



## **REQUEST FOR PROPOSALS**

### **DEVELOPMENT, CONSTRUCTION, AND OPERATION OF AN AFFORDABLE HOUSING PROJECT**

**City Clerk's Office  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758**

**Proposals due by:**

**March 24, 2021 at 4:00pm (9% LIHTC submitted in July 2021)**

**May 19, 2021 at 4:00pm (4% LIHTC and all other funding)**

## INTRODUCTION

The City of Elk Grove is accepting proposals from qualified affordable housing developers to construct new affordable multifamily housing within the City of Elk Grove in accordance with the included specifications, terms, and conditions shown in this Request for Proposals (RFP). The City has approximately \$8 million available that may be loaned to two or more qualified projects. This RFP is being released to identify experienced and eligible affordable housing developers wishing to develop, construct, and operate affordable multifamily rental housing. Prospective respondents are advised to read this information carefully prior to submitting a proposal.

The City anticipates funding **one** project that is ready to proceed and will submit for 9% low-income housing tax credits (LIHTC) in the July 1, 2021 round. The City also anticipates funding **one or more** projects that rely on other funding sources, such as 4% LIHTC, Affordable Housing and Sustainable Communities funding, Multifamily Housing Program, or 9% LIHTC funding in 2022 or beyond.

One digital PDF copy must be submitted to the Office of the City Clerk by **March 24, 2021 at 4:00pm for 9% LIHTC projects submitted in July 2021** or by **May 19, 2021 at 4:00pm for all other projects**. Proposals shall be addressed to the City Clerk Jason Lindgren at [jlindgren@elkgrovecity.org](mailto:jlindgren@elkgrovecity.org), with a copy to Sarah Bontrager at [sbontrager@elkgrovecity.org](mailto:sbontrager@elkgrovecity.org). Submittals in PDF format must be fully ADA compliant. Large files may be sent using a cloud-based system such as Dropbox. Proposers shall be responsible for ensuring that proposals submitted electronically are received by the City Clerk prior to the deadline. Proposals that are not received prior to the deadline shall not be considered by the City, even if the late submission is due to a technical or other error, including, without limitation, the City's inability to open or access the electronic file. If the proposer does not receive a confirmation from the City Clerk that the proposal has been received, proposer should assume the transmission failed and either resubmit or arrange for another method of delivery. Proposers are also encouraged to contact the City Clerk to confirm receipt of their proposal prior to the deadline. Proposals shall not be accepted by fax.

## QUESTIONS

Questions regarding this RFP are to be directed by e-mail to Sarah Bontrager, Housing and Public Services Manager, at [sbontrager@elkgrovecity.org](mailto:sbontrager@elkgrovecity.org). Such contact shall be for clarification purposes only. The City will answer questions on a rolling basis, generally weekly. Material changes, if any, to the scope of services or proposal procedures will only be transmitted by written addendum and posted to the City website. Addendums and answers to submitted questions will be available via the City of Elk Grove website under "Notice" for the RFP announcement.

## SCOPE OF WORK

### ***Background***

The City currently charges an impact fee on new residential and non-residential development to support the creation of new affordable housing opportunities. Historically, the proceeds of the fee have been used primarily to develop new multifamily rental residential housing. In 2014, the City updated its Affordable Housing Loan Program Guidelines that specify policies related to loan applications and processing (Attachment A).

Since the City's incorporation in 2000, the City has invested about \$74 million in the creation of almost 1,800 rental units affordable to low-income households (for rental units, those earning less than 60 percent of the area median income). More than half of the City's existing affordable housing units are targeted to low-income households (60%), with the remainder being primarily very low-income (50%) units. Few options exist for extremely low-income households. Vacancy rates across projects are currently under 2% on average.

Under this RFP, financial assistance may be provided to acquire land and construct multifamily rental units in the City for the purpose of providing affordable housing to low-income households. The total value of any project loan associated with this RFP is not expected to exceed \$5 million. The available amount under this RFP is expected to be approximately \$8 million. In no event shall the project loans issued hereunder exceed the uncommitted fund balance in the Affordable Housing Fund at the time of commitment.

City loans are based on the individual needs of the project, and in all cases are intended to be gap financing. The developer is expected to seek financing for the project from other state and local agencies, private investors, and banks.

