

Percent of HOME funds which will benefit:	
Households below 30 percent median income	80%
Households below 50 percent median income	20%
Households below 60 percent median income	
Households from 60 - 80 percent median income	
Total (Must total 100%)	100%

Percent of HOME funds which will benefit:	
First-time homeowners	
Existing homeowners	
New homeowners	
Renters	100%
Total (Must total 100%)	100%

7. BUDGET PROJECTION:

a. HOME funds projected FY 2021	\$370,000
b. Number of Units receiving HOME funding	10
c. Maximum HOME dollars to be invested per unit	\$1,538
d. Other Financial Sources: (best estimate)	\$65,000

8. PERIOD OF AFFORDABILITY:

a. Specify the minimum required term of affordability and how it will be enforced:
NA

9. FORM OF INVESTMENT:

a. HUD preapproves the forms of investment listed below:

- Equity Investment
- Interest-bearing Loan/Advance
- Noninterest-bearing Loan/Advance
- Interest Subsidies
- Deferred Payment Loans or Grants

b. If you are planning to use a form of investment other than those on the list above, indicate and describe below:

- Other: Amount:

10. CONSISTENCY WITH CONSOLIDATED PLAN

a. Describe how this project/program is consistent with the Consolidated Plan:

This project aligns with the Consolidated Plan's rental assistance goal by providing housing for individuals at risk of or currently experiencing homelessness through rental subsidy.

[Save and Continue](#)

11. TENANT-BASED RENTAL ASSISTANCE:

a. Attach proposal for how program will be administered (see 24 CFR 92.216, HOME Final Rule 9/16/96).

12. HOME FUNDS USAGE:

a. Please summarize your percentage use of FY2021 HOME funds on the table below.

Please include any program income received in FY20 in this chart. If actual dollar amounts are known, please use actual amounts.

Activity	Total HOME %/\$	Rental %/\$	Owner %/\$
Tenant –Based Rental Assistance:			
Project Name: SHP Tiny Homes Village	100%	100%	
Total Project Allocation	100%	100%	

13. If you anticipate using CHDOs to carry out one of the program activities summarized above (not including the Consortium-wide RFP for the CHDO set-aside), please complete the table below.

Activity	Proposed \$ Allocation
Tenant –Based Rental Assistance:	
TOTAL	\$0

F. Attachments

- 1. Attachment: [Program Administration Proposal](#) [COH_SHP_Tiny_Homes_Village_Program_Description.docx](#)
- 2. Attachment:
- 3. Attachment:

Program Manager Signature [Amy Cole-Bloom](#)
Date Signed [03/10/2022](#)

City/County Accepted Signature [Kelly M. Thiemann](#)
Date Signed [09/29/2022](#)

Initially submitted: Mar 10, 2022 - 12:14:17

**CONTRACT DESIGNATING THE CITY OF HAYWARD
AS A SUBRECIPIENT OF HOME FUNDS**

This SUBRECIPIENT AGREEMENT is made and entered into this 1st day of July 2022, by and between the CITY OF HAYWARD, a municipal corporation located within the County of Alameda, hereinafter called "City," and the COUNTY OF ALAMEDA, a body corporate and politic of the State of California, hereafter called "County."

WITNESSETH:

WHEREAS the City and County have entered into a Cooperative Agreement to form, along with other cities the Alameda County HOME Consortium (the "Consortium") to qualify for HOME Investment Partnership Act funds, funded by the U.S. Department of Housing and Urban Development; and

WHEREAS the County is the lead agency in the Consortium, designated by HUD as the HOME Participating Jurisdiction; and

WHEREAS the City and the County have determined that it is mutually beneficial to have County disburse HOME funds for HOME-eligible activities in City; and

WHEREAS the City must be designated a HOME Subrecipient in order to directly execute contracts for and implement HOME-funded activities within its jurisdiction; and

WHEREAS, the City and County desire to enter into this Subrecipient Agreement (the "Agreement") for the purpose of designating the City a HOME subrecipient;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

A. STATEMENT OF WORK

1. The Term of this Agreement shall be from July 1, 2022, until June 30, 2026, or until all fiscal year 2022 HOME funds allocated to City for a project are disbursed to City, or for the duration of any regulatory agreement executed in conjunction with a project financed with all of the fiscal year 2022 HOME funds, or when all of the contract terms have been completed, whichever shall first occur.

B. COMMENCEMENT AND COMPLETION REQUIREMENTS

1. Upon execution of this Agreement, City shall be designated as a HOME Subrecipient for 2022 fiscal year funds for the purpose of administering HOME funds.
2. The maximum amount of HOME funds covered by this Agreement shall be four hundred forty-two thousand, four hundred eighty-nine dollars (\$442,489), for both the administrative and project costs set forth in Exhibit A. In the event that HUD reduces the HOME allocation to the Consortium, or the City does not meet any deadline for commitment or expenditure of funds as established by the County, the City's allocation will be reduced accordingly. Specific information regarding HUD HOME contract is set forth in Exhibit A1.

3. As a subrecipient, City is responsible for identifying, selecting and implementing HOME-eligible activities within its jurisdiction. This includes contracting for the performance of these activities with other entities for HOME-eligible activities, and maintaining the required records to conform to HUD and HOME program standards. In its role as subrecipient, City is responsible for fulfilling all of the requirements of the HOME program and for ensuring that HOME requirements are fulfilled by its contractors, as applicable.
4. Any HOME eligible activities that the City desires to engage in must be approved by County in advance of any commitment of funds from the City to another entity. The City is responsible for submission of an Application to the County. County approval will be evidenced by a project approval letter to the City and a subsequent amendment of this Agreement to add funding for approved project(s). County will notify City of any disapproved Applications or modifications needed for approval.
5. As a Subrecipient, the City is responsible for conducting the environmental review of any project or program assisted through this contract in compliance with the National Environmental Protection Act (NEPA) and 24 CFR 58 and the California Environmental Quality Act (CEQA) (the "Environmental Review"). The City shall submit the NEPA Environmental Review (ER) to the County as the Grantee and Responsible Entity. The County shall review the documents and may require changes or modifications by the City to the ER and require the City to resubmit and publish the final version. Once the County has reviewed and approved, the ER will be submitted to HUD for Authority to use Grant Funds. HUD must give formal acceptance, prior to City entering into a commitment of HOME funds for the subject activity.
6. After project or program approval by County and HUD approval of the Environmental Review, City may enter into a formal written agreement committing the HOME funds. City agrees that any HOME-eligible activities funded through this Agreement shall be confirmed with a written contract that contains the provisions specified in 24 CFR Part 92.504. In addition, any contract made between City and another entity for the use of HOME funds pursuant to this Agreement shall comply with all applicable HOME regulations and shall be enforced by deed restriction, where applicable. The form of the contract and deed restriction shall be approved by County in advance of execution. A copy of all contracts for HOME-funded activities shall be sent to the County.
7. Once the City enters into a formal written agreement for the commitment of HOME fund, the County shall make funds available to the City by setting up the project in HUD's IDIS financial disbursement system and in the County's ALCO LINK accounting system. As the County must adhere to HUD's new project based requirement for the expenditure of HOME funds, the County reserves the right to allocate costs between grant years as required to effectively administer the HOME program.
8. Funds allocated to the City for Administration, as defined by HUD and within the amounts allocated by the County to City each year, are available to the City without the requirement of an application and formal commitment. All other funding expended under this Agreement must follow the procedures outlined in this Agreement.
9. City agrees to abide by uniform administrative requirements stated in 24 CFR Part 92.505.
10. To comply with the HOME regulation that funds be spent within 15 days of disbursement, City shall request reimbursement of expenditures. In the case of a known large expense, City may request, in writing, from the County an advance of the necessary amount of the funds, which

will be expended within the time allowed. The amount of each request shall be limited to the amount reasonably anticipated to be needed.

11. Loan repayments, interest or other return on City's investment of HOME funds disbursed through this contract shall be collected by City and transferred to the County within 30 days of receipt. The County will hold any such funds for additional HOME-eligible activities in City. In the case of homebuyer assistance payments, the City may retain payments for future homebuyer assistance activities funded with HOME funds in accordance with HOME regulations.
12. County and City will cooperate in the preparation of, and will furnish any and all information required for, reports to be prepared as may be required by HOME regulations including but not limited to the Consolidated Plan, the annual performance report and any quarterly reports required by County.
13. Activities and programs under this Agreement shall be governed by the policies and procedures of the HOME Consortium or as directed by the County as lead agency, in order to ensure compliance with all federal laws and regulations.

C. GENERAL REQUIREMENTS

1. City and County shall maintain, on a current basis, complete records, including, but not limited to, contracts, books of original entry, source documents supporting accounting transactions, eligibility and service records as may be applicable, a general ledger, personnel and payroll records, canceled checks and related documents and records to assure proper accounting of funds and performance of this contract in accordance with HOME regulations. To the extent permitted by law, County and City will also permit access to all books, accounts or records of any kind for purposes of audit or investigation, in order to ascertain compliance with the provisions of this contract. Records shall be maintained for a period of five years or in accordance with 24 CFR Part 92.508(c), whichever is longer.
2. City agrees to defend, indemnify and hold harmless County and its Board of Supervisors and the individual members thereof, officers, employees and agents (collectively, "County Indemnitees") from any and all acts, claims, omissions, liabilities and losses by whoever asserted arising out of acts or omissions of City in the performance of the scope of work except those arising by reason of the sole negligence of County Indemnitee. As a part of this agreement, the City will provide the County with a Certificate of Insurance as outlined in Exhibit B.
3. County agrees to defend, indemnify and hold harmless City and its City Council and individual members thereof, officers, employees and agents (collectively, "City Indemnitees") from any and all acts, claims, omissions, liabilities and losses by whoever asserted arising out of acts or omissions of County in the performance of the scope of work except those arising by reason of the sole negligence of any City Indemnitee.
4. City shall comply with all applicable laws, regulations, ordinances and codes of Federal, State and local governments, in the performance of this Agreement.
5. City agrees to comply with all requirements, which are now, or which may hereafter be imposed by HUD for the HOME Program, as well as such requirements which are now, or which may be hereafter be imposed by the Alameda County HOME Consortium.

6. City agrees that it will comply with the Americans with Disabilities Act and Title VII of the Civil Rights Acts of 1964, and that no person in the United States shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era veteran's status, political affiliation or any other non-merit factors be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with funds made available to City by County pursuant to this contract. City shall not discriminate by any of the following means:
 - a. Deny any service or other benefit provided under the program or activity;
 - b. Provide any service or other benefit which is different or is provided in a different form from that provided to others under the program or activity;
 - c. Subject to segregated or separate treatment in any facility in or in any manner or process related to receipt of any service or benefit under the program or activity;
 - d. Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program or activity;
 - e. Treat an individual differently from others in determining whether that individual satisfies any admission enrollment, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service or other benefit provided under the program or activity; or
 - f. Deny an opportunity to participate in a program or activity as an employee.
7. City shall comply with Executive Order 13166 to improve access to services for persons with Limited English Proficiency (LEP) including developing a Language Access Plan.
8. If the City withdraws from the Consortium and it becomes a HOME Participating Jurisdiction, at City's request and with HUD approval County shall transfer to City any accounts receivable attributable to the City's allocation of HOME funds, any City allocation of HOME funds, and any Program Income attributable to City's HOME allocation on hand at the time City withdraws from the Consortium. Along with this transfer, City shall assume all obligations and responsibilities attributable to such funds and the County shall be relieved of all such obligations and responsibilities.
9. If City withdraws from the Consortium and does not become a HOME Participating Jurisdiction, County shall retain any accounts receivable attributable to the City's allocation of HOME funds, any City allocation of HOME funds, and any Program Income attributable to City's HOME allocation on hand at the time City withdraws from the Consortium. County shall retain all obligations and responsibilities attributable to such funds.
10. As specified in 24 CFR Part 85.43 breach of this Agreement may result in the suspension or termination of City as a sub-recipient of HOME funds.
11. Any and all notices, writings, correspondences, etc., as required by this Agreement shall be directed to the City and County as follows:

City
Office of the City Manager
Housing Division
Attn.: Housing Development Specialist
777 B Street,
Hayward, CA 94541

County
Housing Director
Alameda County HCD
224 W. Winton Avenue, Room 108
Hayward, CA 94544

12. In conjunction with performance of this Agreement, City has been made cognizant of and will comply with all applicable affirmative action anti-discrimination and equal opportunity guidelines and requirements of the federal, state or local government. City will use its best efforts to utilize minority and female enterprises and ensure that minority and female enterprises have equal opportunity to compete for subcontractor work under this contract.
13. This Agreement may be amended only by written agreement of the parties hereto.

[SIGNATURES TO FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first mentioned above.

COUNTY OF ALAMEDA

CITY OF HAYWARD

By *Keith Carson*
President
Alameda County Board of Supervisors

DocuSigned by:
Kelly Melldoo
City Manager

Date: 9/30/2022

Date: 6/28/2022

Approved as to form:
Donna R. Ziegler, County Counsel

Approved as to form:

Attested:

DocuSigned by:
By *Heather Littlejohn Goodman*
Heather Littlejohn Goodman,
Deputy County Counsel

DocuSigned by:
By *Michael Lawson*
City Attorney

DocuSigned by:
By *Miriam Lens*
City Clerk

Date: 6/28/2022

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

EXHIBIT A
AGREEMENT BY AND BETWEEN
THE CITY OF HAYWARD
AND
THE COUNTY OF ALAMEDA

Activity	HOME Funds
Administration/Planning Costs as Authorized by HOME Regulations	\$25,274
Program Income (Administration portion)	\$0
Total Administration Allocation	\$25,274
FY22/23 Project Funds Available	\$417,215
Prior Year Program Income (project portion)	\$0
Total Project Allocation Available	\$417,215
Project Allocation: Project Independence Tenant-Based Rental Assistance	\$417,215
Total Project Allocation Utilization	\$417,215
Total:	\$442,489

EXHIBIT A1

ALAMEDA COUNTY HOUSING AND COMMUNITY DEVELOPMENT
AND
CITY OF HAYWARD

CFDA number:

■ HOME 14.239

CFDA Title: HOME Investment Partnership Program (HOME)

Name of Federal Agency: Housing and Community Development Department (HUD)

Subrecipient Agency Unique Identifier Number: 021116418

Federal Award Date of award to HCD by HUD:

Federal Award Identification Number: M22-DC-060001

EXHIBIT B**COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	<p><u>Endorsements and Conditions:</u></p> <ol style="list-style-type: none"> ADDITIONAL INSURED: All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG20 38 04 13. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: <ul style="list-style-type: none"> – Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as the ISO Form named above. – Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured." CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The require certificate(s) and endorsements must be sent as set forth in the Notice provision. 	

Certificate C-1

Form 2001-1 (Rev. 02/26/14)

**AMENDMENT TO RENTAL HOUSING SUBSIDY GRANT AGREEMENT BETWEEN
THE CITY OF HAYWARD AND ABODE SERVICES (PROJECT INDEPENDENCE
VIII)**

THIS AMENDMENT TO THE AGREEMENT, dated for convenience this 27th day of October, 2023, is by and between Abode Services, a 501(c)(3) nonprofit organization ("CONTRACTOR") and the CITY OF HAYWARD, a public body of the State of California ("CITY");

W I T N E S S E T H

WHEREAS, the City of Hayward participates in a consortium of cities in Alameda County that share federal HOME Investment Partnership Program (HOME) funds and the City receives an allocation of federal HOME Investment Partnership funds each year, through the consortium;

WHEREAS, the Contractor operates Project Independence, a program that provides affordable housing and comprehensive support services, such as education, and vocational training, employment placement, financial literacy training, and mental and physical healthcare services to emancipated youth or youth ages 18 and older, in Alameda County who have aged out of the foster care system;

WHEREAS, the City Council of the City of Hayward by **Resolution No. 21-201**, dated October 19, 2021, authorized the City Manager to negotiate and execute a rental housing subsidy grant agreement with Abode Services using \$381,538 in HOME funds for Project Independence;

WHEREAS, due to challenges associated with filling vacant units to provide affordable housing to emancipated youth or youth ages 18 or older who have aged out of the foster care system, the Contractor needs additional time to spend down the remaining funds in the agreement;

NOW, THEREFORE, the CONTRACTOR and the CITY do hereby agree to the following amendments to the AGREEMENT:

1. Amend Article 1, Section 1.1(aa) to read as follows:

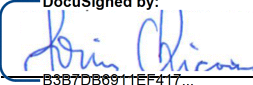
“Term” shall mean the term of the Grant, commencing on the date of this Agreement and continuing until December 31, 2024.

2. All other terms and provisions of the AGREEMENT not modified by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, the day and year set forth below their respective signatures:

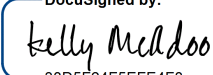
CONTRACTOR


Dated: 11/2/2023 _____

DocuSigned by:
By: 
33B7DB0911EF417...
Louis Chicoine, Executive Director

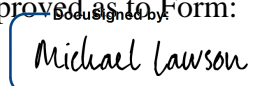
CITY OF HAYWARD

Dated: 10/31/2023 _____

DocuSigned by:
By: 
38B5F24F5EFE4F8...
Kelly McAdoo, City Manager

DocuSigned by:
Attest: 
0022A42DA1F540D...
Miriam Lens, City Clerk

Approved as to Form:

DocuSigned by:
By: 
EB80EC4EC3E24B7...
Michael, S. Lawson, City Attorney

Attachments:

- Amended Rental Housing Subsidy Grant Agreement Between the City of Hayward and Abode Services
- Original Agreement for Services Between the City of Hayward and Abode Services
- Resolution 21-201

RENTAL HOUSING SUBSIDY GRANT AGREEMENT - VIII
(Project Independence)

This Rental Housing Subsidy Grant Agreement – VIII (the "**Agreement**") is entered into as of December 1, 2021 (the "**Effective Date**"), by and between the City of Hayward, a municipal corporation (the "**City**"), and Abode Services, a California nonprofit public benefit corporation ("**Grantee**"), with reference to the following facts:

RECITALS

A. The City, as a member of the Alameda County HOME Consortium, has received Home Investment Partnership Act funds from the United States Department of Housing and Urban Development ("**HUD**") pursuant to the Cranston-Gonzales National Housing Act of 1990 ("**HOME Funds**"). Such funds must be used by City in accordance with 24 CFR 92 *et seq.*

B. The Grantee intends to lease at least six (6) apartment units located in the City of Hayward (the "**Apartment Units**") from private landlords and sublease these units and provide rental subsidies to at least twelve (12) persons who meet certain eligibility criteria (the "**Participants**"). The Grantee's rental subsidy program shall also provide counseling and other ancillary services to Participants and be referred to in this Agreement as the "**Project Independence Program**".