### **Requirements**

All proposed projects must adhere to the following minimum requirements:

- Projects must adhere to the income restrictions noted below:
  - **9% LIHTC financed projects:**
    - At least 58 percent of the project's subsidized units must be affordable to very low-income households (those earning at or below 50 percent of area median income). Inclusion of extremely low-income units is strongly encouraged.
    - All other subsidized units must be affordable to households earning at or below 60 percent of the area median income, with the exception of one to two unrestricted manager units.
  - **Projects not financed with 9% LIHTC:**
    - All subsidized units must be affordable to households earning at or below 80 percent of the area median income, with the exception of one to two unrestricted manager units.
    - Inclusion of very low-income and extremely low-income units is strongly encouraged.
- The developer must have a successful background in the provision of housing to low-income households, including the associated service component. The project team must indicate their track record of experience and financial capacity to complete, maintain, and manage housing projects similar to the one proposed (including size, tenant profile, affordability profile, financing sources, management and tenant services arrangements, and other applicable characteristics).
- The project location must be near services, shopping, and transit resources. Projects proposing to use 9% LIHTC funding or any other funding source with scoring based on project location must show the number of points the project would receive and the total number of points available relative to location characteristics, as per the most recent

application for the funding source.

- The project must include on-site social services providing resident support for no less than 15 hours per week. Such services may include up to 10 hours per week of after-school programming and/or senior activities.
- The project must offer a repayment schedule that provides for meaningful loan repayment at the earliest point during the project term.
- The project must be deed-restricted to provide affordable rents and occupancy for a minimum of 55 years.

Please note that proposals submitted by the March 24, 2021 deadline (for projects pursuing 9% LIHTC funding in the July 2021 round) must be ready for acquisition and construction activities. These proposals should not represent projects that are conceptual in nature. These proposals are intended to clearly state the entire scope and anticipated accomplishments of the housing activity proposed.

Proposals submitted by the May 19, 2021 deadline may represent projects that are ready for acquisition and construction activities or those that are conceptual in nature.

Proposals for projects to be constructed on City-owned property will **not** be accepted; one or more RFPs for affordable housing projects on City-owned parcels will be released in the future.

Respondents are limited to one proposal per deadline. A proposal for a project not selected from among the March 24, 2021 submittal may be reframed and resubmitted by the May 19, 2021 deadline.

If a project pursuing 9% LIHTC funding in the July 2021 round is funded, under no circumstances shall the developer redefine, renegotiate, or otherwise change the scope or the original intent of the proposal. If, for any purpose, the project is thus redefined with a change in the scope of purpose or any deviation from the original intent of the proposal, the modified proposal shall be deemed null and void.

For any other projects funded hereunder, under no circumstances shall the developer redefine, renegotiate, or otherwise change the scope or the original intent of the proposal without approval of the City. If, for any purpose, the project is thus redefined with a change in the scope of purpose or any deviation from the original intent of the proposal, without the requisite City approval, the modified proposal shall be deemed null and void.

## **PROPOSAL GUIDELINES AND FORMAT**

The following guidelines are provided for standardizing the preparation and submission of proposals. The intent is to assist respondents in the preparation of their submissions and to assist the City by simplifying the review process providing standards for comparison of submissions.

Statements submitted in response to this RFP shall include a complete response to the requirements in this section in the order presented. Statements should be a straightforward

delineation of the respondent's capability to satisfy the intent and requirements of this RFP, and should not contain redundancies and conflicting statements.

Proposals shall be formatted with easy-to-read font size and style, pages shall be numbered, and individual sections shall be divided for easy identification. Digital submissions shall include bookmarks for each section.

Proposals shall contain the following information in the order listed:

**1. Introductory Letter**

The introductory letter should be addressed to:

Sarah Bontrager, Housing and Public Services Manager  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758

The letter should state the prime developer and include the developer's name, mailing address, telephone number, and contact name. Respondent shall provide a brief description of the proposed Project, its location (if known), expected date to begin construction, and amount of City funding requested. The cover letter shall include a statement acknowledging the conditions stated in the RFP, making reference to any exceptions contained in the response, and be signed by an authorized officer of the developer. The developer is responsible for answering any questions relevant to the proposal and has lead responsibility relative to the project development and operation as relates to any City funding commitment.