C. Grantee wishes to accept from the City and the City wishes to extend to Grantee a grant of up to Three Hundred Eighty-One Thousand Five Hundred Thirty-Eight Dollars and 00/100 (\$381,538.00) (the "**Grant**") consisting of HOME Funds to provide rental subsidies to Project Independence Program Participants. The Grant will be evidenced by this Agreement and will be subject to the terms and conditions set forth in this Agreement.

D. As a condition of providing the Grant to the Grantee, the City is imposing occupancy and affordability restrictions on the Apartment Units to be subsidized pursuant to this Agreement.

E. The Grant is being made to subsidize the rent paid by Project Independence Program Participants, to help achieve financial feasibility for the rental subsidy portion of the Project Independence Program and to maximize the affordability of the Apartment Units subleased to the Participants.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

- (a) "**Adjusted Income**" shall mean the total anticipated annual income of all persons in a household as calculated in accordance with 24 CFR 5.609 as adjusted by 24 CFR 5.611.
- (b) "**Agreement**" shall mean this Rental Housing Subsidy Grant Agreement - VIII.
- (c) "**Apartment Unit**" means one of the six (6) (or such other number of units mutually acceptable to the Parties) one (1)-bedroom, two (2)-bedroom, or three (3)-bedroom apartment units located within the City of Hayward, each to be leased by the Grantee from a third-party landlord, pursuant to a Master Lease, and subleased to one or more Participants, pursuant to individual Subleases, in accordance with the terms of this Agreement and the Project Independence Program Guidelines, as set forth on Exhibit A.
- (d) "**Approved Financing**" shall mean all of the following financing acquired by the Grantee and approved by the City for the purpose of financing the Project Independence Program, in addition to the Grant:
- (i) California Department of Social Service THP Plus funds in the approximate amount of Three Hundred Sixty Thousand Dollars (\$360,000) to be used for social services and case management for program Participants.
- (e) "**Area Median Income**" shall mean the median income, adjusted for the Participant's household size, for Alameda County, as periodically published by HUD.
- (f) "**City**" shall mean the City of Hayward, a municipal corporation.
- (g) "**City Subsidy**" shall have the meaning set forth in Section 2.3(b)(ii). The City Subsidy shall be made up of Grant Funds.
- (h) "**County**" shall mean the County of Alameda, a political subdivision of the State of California.
- (i) "**Default**" shall have the meaning set forth in Section 6.1 below.
- (j) "**Grant**" shall mean the City grant to Grantee of the Grant Funds pursuant to this Agreement.
- (k) "**Grant Funds**" shall mean the amount up to Three Hundred Eighty-One Thousand Five Hundred Thirty-Eight Dollars (\$381,538) that the City is granting to the Grantee pursuant to this Agreement to provide rental subsidies for the Project Independence Program.
- (l) "**Grantee**" shall mean Abode Services, a California non-profit public benefit corporation.
- (m) "**Hazardous Materials**" shall have the meaning set forth in Section 4.7 below.
- (n) "**Hazardous Materials Claim**" shall have the meaning set forth in Section 4.7 below.

- (o) "**Hazardous Materials Law**" shall have the meaning set forth in Section 4.7 below.
- (p) "**HOME Regulations**" shall mean the implementing regulations for the HOME Program, as amended (24 CFR 92).
- (q) "**HUD**" means the United States Department of Housing and Urban Development.
- (r) "**Low-Income Participant**" shall mean a Participant with an Adjusted Income that does not exceed the qualifying limit for a low-income household under the HOME Program as defined in 24 CFR 92.2.
- (s) "**Master Lease**" shall mean each lease agreement entered into by the Grantee and a private, third-party landlord for the rental of an Apartment Unit.
- (t) "**Monthly Report and Disbursement Request**" shall mean the monthly report and reimbursement request provided by the Grantee to the City by the fifteenth (15th) calendar day of each month stating the eligible expenses, any documentation reasonably requested by the City to document the eligible expenses, including the Total Rent for each Apartment Unit, the Participant's Adjusted Income, the utility allowance as published by Alameda County Housing Authority, the amount of City Subsidy requested for each Apartment Unit, the amount of Participant Rent paid per Apartment Unit, the funds used to pay any remaining Total Rent, and Project Independence Program participation during the preceding month. The Monthly Report and Disbursement Request shall be in a form acceptable to the City.
- (u) "**Parties**" shall mean the City and Grantee.
- (v) "**Participant**" shall mean one of the twelve (12) individuals (or such greater number of individuals mutually acceptable to the Parties) enrolled and actively participating in the Project Independence Program and receiving rental assistance pursuant to this Agreement. Each Participant shall be an individual that at the time of application to the Project Independence Program: (i) has been a resident in a foster care or group home, located in the City, within the last five (5) years; (ii) is currently a resident in a foster care or group home, located in the City, to be emancipated from foster care services; or (iii) has been a "runaway or homeless or at risk of being homeless youth" as that term is defined in the Missing, Exploited, and Runaway Children Protection Act (42 USC 5701 *et seq.*) within the last five (5) years. Each Participant shall meet the Project Independence Program Guidelines as more particularly described in the attached Exhibit A.
- (w) "**Participant Rent**" shall have the meaning set forth in Section 2.3(b)(i).
- (x) "**Rent Standard**" shall mean the Fair Market Rent as defined in 24 CFR 5.100 and published by HUD. As of the date of this Agreement, the 2022 Rent Standard in the Oakland-Fremont HUD Metro FMR Area, which includes the City, are as follows: \$1,538 (for a studio/efficiency), \$1,854 (for a one-bedroom), and \$2,274 (for a two-bedroom).
- (y) "**Sublease**" shall mean the sublease agreement entered into by the Grantee and each Participant for the sublease of an Apartment Unit to the Participant. Each Sublease shall set

forth the Participant's Rent and shall meet the requirements set forth in Section 3.1 of this Agreement.

(z) "**Sixty Percent Participant**" shall mean a Participant with an Adjusted Income that does not exceed the sixty percent (60%) of Area Median Income, adjusted for actual household size.

(aa) "**Term**" shall mean the term of the Grant, commencing on the date of this Agreement and continuing until such time as all Grant Funds have been disbursed, but in no event to exceed twenty-four (24) months from the date of this Agreement.

(bb) "**Total Rent**" shall mean the total amount of rent due under any Master Lease plus utility allowance applicable for the Apartment as published by the Alameda County Housing Authority.

(cc) "**Transfer**" shall have the meaning set forth in Section 4.11 below.

Section 1.2 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Project Independence Program Guidelines

EXHIBIT B: Form for Annual Report

ARTICLE 2 GRANT PROVISIONS

Section 2.1 Grant.

The City shall grant to the Grantee the Grant in the principal amount not to exceed Three Hundred Eighty-One Thousand Five Hundred Thirty-Eight Dollars (\$381,538) for the purposes set forth in Section 2.2 of this Agreement.

Section 2.2 Use of Grant Funds; Material Change in Project Independence Program.

(a) The Grantee shall use the Grant Funds to provide rental subsidies to Participants in the Project Independence Program in accordance with the Project Independence Program Guidelines substantially in the form as the attached Exhibit A.

(b) The Grantee shall not use the Grant funds for any other purpose without the prior written consent of the City. The Grantee agrees and acknowledges that the Project Independence Program Guidelines, attached as Exhibit A, sets forth specific eligibility requirements for Participants, the application process for potential Participants, the move-in process for Participants upon executing the Sublease, continuing Participant obligations, and other Project Independence Program requirements. The Grantee further agrees and acknowledges that the Grantee shall not materially alter the Project Independence Program Guidelines, as set forth in the attached Exhibit A, without the prior written approval of the City. The City shall have thirty

(30) days to either approve or disapprove of any Grantee request to materially change or modify the Project Independence Program. If the City reasonably determines that the proposed change is beneficial to the Grantee's operation of the Project Independence Program and permissible under the HOME Regulations, then the City shall approve the Grantee's request. If the City reasonably determines that the proposed change is either not beneficial to the Grantee's operation of the Project Independence Program, or is impermissible under the HOME Regulations, then the City shall disapprove Grantee's request and provide Grantee a written explanation detailing the City's justification for disapproving Grantee's request. In the event the City fails to approve or disapprove Grantee's request to materially change or alter the Project Independence Program within such thirty (30) day period, such request shall be deemed disapproved. The Grantee's failure to comply with the requirements of this Section 2.2 shall constitute a Default under Section 6.1.

Section 2.3 Affordability.

(a) Purpose. Grantee agrees that the Grant Funds shall be used to provide rental subsidies for Participants in accordance with the requirements of this Section 2.3. The purpose of the Grant is to assist the Grantee in the operation of the Project Independence Program, which shall provide a rental housing subsidy for each Participant, so long as the Participant is in compliance with the Project Independence Program Guidelines. As a condition to subleasing any Apartment Unit consisting of two (2)-bedrooms to one Participant, Grantee shall first verify that the Participant has legal custody of at least one (1) child and that the Apartment Unit shall be the primary residence of such child or children or otherwise require the two (2) bedroom as a reasonable accommodation under fair housing laws. The previous sentence shall not prevent Grantee from leasing a two (2) bedroom apartment unit to two Participants as housemates. As a condition to subleasing any Apartment Unit consisting of three (3)-bedrooms to one Participant, Grantee shall first verify that the Participant has legal custody of at least two (2) child and that the Apartment Unit shall be the primary residence of such child or children or otherwise require the three (3) bedroom as a reasonable accommodation under fair housing laws. The previous sentence shall not prevent Grantee from leasing a three (3) bedroom apartment unit to three Participants as housemates.

(b) Master Lease Rent. Prior to entering into any Master Lease, Grantee shall provide evidence to the City that the Total Rent is reasonable and that the Apartment Unit meets habitability requirements, as described in Section 3.2, below. Each Master Lease shall comply with the requirements of Section 3.1. The Total Rent due under each Master Lease shall be payable through the combination of the Participant's Rent, stated in each Sublease, the City Subsidy, and any additional funding provided by Grantee.

(i) Participant Rent. The Participant Rent shall be equal to the greater of: (1) Seventy-Five Dollars (\$75) or (2) thirty percent (30%) of one-twelfth (1/12th) of the Participant's Adjusted Income.

(ii) City Subsidy. For each Apartment Unit, the total City Subsidy shall be equal to the difference between the Rent Standard and the Participant Rent; provided, however, that in the event the sum of the City Subsidy and Participant Rent exceeds the Total Rent, the City Subsidy shall be reduced by the amount of such excess.

(iii) Grantee Subsidy. The Grantee shall be responsible for funding any amount by which the Total Rent exceeds the sum of the Participant Rent and City Subsidy.

(c) Income Eligibility. Each Participant receiving assistance pursuant to this Agreement must be a Low-Income Participant. Grantee shall ensure that at least ninety percent (90%) of Participants receiving assistance pursuant to this Agreement shall be Sixty Percent Participants. Grantee shall obtain, complete and maintain on file, immediately prior to entering into a Sublease with a Participant, and annually thereafter, income certifications from each Participant. Grantee shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain pay stubs for the most recent two months; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's current employer (showing income for at least the two preceding months); (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies (showing income for at least the two preceding months); or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification (showing income for at least the two preceding months). Copies of Participant income certifications shall be available to City upon request. A Participant will not qualify as a Low-Income Participant if the Individual is a student who is not eligible to received Section 8 assistance under 24 CFR 5.612. Section 5.612 provides that no Section 8 assistance may be provided to any individual who: (i) is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002); (ii) is under 24 years of age; (iii) is not a veteran of the United States military; (iv) is unmarried; (v) does not have a dependent child; (vi) is not a person with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act and was not receiving assistance under section 8 of the 1937 Act as of November 30, 2005; and (vii) is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under section 8 of the 1937 Act.

Section 2.4 Conditions Precedent to Disbursement.

City shall not be obligated to make any disbursements of Grant funds or take any other action under the Agreement unless the following conditions precedent are satisfied prior to each such disbursement of the Grant:

(a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement;

(b) Grantee has executed and delivered to City all documents, instruments, and policies required under this Agreement;

(c) The City has received reasonable evidence that the local match requirements set forth in 24 CFR 92.218 *et seq.* have been satisfied pursuant to Section 4.2 of this Agreement.

(d) The City has received an executed Monthly Report and Disbursement Request in a form acceptable to the City setting forth the eligible expenses to be reimbursed consistent with

this Agreement, and to the extent applicable, such additional evidence reasonably requested by the City to document eligible costs and expenses incurred by Grantee.

(e) The Grantee holds leasehold title to each Apartment Unit pursuant to a Master Lease, meeting the requirements of Section 3.1, below

(f) The Grantee has provided the City a copy of the executed Sublease for each Apartment Unit for which the Grantee is requesting reimbursement.

(g) The Grantee has verified the income of the Participant who will occupy the Apartment Unit for which the Grantee is requesting reimbursement pursuant to Section 2.3(c), and confirmed that the income of the Participant meets the requirements set forth in Section 2.3(c).

(h) The Grantee has verified that the Participant is not a student who is ineligible to receive Section 8 assistance under 24 CFR 5.612.

(i) Each Apartment Unit for which Grantee is requesting reimbursement meets the habitability requirements set forth at 24 CFR 982.401 and, to the extent applicable, other property standards adopted by the City pursuant to 24 CFR 92.251(f).

Section 2.5 Disbursement Schedule.

The Grantee shall submit a Monthly Report to the City by the fifteenth (15th) calendar day of each month. Provided that the conditions set forth in Section 2.4 are satisfied, the City shall reimburse the Grantee for all eligible expenses documented on the Monthly Report within twenty-one (21) calendar days of the City's receipt of the Monthly Report. Grantee shall ensure that the City Subsidy is timely expended in accordance with the terms of this Agreement.

ARTICLE 3 LEASE REQUIREMENTS

Section 3.1 Master Lease and Sublease Requirements.

The requirements set forth in this Article 3 shall apply to each Master Lease and each Sublease, pursuant to the HOME Regulations (24 CFR 92).

(a) Master Lease. Each Master Lease shall comply with the terms and conditions of this Agreement, the applicable HOME Regulations and meet the following requirements:

(i) The Total Rent for each Apartment Unit must be reasonable in comparison to rental charges for similarly situated housing units in the City.

(ii) The Total Rent during the Master Lease term shall be subject only to minimal increases that shall not affect the economic feasibility of the Project Independence Program.

(iii) The initial term of the Master Lease shall be no less than twelve (12) months.

(iv) The owner of the Apartment Unit may not terminate the tenancy or refuse to renew the Master Lease except for serious or repeated violation of the terms and conditions of the Master Lease, for violation of applicable federal, state, or local law; for completion of the tenancy period for transitional housing; or for other good cause. Good cause does not include an increase in the Participant's income. In order to terminate or refuse to renew tenancy, the owner must serve written notice to the Grantee specifying the grounds for the action at least sixty (60) days before the termination of the Grantee's tenancy.

(v) The Master Lease shall not include any prohibited lease term as set forth in 24 CFR 92.253.

(b) Sublease. The initial term of the Sublease shall be no less than twelve (12) months, unless Participant and Grantee mutually agree to a shorter specified period. The Grantee shall obtain the City's prior written approval of each Sublease, (or the form of Sublease). In addition, each Sublease cannot include certain provisions including the following:

(i) Any requirement that the tenant agree to be sued, to admit guilt, or agree to a judgment in favor of the landlord in a lawsuit brought in connection with the lease.

(ii) Any requirement stating that the landlord may take, hold, or sell the tenant's personal property without notice to the tenant prior to the tenant vacating the Apartment Unit.

(iii) Any provision that excuses the landlord for any act, or failure to act, whether intentional or negligent.

(iv) Any requirement that the tenant waive the right to notice prior to the landlord instituting a lawsuit against the tenant.

(v) Any requirement that the tenant waive the right to a jury trial.

(vi) Any provision that prohibits the tenant's right to appeal a court decision in connection with the lease.

(vii) Any provision requiring the tenant to pay attorney's fees if the tenant wins a court proceeding against the landlord.

(viii) Any provisions requiring the tenant to accept the supportive services that are offered by the Grantee.

(ix) The Grantee may not terminate the Sublease or refuse to renew the Sublease except for serious or repeated violation of the terms and conditions of the Sublease, for violation of applicable federal, state, or local law; for completion of the tenancy period for transitional housing; or for other good cause. Good cause does not include an increase in the tenant's income. In order to terminate or refuse to renew tenancy under the Sublease, the Grantee must serve written notice to the Participant specifying the grounds for the action at least sixty (60) days before the termination of the Participant's tenancy.

(x) The Grantee may not charge and the Sublease may not include charges for any additional fees (or pass on charges from the Master Lease) to Participant except as follows: the Grantee may charge (i) reasonable application fees to the Participant; (ii) parking fees if such fees are customary for rental housing in the neighborhood and approved in advance by the City; (iii) fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for the services provided and approved in advance by the City.

Section 3.2 Inspections.

(a) Prior to Entering Master Lease. Grantee shall not enter into any Master Lease until the City, or the City's designee, has inspected the potential Apartment Unit and provided written confirmation to the Grantee that the potential Apartment Unit satisfies the habitability requirements of 24 CFR 982.401. The City shall provide a list to Grantee of its designated inspectors upon request of Grantee.

(b) Annual Inspection. Under each Master Lease and Sublease, Grantee shall permit and facilitate, and shall require its Participants to permit and facilitate, observation and inspection at any Apartment Unit by the City (or its employees or agents) during reasonable business hours and after written notice provided to both the Grantee and the Participant at least twenty-four (24) hours prior to the inspection for the purposes of determining compliance with this Agreement and that the Apartment Unit meets the requirements set forth in 24 CFR 982.401, and other applicable property standards adopted by the City pursuant to 24 CFR 92.251(f). The City shall inspect each Apartment Unit at least once every twelve (12) months.