**2. Table of Contents**

The developer shall insert a comprehensive table of contents denoting Sections 3 through 14 of the proposal as indicated below.

**3. Qualifications and Experience**

Provide a narrative statement describing all entities responsible for the development and management of the project (including service providers if applicable), including the following:

- a. A description of each firm relevant to the project's development, construction, and management. Include information on each firm's role in the project, and experience working together on previous projects. Also, note which firm will be the project lead.
- b. Identify key staff, including brief resumes that include length of time providing such services and contact information (including location, phone and e-mail address). The proposal should indicate each team member's responsibility for project tasks. Identify the lead person who will be the primary liaison.
- c. For each nonprofit organization involved in the project, provide nonprofit name, incorporation date and place, affiliated organizations, IRS tax status, annual budget, and major sources of funding.

- d. For each entity, the proposal shall include a list of jurisdictions and projects similar to the one proposed in which the entity has provided such services in the past 5 years. Projects included shall include the client name and location. At least five examples of recent, relevant projects shall be provided. For developers, the list should include the name of the jurisdiction, contact person, phone number, and the approximate amount of funding received. Respondent must have no record of unsatisfactory performance with the City or with any other jurisdictions that have contracted with or provided funding. References may be contacted as a part of the selection process, and will be asked to comment on work quality and performance.
- e. Show that the developer or joint venture formed by the developer has the demonstrated ability to secure conventional and/or subsidized financing as any such financing may be applicable to the project.

**4. Project Description**

Provide the following information:

Ready to Proceed Projects

- a. Name of project.
- b. Property address and Assessor's Parcel Number(s), location map, and description of nearby amenities.
- c. Description of the population served (e.g., family, senior, special needs).
- d. Number of proposed affordable units, proposed affordable rents (and basis for which), and affordability levels by unit.
- e. Total project costs, total units, and cost per unit.
- f. Applicable project amenities, services, and/or any other relevant project information.
- g. Conceptual site plan, elevations, unit plans, and a description of how the project design will complement and enhance the surrounding community.
- h. Any market or feasibility studies completed for the project within the last six (6) months, or indicate if none were completed. (Attach as an appendix.)

Conceptual Projects

- a. Working name of project.
- b. Desired site characteristics, including size of parcel, target locations (may be specific or map of general area), and nearby amenities.
- c. Description of the population served (e.g., family, senior, special needs).
- d. Number of proposed affordable units, proposed affordable rents (and basis for which), and affordability levels by unit.

- e. Anticipated total project costs, total units, and cost per unit.
- f. Applicable project amenities, services, and/or any other relevant project information.
- g. Conceptual site plan, elevations, unit plans, and a description of how the project design will complement and enhance the surrounding community. Alternately, the developer may provide this information from a prior, recent project similar to the one anticipated in this proposal.
- h. Any feasibility information or studies supporting the likelihood that the anticipated project could be constructed. (Attach as an appendix.)

**5. Site Control Description/Evidence and Valuation**

If proposing by the March 24, 2021 deadline, respondent must have site control (e.g. fee simple title, long-term leasehold, or purchase option through the date of expected land closing) for the project, and provide evidence thereof. Include as an appendix any applicable evidence of site control and a recent appraisal or other evidence of value.

If proposing by the May 19, 2021 deadline, respondents must include the above-noted information if they have a specific site on which they are proposing to construct a project. Respondents proposing conceptual projects may indicate this section is not applicable.

**6. Project Expected Timeline**

Respondent shall prepare a table that explains key project timeline milestones achieved to date and/or projected in the future. Such table shall include the following at a minimum (or indicate if not applicable):

Milestone	Date	Key Prerequisite Milestone / Contingency
Obtain site control		
Submit application for planning entitlements/approvals		
Submit loan application to lender		
Environmental review/Phase 1 study		
Complete planning entitlement process		
Select tax credit investor		
Select contractor		
Prepare detailed cost estimate		
Submit plans and application(s) for plan check and building permit		
Public body approval and TEFRA to apply for bond allocation		

Submit application for bond allocation		
Submit application for tax credit allocation		
Obtain bond allocation		
Obtain tax credit allocation		
Obtain approval of construction plans		
Obtain construction and permanent loan commitment		
Final construction contract		
Closing of all financing		
Pay impact fees and obtain construction permits		
Begin construction		
Complete construction		
Full lease-up		

**7. Zoning and Entitlements**

For all proposals where the respondent has site control, provide a narrative that clearly describes current zoning of the project and entitlement status. Indicate level of environmental review required of the project and completed to date. Indicate when and under what conditions upon receipt of entitlements that buildings plans will be submitted and approved.