ARTICLE 4 GRANT REQUIREMENTS

Section 4.1 Compliance with Agreement.

Grantee shall comply with the terms of this Agreement and any breach by Grantee under this Agreement shall be considered a Default under this Agreement.

Section 4.2 Match Requirement.

Grantee shall ensure that HOME Funds are matched with non-federal resources as required by HOME regulations at 24 CFR 92.218 and 92.220. To satisfy such requirements, the Grantee must obtain matching funds in the minimum amount of Ninety-Five Thousand Three Hundred Eighty-Five Dollars and 00/100 (\$95,385.00). Funds counted as match funds must be from nonfederal sources, represent a permanent contribution to the Project Independence Program, and be eligible in accordance with 24 CFR 92.220.

Section 4.3 Financial Accountings and Audits.

In addition to the Monthly Reports, the Grantee shall submit a year-end report at the end of each fiscal year which shall include the form attached as Exhibit B, but in no event later than July 30 of each year. The year-end report shall summarize the performance of the Project Independence Program for the preceding year, and provide any other information the City reasonably determines is necessary to evaluate the Project Independence Program.

During the Term, from time to time as reasonably requested by the City, Grantee shall make available for examination during normal business hours to City all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine, and make excerpts or transcripts from such records. City may make audits of any conditions relating to this Agreement.

Section 4.4 Information.

Grantee shall provide any information reasonably requested by the City in connection with the Project Independence Program, including (but not limited to) any information required by the State of California or HUD in connection with Grantee's use of the Grant funds.

Section 4.5 Records.

(a) Grantee shall maintain complete, accurate, and current records pertaining to the Project Independence Program for a period of five (5) years after the creation of such records, and shall permit any duly authorized representatives of the City or HUD to inspect and copy records. Such records shall include all Master Leases, Subleases, Participant applications, invoices, receipts, and other documents related to expenditures from the Grant funds. Records must be kept accurate and current.

(b) The City shall notify Grantee of any records it deems insufficient. Grantee shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Grantee shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible (but in any event no later than sixty (60) days following the initial Notice from the City).

Section 4.6 HOME Requirements.

(a) In addition to the HOME requirements for each Master Lease and each Sublease described in Section 3.1, Grantee shall comply with all applicable laws and regulations governing the use of the Grant funds as set forth in 24 CFR 92 *et seq.* In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the Grant funds, the applicable laws and regulations shall govern.

(b) The laws and regulations governing the use of the Grant funds include (but are not limited to) the following:

(i) Environmental and Historic Preservation. 24 C.F.R. Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.

(ii) Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110, A-122, and A-133.

(iii) Debarred, Suspended or Ineligible Contractors. The use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24.

(iv) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 C.F.R. 100 *et seq.*; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by executive Order 12608.

(v) Lead-Based Paint. The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 *et seq.*), and implementing regulations at 24 C.F.R. Part 35.

(vi) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601, *et seq.*) and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. Part 42; 24 C.F.R. Section 92.353; and California Government Code Section 7260 *et seq.* and implementing regulations at 25 California Code of Regulations Section 6000 *et seq.* If and to the extent that development of the Development results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then Borrower shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. Borrower shall prepare and submit a relocation plan to the City for approval. Borrower shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. The Borrower shall indemnify, defend (with counsel reasonably chosen by the City), and hold harmless the City against all claims which arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the Development.

(vii) Discrimination against the Disabled. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 *et seq.*), and federal regulations issued pursuant thereto.

(viii) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 1500, as amended from time to time.

(ix) HOME Uniform Administrative Requirements. The requirements of 24 C.F.R. 92.505 regarding cost and auditing requirements.

(x) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701(u) ("Section 3"), requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Grantee agrees to include the following language in all subcontracts executed under this Agreement:

(1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(2) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(4) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(6) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(7) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

(xi) Labor Standards. The Grantee shall comply with applicable labor requirements set forth in 24 C.F.R. Section 92.354. The prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 276a-276a-5); the Copeland "Anti-Kickback" Act (40 U.S.C. 276I) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 327-333) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

(xii) Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 24.

(xiii) Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 C.F.R. Part 87.

(xiv) Historic Preservation. The Grantee shall comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800.

(xv) Faith Based Activities. If the Grantee is a religious organization, as defined by the HOME requirements, the Grantee shall comply with all conditions prescribed by HUD for the use of HOME Funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. 92.257.

(xvi) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the Loan funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

Section 4.7 Hazardous Materials.

(a) Grantee shall keep and maintain the Apartment Units in compliance with, and shall not cause or permit the Apartment Units to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Apartment Units including, but not limited to, soil and ground water

conditions. Grantee shall not (and Grantee shall not permit any Participant to) use, generate, manufacture, store or dispose of on, under, or about the Apartment Units or transport to or from the Apartment Units any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "**Hazardous Materials**") except such of the foregoing as may be customarily kept and used in and about residential property of this type.

(b) Grantee shall immediately advise the City in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Grantee or the Apartment Units pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("**Hazardous Materials Law**"); (ii) all claims made or threatened by any third party against Grantee or the Apartment Units relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "**Hazardous Materials Claims**"); and (iii) Grantee's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Apartment Units that could cause the Apartment Units or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq. or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Apartment Units under any Hazardous Materials Law.

(c) The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Grantee. Grantee shall indemnify and hold harmless the City and its supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Apartment Units including without limitation: (a) all foreseeable consequential damages (but only with respect to consequential damages related to Hazardous Materials present on the Apartment Units due to actions or inactions of Grantee); (b) the costs of any required or necessary repair, cleanup or detoxification of the Apartment Units and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the City in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

(d) Without the City's prior written consent, which shall not be unreasonably withheld, Grantee shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Apartment Units, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims; provided, however, that the City's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Apartment Units either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the City's

consent before taking such action, provided that in such event Grantee shall notify the City as soon as practicable of any action so taken. The City agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Grantee will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) or the action has been agreed to by the City.

(e) Grantee hereby acknowledges and agrees that (i) this Section is intended as the County's written request for information (and Grantee's response) concerning the environmental condition of the Apartment Units as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

Section 4.8 Fees and Taxes.

Grantee shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Apartment Units to the extent owned by Grantee, and shall pay such charges prior to delinquency. However, Grantee shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the City, Grantee deposits with the City any funds or other forms of assurance that the City in good faith from time to time determines appropriate to protect the City from the consequences of the contest being unsuccessful.

Section 4.9 Notice of Litigation.

Grantee shall promptly notify the City in writing of any litigation materially affecting Grantee or the Apartment Units (or any individual Apartment Unit) and of any claims or disputes that involve a material risk of such litigation.

Section 4.10 Nondiscrimination; Affirmative Marketing Plan.

(a) The Grantee covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the participation in the Project Independence Program, nor shall the Grantee or any person claiming under or through the Grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Apartment Units.

(b) No later than thirty (30) days after the execution of this Agreement, Grantee shall submit to City for approval its plan for marketing the Project Independence Program to potential Participants, including information on affirmative marketing efforts and compliance with fair housing laws. Upon receipt of the Affirmative Marketing Plan, City shall promptly review the Affirmative Marketing Plan and shall approve or disapprove it within thirty (30) days after submission. If the Affirmative Marketing Plan is not approved, Grantee shall submit a revised

Affirmative Marketing Plan within thirty (30) days. If City does not approve the revised Affirmative Marketing Plan because Grantee has not incorporated specific revisions reasonably requested by the City, Grantee shall be in default hereunder. Grantee shall follow and comply with the City approved Affirmative Marketing Plan.

Section 4.11 Transfer.

(a) This Agreement is entered into solely for the purpose of operation of the Project Independence Program and its subsequent use in accordance with the terms hereof. The Grantee recognizes that the qualifications and identity of Grantee are of particular concern to the City. The Grantee further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Grantee and that limited Transfers are permitted only as provided in this Agreement.

(b) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under this Agreement; or (ii) any interest in the Grantee, including any merger, consolidations, sale, or lease of all or substantially all of the assets of Grantee. The term "Transfer" shall exclude the leasing of any single Apartment Unit to a Participant in accordance with this Agreement.

(c) No Transfer shall be permitted during the Term. Any unauthorized Transfer shall automatically cancel the City's obligations to provide the Grant Funds to Grantee after the date of the unauthorized Transfer.

Section 4.12 Insurance Requirements.

The Grantee shall maintain the following insurance coverage throughout the Term of the Grant:

(a) Worker's Compensation insurance, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Comprehensive General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, and Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Grantee does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(d) Commercial crime insurance covering all officers and employees, for loss of Grant proceeds caused by dishonesty, in an amount approved by the City, naming the City as a Loss Payee, as its interests may appear.

(e) The required insurance shall be provided under an occurrence form, and Grantee shall maintain such coverage continuously during the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(f) Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as an additional insured the City and its officers, agents, employees and members of the City Council.

(g) All policies and bonds shall be endorsed to provide thirty (30) days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the City. And contain: (1) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the City; (3) a provision that no act or omission of the Grantee shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (4) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF GRANTEE

Section 5.1 Representations and Warranties.

Grantee hereby represents and warrants to the City as follows:

(a) Organization. Grantee is a duly organized, validly existing California nonprofit corporation and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Grantee. Grantee has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, and to perform and observe the terms and provisions of all of the Agreement.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Grantee, and all actions required under Grantee's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Grantee enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed

or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Grantee, or any provision of the organizational documents of Grantee, or will conflict with or constitute a breach of or a default under any agreement to which Grantee is a party, or will result in the creation or imposition of any lien upon any assets or property of Grantee, other than liens established pursuant hereto.

(f) Pending Proceedings. Grantee is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Grantee, threatened against or affecting Grantee, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Grantee, materially affect Grantee's ability to administer the Project Independence Program.

ARTICLE 6 DEFAULT AND REMEDIES

Section 6.1 Events of Default.

Each of the following shall constitute a "Default" by Grantee under this Agreement:

(a) Breach of Covenants. Failure by Grantee to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Agreement, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the City to the Grantee, or if the breach cannot be cured within thirty (30) days, the Grantee shall not be in breach so long as Grantee is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

(b) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Grantee to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Grantee or seeking any arrangement for Grantee under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Grantee in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Grantee if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or Grantee shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive.

(c) Assignment; Attachment. Grantee shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution.

- (d) Suspension; Termination. Grantee shall have voluntarily suspended its business.
- (e) Unauthorized Transfer. Any Transfer other than as permitted by Section 4.11.
- (f) Representation or Warranty Incorrect. Any Grantee representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the City in connection with this Agreement, proving to have been incorrect in any material respect when made and having a material adverse effect on the Project Independence Program.

Section 6.2 Remedies.

The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the City or automatically where so specified, relieve the City of any obligation to make or continue the Grant and shall give the City the right to proceed with any and all remedies in law or equity, including suit for recovery of any Grant funds which Grantee has not utilized in compliance with this Agreement or for any Grant funds which may be due to HUD pursuant to 24 CFR 92.205(e).

Section 6.3 Right of Contest.

Grantee shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the City or the rights of the City hereunder.

Section 6.4 Remedies Cumulative.

No right, power, or remedy given to the City by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Grantee and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 7 GENERAL PROVISIONS

Section 7.1 Relationship of Parties.

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and Grantee or its agents, employees or contractors, and Grantee shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Grantee has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. Grantee shall be solely

responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Grantee shall be solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims.

Nothing contained in this Agreement shall create or justify any claim against the City by any person that Grantee may have employed or with whom Grantee may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the operation of the Project Independence Program and Grantee shall include similar requirements in any contracts entered into for the operation of the Project Independence Program.

Section 7.3 Amendments.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

Section 7.4 Indemnification.

The Grantee shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the City harmless against all claims made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with the operation of the Project Independence Program (including, but not limited to, any claim made by a Participant or any claim made by the owner of an Apartment Unit), except to the extent such claim arises from the grossly negligent or willful misconduct of the City, its agents, and its employees. The provisions of this Section 7.4 shall survive the expiration of the Term.

Section 7.5 Non-Liability of City Officials, Employees and Agents.

No member, official, employee or agent of the City shall be personally liable to Grantee in the event of any default or breach by the City or for any amount which may become due to Grantee or its successor or on any obligation under the terms of this Agreement.

Section 7.6 No Third Party Beneficiaries.

There shall be no third party beneficiaries to this Agreement.

Section 7.7 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.7(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or financial benefit from the activity,

or have a financial interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have immediate family or business ties, during, or at any time after, such person's tenure. Grantee shall exercise due diligence to ensure that the prohibition in this Section 7.7(a) is followed.

(b) The conflict of interest provisions of Section 7.7(a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the City. Immediate family ties include (whether by blood, marriage, or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

(c) No officer, employee, agent, consultant, or sponsor of Grantee, or any immediate family member of any such person may receive City Subsidy as tenant based rental assistance.

Section 7.8 Notices, Demands and Communications.

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 Hayward
Community Services/Housing Division
777 "B" Street
Hayward, CA 94541-5007
Attention: Housing Dev. Specialist/Project Independence

Grantee:

Abode Services
40849 Fremont Blvd.
Fremont, CA 94538

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

Section 7.9 Applicable Law.

This Agreement shall be governed by California law.

Section 7.10 Parties Bound.

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

Section 7.11 Attorneys' Fees.

If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 7.12 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability. The Parties to this Agreement, and their counsel, have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including, but not limited to, Civil Code Section 1654) shall not apply to this Agreement.

Section 7.13 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; or court order; or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the City be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.14 City Approval.

Whenever this Agreement calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council. The City hereby authorizes the City Manager, or the designee of the City Manager, to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City Manager, or the designee of the City Manager, is also hereby authorized to approve, on behalf of the City, requests by Grantee for reasonable extensions of time deadlines set forth in this Agreement. The City shall not unreasonably delay in reviewing and approving or disapproving any proposal by Grantee made in connection with this Agreement.

Section 7.15 Waivers.

Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Grantee or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Grantee to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Grantee shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 7.16 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 7.17 Entire Understanding of the Parties.

This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Grant.

Section 7.18 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts, and all of which taken together shall constitute this Agreement.

WHEREAS, this Agreement has been entered into by the undersigned as of Effective Date.

CITY:

THE CITY OF HAYWARD, a municipal corporation

By: DocuSigned by:
Kelly McAdoo
38D6F24F6EFE4F8...
Kelly McAdoo, City Manager

APPROVED AS TO FORM:

By: DocuSigned by:
Michael Lawson
FB88E84EC9F24B7...
Michael S. Lawson, City Attorney

ATTEST:

By: DocuSigned by:
Miriam Lens
0022A42DA1F540B...
Miriam Lens, City Clerk

GRANTEE:

Abode Services, a California non-profit public benefit corporation

By: DocuSigned by:
[Signature]
B3B7DB6911EF417...

Name: Louis Chicoine

Its: CEO

EXHIBIT A
Project Independence Program Guidelines



**PROJECT INDEPENDENCE VIII
PROGRAM DESCRIPTION**

Mission Statement: To create a positive, supportive, and nurturing life experience for adolescents transitioning to adulthood by providing the services that will empower youths to achieve self-sufficiency and recognize their responsibility in becoming functionally independent individuals.

Objective: To assist young adults who are coming out of the foster care/group home system and/or at high-risk with the greatest need with the housing, linkages to training/education and social services which will allow them to reach their dreams, act with self-determination and ultimately become independent.

Eligibility Requirements:

The identification of those adolescents who would qualify for Project Independence (the Program) would be based on the following criteria:

- a. Must be fully emancipated or a minimum age of 18 years. Emancipated young adults coming out of a local group home, other foster care placement and/or at high –risk with the greatest need.
- b. Homeless or at-risk of homelessness.
- c. Must demonstrate ability to enter into housing, sign a lease agreement and abide by its conditions.
- d. Must agree to pay \$75 security deposit and their portion of first month’s rent for apartment upon entering the program. (Security deposit will be returned to participant upon graduation from program.)

Additional criteria, which will be assessed, are:

- Academic achievement
- High School Diploma
- GED
- GPA
- Vocational history including references.
- Employers
- Volunteer status

- Coaches
- References from school personnel, social worker, CASA worker and probation officer.
- Review of any juvenile justice records

Qualifying candidates for this program will have successfully completed a thorough evaluation and assessment to determine their eligibility. It will be the sole responsibility of Abode Services staff to determine eligibility, selection of candidates into the program, and placement of participants in units.

Methodology: Young adults selected for participation in Project Independence will be provided with a housing subsidy, linkage to training and educational opportunities, social services and will be assigned to a Youth Service Coordinator who will serve at the young adult's link to the program and other services. The following are the components that follow, once a participant has been accepted into the program:

a. Independence Plan

Each participant would be asked to develop a Transition to Independent Living Plan (TILP). Each TILP will be unique to each participant and designed to assist participants to define their life goals, needs and the action steps necessary for success. This TILP will provide the basis for a monthly contract containing specific activities required from participants and program staff such as active participation in their educational/training program for the month. Progress toward the monthly contract activities will be evaluated the following month in a meeting of the participant and his or her service coordinator. Success in Project Independence will depend on this agreement between the participant and program.