Respondents proposing conceptual projects must include a summary of their experience completing required environmental reviews and project entitlement processes.

**8. Sources and Uses of Funds**

Provide a detailed “Sources and Uses table” which clearly states:

- a. Each funding source and proposed or committed amount.
- b. Detailed use of funds broken down between acquisition, construction, soft costs, and other cost categories as applicable. Include a statement with regard to the basis for construction cost estimates and indicate if construction costs are based on prevailing wage requirements.
- c. A table that identifies sources and uses by funding source.
- d. Evidence of funding commitment, for any funds committed.
- e. Description of lien position among all funding sources.
- f. Detailed contact information for each applicable funding source (such as name, title, address, phone, email).

- g. Expiration date of any funding commitments.
- h. Critical terms and conditions of any funding commitments.

**9. Operating Pro Forma**

Submit a cash flow projection including the first fifteen (15) years of the project but also including the full amortization of all mortgage financing sources. The operating pro forma shall clearly provide all relevant revenue, operating cost, and financing assumptions.

**10. Low-Income Housing Tax Credits (LIHTC)**

If respondent anticipates applying for 9% LIHTC, submit an analysis detailing the project’s tie-breaker percentage, based on California Tax Credit Allocation Committee (TCAC) guidelines. In order to provide the City with information on how competitive this new project is and the likelihood of receiving TCAC funding, provide a narrative describing how this proposed new development compares to the developments funded in the recent rounds of the 9% LIHTC awards.

**11. Conflict of Interest Statement**

Submit a statement regarding any activities or relationships of the proposer that might create a conflict of interest for the proposer or the City, and, if such activities or relationships exist, a description of the facts, legal implications, and possible effects sufficient to permit the City to appreciate the significance of the conflict and to grant any conflict waiver, if appropriate and necessary.

**12. Insurance**

Submit evidence of ability to insure as stated in Attachment B and summarized below.

TYPE	SINGLE LIMIT / OCCURRENCE	AGGREGATE	ENDORSEMENTS*
General Liability (1F)	\$2,000,000	\$2,000,000	Additional Insured Waiver of Subrogation Primary Non Contrib.
Auto Liability (2E)	\$1,000,000 Any Auto		Additional Insured
Work Comp (3A) Employer’s Liability	Statutory \$1,000,000 each		Waiver of Subrogation
Builder’s Risk (5A)	Total value of loan	During construction until occupancy	Loss Payee Waiver of Subrogation
Hazard Insurance (7A)	Replacement value of affordable housing	At occupancy until loan maturity date	Loss Payee
Umbrella Coverage (8B)	\$5,000,000	\$5,000,000	Additional Insured Waiver of Subrogation Primary Non Contrib.

\*Must be actual endorsements. Typed statements on Certificates of Liability are unacceptable. This is a summary only. Please refer to Exhibit B for specific requirements.

### **13. Exceptions**

Note any exceptions to the RFP requirements in their entirety. The City may reject any requests for modifications to the RFP requirements that were not noted in response to this RFP.

### **14. Supportive Information**

This section may include graphs, charts, photos, resumes, references, etc. in support of the respondent's qualifications and/or project plan.

## **RFP SCHEDULE**

The City anticipates the following schedule for reviewing submitted proposals:

RFP available	February 22, 2021
Questions/answers posted online	Weekly
<b>Deadline for proposal submissions</b>	<b>March 24, 2021 at 4:00pm (9% LIHTC 7/2021)</b> <b>May 19, 2021 at 4:00pm (other funding)</b>
City Council consideration	June 23, 2021 (9% LIHTC 7/2021) August 25, 2021 (other funding)

The City may revise the schedule as needed.

Prior to City Council consideration, the Affordable Housing Committee (AHC) may select one or more proposals to move forward to the loan application stage. The AHC may then review the loan application(s) and recommend that the Council consider a loan for one or more specific projects. The timeframe for the loan application stage will be determined in coordination with the developer(s) selected, staff, and the AHC members.

In the event that a loan is recommended, City staff plans to present to the City Council a Resolution of Conditional Loan Commitment or similar document in order to approve the funding for an affordable housing project. The Resolution will give the developer an opportunity to apply for one or more rounds of LIHTC. Unless otherwise approved by the City, the Resolution shall terminate upon the earlier of 1) denial of award of LIHTC during three consecutive rounds, or 2) automatically as of December 31, 2022 and shall thereafter have no force or effect.

## **EVALUATION AND SELECTION CRITERIA**

### ***Project Selection Process***

In order for projects to be considered for assistance, a proposal consistent with the terms of this RFP must be submitted. City staff shall review the responses to this RFP for completeness and evaluate them against the stated criteria. Once the proposal has been determined to be eligible and complete, it will be reviewed by the AHC for recommended action. The AHC will select one or more projects to move forward to the loan application stage.

During the loan application stage, the selected developer(s) shall be required to submit a complete loan application. The loan application will be reviewed and analyzed by City staff to determine financial feasibility, confirm the request for assistance is reasonable and necessary, and evaluate whether the project is likely to proceed on a timely basis, among other factors. The AHC will then consider the loan application and make a recommendation to the City Council

regarding loan commitment. The AHC may recommend approval of a loan, denial of a loan, or continued negotiation and collection of information.

If a loan is ultimately approved, it will be evidenced by a Loan Agreement, Promissory Note, Deed of Trust, Regulatory Agreement, and any other documents deemed necessary by the City.

***Proposal Evaluation***

Proposals will be evaluated using the five categories listed below, plus four bonus categories. The following represent the principal selection criteria, which will be considered during the evaluation process:

**Development and Management Capacity (25%)**

- Experience developing, owning, and operating affordable housing projects similar to the one proposed.
- Record of developing successful housing within California and specifically the Sacramento region.
- Strength, stability, and experience of team members individually and working as a team.
- Assessment by references.

**Project Financial Feasibility (25%)**

- Status of funds from other sources (such as fee waivers, payment of infrastructure costs, Low Income Housing LIHTCs, tax-exempt bonds, and lender financing). For conceptual projects, the developer's track record of receipt of LIHTC and other funding source will be considered.
- Cost reasonableness.
- Competitiveness to receive LIHTC (if applicable).
- Amount of per-unit and per-project funding requested.
- Proposed cost savings sharing in a percentage equal to the City's contribution to the total project financing.
- Likelihood of the project being constructed within the next 24 months.

**Project Design and Community Benefit (25%)**

- Project enhances and complements the surrounding neighborhood.
- Project location provides tenants with easy access to major bus routes, shopping, and social service providers.
- Proposes support services for the low-income residents through a provider with a proven record of success.
- Offers on-site tenant amenities for low-income residents and surrounding communities that would not normally be available.
- Site plans and unit plans suitable for targeted population.

For respondents proposing conceptual projects, this factor shall be evaluated based on information from a prior, recent project similar to the one anticipated in this proposal.

**Ability to Meet Community Housing Needs (15%)**

- Includes 29%+ of affordable units for extremely low-income households.  
AND/OR

- Includes 58%+ of affordable units for very low-income households.

**Project Readiness (10%)**

- Evidence of private or public lender commitment to the project.
- Zoning or development approval has been obtained or is supported and/or readily achievable.
- Evidence of clear title, appraised value, and environmental acceptability of the identified site.
- Preliminary design sketches, site and unit layout, and landscape plan.

For respondents proposing conceptual projects, this factor shall be evaluated based on information from a prior, recent project similar to the one anticipated in this proposal. Evidence of clear title, appraised value, and environmental acceptability is not required.

**Bonus – Unit Affordability Adjustments (10%)**

- Commitment to performing annual income recertifications and adjusting unit affordability accordingly. In effect, this means that a household initially living in a 30% AMI unit and whose household income rises to 50% AMI would have their rent adjusted to the 50% AMI level, and the next available unit would be made available to a household earning 30% AMI.
- Developer commitment to placing tenant-based Housing Choice Voucher (HCV or Section 8) holders into units with the highest income level (generally 60% units), when such units are available, and, when such units are not available, adjusting unit affordability as soon as possible. (This policy is not intended to prioritize HCV holders over other households, but rather to ensure that the units targeted to households with the lowest incomes are available to those without HCV subsidy.)

**Bonus – Commitment to Addressing Homelessness (5%)**

- Commitment to working with the City to address homelessness, including by implementing a policy moving Elk Grove households experiencing homelessness to the top of the waitlist for any vacant unit for which they are qualified.

**Bonus – Maximizing Funding Sources (5%)**

- Usage of funding sources in addition to or in lieu of LIHTC financing and/or a per-unit City loan of less than \$35,000 per affordable unit.

**Bonus – Innovation in Project Design (5%)**

- Innovation in design or project type, such as a mixed-use development or a project containing permanent supportive housing.

**GENERAL POLICIES**

***Late Proposals***

Proposals arriving after the specified date and time will not be considered, nor will late proposals be opened. Each respondent assumes responsibility for timely submission of its proposal.

***Withdrawal or Modifications of Proposals***

Any proposal may be withdrawn or modified by a written request signed by the respondents and

received by the City Clerk prior to the final time and date for the receipt of proposals. Once the deadline is past, respondents are obligated to fulfill the terms of their proposal.

***Proposal Acceptance and Rejection***

The City reserves the right to accept any proposal, to reject any and all proposals, and to call for new proposals, or dispense with the proposal process in accordance with the Elk Grove Municipal Code.

***Proposal Evaluation and Award***

Evaluation will be made on the basis of the weighted scoring as noted in Evaluation and Selection Criteria section. Proposals shall be evaluated by staff and the Affordable Housing Committee. One or more developers will be selected to move forward to the loan application stage based on the strength of their proposal.

No commitment of funds shall be made until such time that a complete loan application has been submitted and underwritten. The Council shall approve or deny any loan commitment after considering the recommendation of the AHC.

Nothing herein shall obligate the City to award a contract or loan to any responding developer.

***Register with the California Secretary of State:***

Unless respondent is a sole proprietorship, respondent must be registered and in good standing with the California Secretary of State within 14 days following notification of the City's intent to prior to execution of final loan documents. Failure to timely register with the Secretary of State may result in the City awarding the contract to another proposer. Additional information regarding the registration process may be found on the Secretary of State's website at: <https://businesssearch.sos.ca.gov/>.

***Disclosure of Submitted Materials***

After selection and execution of the contract(s), (or prior thereto if required by law) all information and materials provided in each submittal received is subject to disclosure through a public records request pursuant to the California Public Records Act, or otherwise as may be required by law. The City, in its sole discretion, may release any submitted materials, regardless of whether such materials are marked by respondents as confidential or otherwise as protected.

***Waiver of Irregularities***

The City retains the right, in its sole discretion, to waive any irregularities in proposals that do not comply with the strict requirements of this RFP, and the City reserves the right to award a contract to a developer submitting any such non-compliant proposal, all in the City's sole discretion.

***Use of Other Governmental Contracts***

The City reserves the right to reject any part or all of any proposals received and utilize other available governmental contracts.

***Qualification/Inspection***

Proposals shall only be considered from developers normally engaged in providing the types of products and services specified herein. By responding to this RFP, the developer consents to the City's right to inspect the developer's facilities, products, personnel, and organization at any time,

or to take any other action necessary to determine developer's ability to perform. The City reserves the right to reject proposals where evidence or evaluation is determined to indicate inability to perform. The City reserves the right to interview any or all responding developers and/or to award a contract or loan without conducting interviews.

***Federal Requirements***

Should any portion of this procurement require the use of Federal funds, all Federal requirements shall apply and all developers must consent to each certification and assurance, which will be incorporated into the contract or loan documents.

***Performance***

It is the intention of the City to acquire products or services as specified herein from a developer that will give prompt and convenient service.

***Term of Agreement***

The term of the contract or loan commitment, if awarded, will be for a specific period of time. The City anticipates the loan commitment to be for a term of not more than 24 months, with any extensions at the sole option of the City; the City reserves the right to set the term for a period deemed to be in the best interest of the City.

***Service and Support***

All developers shall explain how all on-going service and support will be handled by the developer.

***Records***

The developer shall maintain complete and accurate records with respect to labor costs, material expenses, and other such information required by City that relates to the performance of services under any contract or loan agreement. The developer shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible and in a form acceptable to the City, which the City may specify and change from time to time. The developer shall provide free access to the representatives of City or its designees, at reasonable times, to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to this contract or loan agreement. Such records, together with supporting documents, shall be maintained for City's inspection for a period of at least three (3) years after receipt of final payment.

***Insurance Requirements***

Attachment B includes the applicable insurance requirements for this project. The proposed developer must review these requirements closely as changes requested after the proposal submission deadline may not be allowed.

***Agency Discretion, Non-Liability Waivers, and Hold Harmless***

The information in this RFP is intended to provide general information regarding the City affordable housing programs. This information is not intended or warranted to be a complete statement of all of the information the respondents might be required to ultimately provide.

This RFP does not commit the City to pay any costs incurred in the preparation of a response. The City reserves the right to accept or reject any proposal in part or in its entirety. The City reserves the right to choose any number of qualified proposals. In addition, the City reserves the right to issue written notice to all participants of any changes in the proposal submission schedule or other schedules, should the City determine, at its sole discretion, that such changes are necessary.

### **Loan Terms**

In the event that a Resolution of Conditional Loan Commitment is approved by the City Council, it will be conditioned on, among other things, the agreement of the City and the developer (also called "Borrower") on the form of the loan documents (including, but not limited to, a Loan Agreement, Regulatory Agreement, Promissory Note, Deed of Trust, and Notice of Affordability Restrictions). Loan terms will be negotiated for each individual project, but will generally include the following:

- Description of property, including regulated units and project amenities;
- Restrictions requiring the property to be used as affordable housing for a term of at least 55 years;
- Interest rate of 4%;
- Conditions regarding the disbursement of funds, which will be tied to phases of completion;
- Cost savings sharing provision;
- Financial record-keeping and reporting requirements;
- Insurance requirements (Attachment B);
- Environmental compliance policies;
- Events of default and remedies;
- Repayment plan and policies;
- Management policies and requirements;
- Payment and performance bonding requirements (Attachment C);
- Downward adjustor in the case that any of the proposed affordable units are not provided, or if more funding than anticipated is received from other sources;
- Timeframe for construction start and completion;
- Quality of work provisions;
- Limitations on property encumbrances and transfers;
- Requirements related to accessibility and non-discrimination;
- Provisions requiring the following:
  - Property must have an on-site social service component;
  - Compliance with federal and state prevailing wage provisions and licensing requirements, as applicable;
  - Competitive bidding of contracts and subcontracts;
  - Payment and performance bonding, in compliance with the templates in Exhibit C;
  - City approval of any changes to the Financing Plan, including all construction change orders over \$25,000 and soft costs change orders over \$10,000;
  - Developer fee limited to 10% of total project cost;
  - Property must be rebuilt in the event of damage, and that any insurance proceeds must be used for that purpose; and
  - City approval is required for any changes to the senior loan.

Any disagreement with, or specific requirements for, these general terms must be discussed in the proposal.

Sample documents from the City's recent transactions are available on request; however, the City shall have the right to design loan documents for this transaction in the manner deemed in the best interest of the City.

***Final Authority***

The final approval authority rests solely with the City Council of the City of Elk Grove.

**ATTACHMENT A**  
**AFFORDABLE HOUSING LOAN PROGRAM GUIDELINES**



**CITY OF ELK GROVE**  
**Affordable Housing Loan Program Guidelines**  
April 9, 2014

**I. BACKGROUND**

The City of Elk Grove's Affordable Housing Fund (AHF) is supported by a development impact fee program that provides the financial resources to promote and assist in the development of new affordable housing in the City. The AHF's revenues come from residential and non-residential development impact fees paid by project applicants at building permit issuance. Revenues in the AHF must be used in compliance with Chapters 16.88 and 16.89 of the Municipal Code, which generally allow provision of loans or grants to support new residential development costs for low-income housing units, acquisition and rehabilitation of low-income housing units, homeowner downpayment assistance for low-income households, and other project or programs approved by the Council.

The