It is the job of the service coordinator to assist the participant to set realistic goals like completing training or education, finding employment when appropriate, saving money and following through with counseling or other appointments. Participants will also be expected to act responsibly when it comes to their housing.

b. Housing Selection

1. Participants must be prepared to pay the \$75 (refundable) security deposit and their share of the first month's rent.
2. Participants are encouraged to have a part-time job before entering housing.
3. Participants must demonstrate ability to pay their portion of rent, utilities and living expenses. Additionally, participants are responsible for paying their portion of the monthly gas & electric bill.
4. Upon selection for participation in the Program, the new participant will be assigned housing and a Youth Service Coordinator.
5. Before entering housing, participants receive an orientation and sign a commitment to abide by program and apartment rules and policies.
6. Participants do a walkthrough of their new apartment with appropriate staff.
7. Participants sign the lease and program contract.
8. Participants move into apartment.

c. Services

Participant-centered services will be provided based on each participant's TILP. The Youth Service Coordinator has extensive social service training and experience to assist participants. The Youth Service Coordinator (YSC) will be responsible for assessing each participant's need for services, providing services, referring participants to appropriate service providers, monthly contracts, budgeting, providing emotional counseling and connecting participant with an adult mentor if requested. The participant and YSC will develop a TILP. The TILP will contain the participants' goals and action plan leading to independence along with the YSC's commitment to provide the services needed to assist participants toward their particular goals

d. Length of Lease

The minimum length of the initial lease agreement is 12 months.

e. Rent & Lease Terms

Abode Services signs a rental master lease with a private landlord, stipulating the monthly rent, security deposit amount and terms of tenancy. Participant signs an attached lease addendum. Please note: If a participant is terminated from the Program, s/he exits the unit and Abode maintains the master lease.

f. Rent Structure

If the participant does not have income, they are responsible to pay \$75 per month. If the participant has income, the participant's rent contribution will be based on 30% of his/her monthly adjusted income.

g. Lease Violations and Program Termination

Participants are expected to fully comply with the terms of their lease. At a minimum, these terms include:

- Timely payment of rent;
- Adherence to guest policies;
- Annual submission of income verification documentation;
- Presuming proper notice, granting access at least annually to perform inspections and more frequently if needed for maintenance; and
- All other stipulations contained within the lease and sublease agreements.

One or more serious and unresolvable lease violations may result in termination from the program. Lease violations may be issued by Abode Services or by the property manager or landlord.

Violence involving weapons and destruction of property are behaviors that will warrant a notice of immediate termination from the program with no exceptions.

If participants require a waiver of any of the above described requirements they may request such waiver from Abode Services.

EXHIBIT B
FORM FOR ANNUAL REPORT
PROJECT INDEPENDENCE VI
ANNUAL CONTRACT YEAR REPORT INFORMATION

For the contract year ended: _____

Activity	Total Number Year-To-Date (for non-duplicated participants)
Lease Agreement – for profit property owner	
Lease Agreement – non-profit property owner	
Program application(s) approved	
Participant(s) placed in a unit	
Participant(s) with children	
Individuals on the wait list	
Participant(s) in training/school	
Participants employed part time	
Participants employed full time	
Participants not employed	
Participant(s) not in compliance with Individual Service Plan contract	
Participant(s) who have graduated from the Program and paying 100% of his/her portion of the rent	

Comments may also include reasons(s) a participant is on the wait list as well as other program challenges.

Form Completed by:

Signature

Date

Print Name/Title

Please note this report is due annually. Please submit completed forms to City of Hayward, Housing Division, 777 B Street, 2nd Floor, Hayward, CA 94541-5007 Attention: Management Analyst, Reference: Project Independence

RENTAL HOUSING SUBSIDY GRANT AGREEMENT - VIII

Between

The City of Hayward

and

Abode Services

(Project Independence)

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND EXHIBITS.....	1
Section 1.1 Definitions.....	1
Section 1.2 Exhibits.....	4
ARTICLE 2 GRANT PROVISIONS	4
Section 2.1 Grant.....	4
Section 2.2 Use of Grant Funds; Material Change in Project Independence Program.....	4
Section 2.3 Affordability.....	5
Section 2.4 Conditions Precedent to Disbursement.....	6
Section 2.5 Disbursement Schedule.....	7
ARTICLE 3 LEASE REQUIREMENTS	7
Section 3.1 Master Lease and Sublease Requirements.....	7
Section 3.2 Inspections.....	9
ARTICLE 4 GRANT REQUIREMENTS.....	9
Section 4.1 Compliance with Agreement.....	9
Section 4.2 Match Requirement.....	9
Section 4.3 Financial Accountings and Audits.....	9
Section 4.4 Information.....	10
Section 4.5 Records.....	10
Section 4.6 HOME Requirements.....	10
Section 4.7 Hazardous Materials.....	13
Section 4.8 Fees and Taxes.....	15
Section 4.9 Notice of Litigation.....	15
Section 4.10 Nondiscrimination; Affirmative Marketing Plan.....	15
Section 4.11 Transfer.....	16
Section 4.12 Insurance Requirements.....	16
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF GRANTEE.....	17
Section 5.1 Representations and Warranties.....	17
ARTICLE 6 DEFAULT AND REMEDIES.....	18
Section 6.1 Events of Default.....	18
Section 6.2 Remedies.....	19
Section 6.3 Right of Contest.....	19
Section 6.4 Remedies Cumulative.....	19
ARTICLE 7 GENERAL PROVISIONS	19

TABLE OF CONTENTS

(Continued)

	<u>Page</u>
Section 7.1 Relationship of Parties.	19
Section 7.2 No Claims.	20
Section 7.3 Amendments.	20
Section 7.4 Indemnification.	20
Section 7.5 Non-Liability of City Officials, Employees and Agents.	20
Section 7.6 No Third Party Beneficiaries.	20
Section 7.7 Conflict of Interest.	20
Section 7.8 Notices, Demands and Communications.	21
Section 7.9 Applicable Law.	21
Section 7.10 Parties Bound.	21
Section 7.11 Attorneys' Fees.	22
Section 7.12 Severability.	22
Section 7.13 Force Majeure.	22
Section 7.14 City Approval.	22
Section 7.15 Waivers.	23
Section 7.16 Title of Parts and Sections.	23
Section 7.17 Entire Understanding of the Parties.	23
Section 7.18 Multiple Originals; Counterparts.	23

EXHIBIT A: Project Independence Program Guidelines

EXHIBIT B: Form For Annual Report

Name of Jurisdiction: City of Hayward

1. Was the Jurisdiction awarded Encampment Resolution Funding (ERF) Program funds (Yes/No)? If so, indicate the round of funding (i.e., ERF-1, ERF-2-L, ERF-2-R, ERF-3-L, or ERF-3-R), the date the grant was awarded, and attach the approved proposal. Max. 100 characters.

No. _____

2. What is the Jurisdiction's role in the Coordinated Entry System (lead, support, etc.)? Max. 100 characters. If applicable, attach any supporting documents.

Alameda County is the CES management entity for the Coordinated Entry System. City staff participate actively in the CoC.

3. Does the Jurisdiction receive a direct allocation of federal funds from HUD (Yes/No)? If so, indicate the type of federal funds, and how the federal funds are being utilized to serve the homeless population. Also, attach the jurisdiction's consolidated plan and indicate the award amount. Max. 100 characters. CDBG funds service providers and infrastructure projects for shelters. FY24 CDBG award was \$1.5M. The consolidated plan is available on the City's website: https://www.hayward-ca.gov/sites/default/files/documents/2021-2025%20Con%20Plan_FINAL_20200702.pdf

Each Jurisdiction's response to homelessness is based on the unique needs of the population they serve. Based on these efforts, the [United States Interagency Council on Homelessness' Seven Principles for Addressing Encampments](#) provides best practice guidance to support communities as they develop and implement a comprehensive response to encampments. Please provide a response on how the Jurisdiction meets each of the principles noted below. *Attach and reference any supporting documentation along with the page numbers accordingly.*

- **Principle 1: Establish a Cross-Agency, Multi-Sector Response to Encampments** (*Describe how system partners work together. Attach communication and coordination plans.*)
- **Principle 2: Engage Encampment Residents to Develop Solutions** (*Describe street outreach efforts to engage with encampment residents to find alternative shelter, housing, and service options before an existing encampment is closed.*)
- **Principle 3: Conduct Comprehensive and Coordinated Outreach** (*Describe multidisciplinary connection strategies and linkages to resources and permanent housing solutions. If applicable, describe how the jurisdiction uses the coordinated entry system to connect individuals to resources and permanent housing.*)
- **Principle 4: Address Basic Needs and Provide Storage** (*Describe efforts to meet basic needs, health, safety, and access to storage for people experiencing unsheltered homelessness.*)
- **Principle 5: Ensure Access to Shelter or Housing Options** (*Include a list of shelter or housing options, such as transitional housing, permanent supportive housing, emergency shelters, etc. within the jurisdiction and/or are accessible within nearby communities. Also, indicate the shelter/housing name, address, target population and funding sources applied towards the development(s).*)
- **Principle 6: Develop Pathways to Permanent Housing and Supports** (*Describe Housing First strategies emphasizing low-barriers, a harm-reduction model, and services to support people obtaining permanent housing more efficiently. Identify efforts to align federal, state, and local funding/programs to provide clear pathways to permanent housing.*)
- **Principle 7: Create a Plan for What Will Happen to Encampment Sites After Closure** (*Describe plans for former encampment spaces. Include efforts to emphasize safety, accessibility, and inclusivity that improve infrastructure. Example: Communities can include curb cuts to increase mobility access and enhanced lighting to encourage safety.*)

TEMPLATE

- **Principle 1: Establish a Cross-Agency, Multi-Sector Response to Encampments** (350 characters max)

The City of Hayward has established a cross-agency and multi-sector response to addressing encampments. At least monthly an inter-agency group of staff meet to discuss existing encampments, concerns, and outreach plans. This group includes City staff from the City Manager’s Office (responsible for managing outreach contracts and coordinating responses), Code Enforcement, Maintenance Services, Environmental Services and Public Works, Reginal Airport, Police and Fire Departments, the City’s Case Management and Service Linkages (LINK) team. It also includes safety and leadership staff from the Hayward Area Recreation District (HARD), a special district that oversees parks and open spaces in the area, including Hayward. Additionally, City staff are engaged in the Continuum of Care (CoC), serving on the Outreach, Access, and Coordination Committee of the CoC, which centers racial equity and individuals with lived experience of homelessness. Staff also regularly meeting with school district staff, faith-based partners, Health Care for the Homeless (HCH) staff, the business community, and local hospital staff. The interdepartmental working group is currently developing a communication and coordination plan which will likely be available for distribution until September due to the number of entities involved. The requirement to provide this plan exceeds the requirements stipulated in section 6604 (b)(5) to provide a 1-page summary of the Prohousing Designation Program Regulations.

Supporting Documentation:

P1(a) Encampment Response Monthly Meeting _Agenda Template (attached)

P1(b) Homeless Response Monthly Meeting Agenda Template (attached)

- **Principle 2: Engage Encampment Residents to Develop Solutions** (350 characters max)

The City established the Let’s House Hayward Strategic Plan for ending homelessness in 2021. The plan was developed with significant input from a Steering Committee, which included individuals with lived experience of homelessness who provided detailed input into the City’s strategic direction and priority projects, such as exploring safe parking and safe camping programs. The City is evaluating ways to incorporate residents of specific encampments in individual encampment responses. Currently, outreach staff engage residents with housing navigation services prior to any abatement or changes to an encampment.

Supporting Documentation:

P2(a) Let’s House Hayward! Strategic Plan 2021.06.25

- **Principle 3: Conduct Comprehensive and Coordinated Outreach** (350 characters max)

The City has two core proactive outreach teams. As part of its operations of the Hayward Navigation Center (HNC), Bay Area Community Services (BACS) has a team of outreach staff who provide housing navigation services, including coordinated entry assessments. They work closely with the City’s newest outreach team, LINK, which focuses on linking individuals to existing County resources and opens case management services to those ineligible or otherwise not connected to case management. LINK serves literally homeless individuals and those at risk of homelessness who have co-occurring behavioral health issues. Both teams operate proactively throughout the City and respond to community concerns. LINK coordinates with County services, including In-Home Outreach Teams and HCH, which both practice street health outreach and harm reduction approaches.

Supporting Documentation:

P3(a) FY24 HNC-BACS Contract Agreement.FE 2023-10-12.PDF (Exhibit A)

P3(b) [Hayward Evaluation And Response Teams \(HEART\) Program | City of Hayward - Official website \(hayward-ca.gov\)](#)

- Principle 4: Address Basic Needs and Provide Storage** (350 characters max)
 Depending on the level of health and safety risk at an encampment, City staff will provide regular trash removal and sharps removal. When encampments are closed, the City posts advance notice and coordinates with residents to identify storage needs. Personal items are stored up to 90 days. Individuals who accept a placement at the HNC also have access to storage on site.
- Principle 5: Ensure Access to Shelter or Housing Options** (Please complete the information below for each shelter or housing options within the jurisdiction and/or are accessible within nearby communities)

Shelter/Housing Name Type of Housing Address Target Population Funding Source

Hayward Navigation Center	Transitional shelter	3788 Depot Rd Hayward, CA	Adults experiencing homelessness	City of Hayward General Fund, HHAP, PLHA
South Hayward Parish	Emergency shelter	27287 Patrick Ave Hayward, CA	Adults experiencing homelessness	County Social Services Agency; City of Hayward General Fund and CDBG award; other County resources
Les Marquis Emergency Shelter	Emergency shelter	22671 3 rd St Hayward, CA	Families	Variety, including CDBG services allocation from City of Hayward
Ruby's Place	Emergency shelter	Confidential	Individuals and families fleeing domestic violence	Variety, including CDBG services allocation from City of Hayward
First Presbyterian Church of Hayward in Castro Valley	Emergency shelter	2490 Grove Way Castro Valley, CA	Adults experiencing homelessness	County Social Services Agency and other County resources

Supporting Documents:

P5(a) HNC-BACS Contract Agreement.FE 2023-10-12.PDF (Exhibit A pg 2 Section 1)

P5(b) Funding Agreement: First Pres-SHP.SS FY 23-24 Contract Agmt.FE.pdf

P5(c) Funding Agreement: Alliance.PS FY 23-24 Contract Agmt.FE.pdf

P5 (d) Funding Agreement: Ruby's.PS FY23-24 Contract Agmt.FE.pdf

- Principle 6: Develop Pathways to Permanent Housing and Supports** (350 characters max)
 The City is committed to collaborating with community based non-profit organizations and developer organizations to increase access to affordable permanent housing options, as is reflected in the City's most recent Housing Element. Outreach teams work closely with individuals to understand their unique needs, barriers, and preferences, leveraging assets like family reunification when possible. Most recently, the City is leveraging State Homekey funding to operate a scattered site program that will provide community-centered, permanent shared housing for homeless individuals throughout the City. Through the program, the City will acquire approximately six homes and convert them to shared housing for low-income, homeless residents. The program will include supportive services to help individuals stabilize and remain housed. Additionally, in 2018 the city funded three affordable housing developments providing 258 units which collectively will provide 92 permanent supportive units. Depot Community Apartments completed construction and lease-up in underway.

Pimentel Place and Mission Paradise are currently under construction and construction completion is expected by the end of 2024.

Supporting Documents:

P6(a) Scattered Sites Homekey Conditional Award Letter.pdf

P6(b) HNC-BACS Contract Agreement.FE 2023-10-12.PDF (Exhibit A pg 3 Section 3)

P6(c) [Depot Community Apartments welcomes first residents | City of Hayward - Official website \(hayward-ca.gov\)](#)

P6(d) [Pimentel Place | EAH Housing](#)

P6(e) [Mission Paradise | EAH Housing](#)

- **Principle 7: Create a Plan for What Will Happen to Encampment Sites After Closure** (350 characters max)
Encampments that arise in parks and unsafe areas near railroad tracks and freeways are a priority in the City to ensure the safety of residents. Staff work closely with Union Pacific and Caltrans to secure sites and reduce the likelihood of recurrence at unsafe locations. Staff also convene place-based working groups to address sensitive locations, such as parks, to discuss safety enhancements like lighting improvements and ways to increase community engagement in the space.

HAYWARD CITY COUNCIL

RESOLUTION NO. 24-038

Introduced by Council Member Syrop

RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY TO AND PARTICIPATE IN THE PROHOUSING DESIGNATION PROGRAM

WHEREAS, Government Code section 65589.9 established the Prohousing Designation Program ("Program"), which creates incentives for jurisdictions that are compliant with state housing element requirements and that have enacted Prohousing local policies; and

WHEREAS, such jurisdictions will be designated Prohousing, and, as such, will receive additional points or other preference during the scoring of their competitive Applications for specified housing and infrastructure funding; and

WHEREAS, the California Department of Housing and Community Development ("Department") has adopted regulations (Cal. Code Regs., tit. 25, § 6600 et seq.) to implement the Program ("Program Regulations"), as authorized by Government Code section 65589.9, subdivision (d); and

WHEREAS, the City of Hayward ("Applicant") desires to submit an application for a Prohousing Designation ("Application").

NOW, THEREFORE, BE IT RESOLVED, that the Applicant is hereby authorized and directed to submit an Application to the Department.

FURTHER RESOLVED, that the Applicant acknowledges and confirms that it is currently in compliance with applicable state housing law.

FURTHER RESOLVED, that the Applicant acknowledges and confirms that it will continue to comply with applicable housing laws and to refrain from enacting laws, developing policies, or taking other local governmental actions that may or do inhibit or constrain housing production. Examples of such local laws, policies, and actions include moratoriums on development; local voter approval requirements related to housing production; downzoning; and unduly restrictive or onerous zoning regulations, development standards, or permit procedures. Applicant further acknowledges and confirms that the Prohousing Policies in its Application comply with its duty to Affirmatively Further Fair Housing pursuant to Government Code sections 8899.50 and 65583. Applicant further acknowledges and confirms that its general plan is in alignment with an adopted sustainable communities strategy pursuant to Public Resources Code section 21155-21155.4. Applicant further acknowledges and confirms that its policies for the treatment of

homeless encampments on public property comply with and will continue to comply with the Constitution and that it has enacted best practices in its jurisdiction that are consistent with the United States Interagency Council on Homelessness' "7 Principles for Addressing Encampments" (June 17, 2022, update).

FURTHER RESOLVED, that if the Application is approved, Applicant is hereby authorized and directed to enter into, execute, and deliver all documents required or deemed necessary or appropriate to participate in the Program, and all amendments thereto (the "Program Documents").

FURTHER RESOLVED, that the Applicant acknowledges and agrees that it shall be subject to the Application; the terms and conditions specified in the Program Documents; the Program Regulations; and any and all other applicable law.

FURTHER RESOLVED, that the City Manager is authorized to execute and deliver the Application and the Program Documents on behalf of the Applicant for participation in the Program.

IN COUNCIL, HAYWARD, CALIFORNIA March 5, 2024.

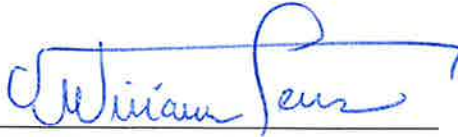
ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Andrews, Bonilla Jr., Goldstein, Roche, Syrop, Zermeño
MAYOR: Salinas


NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward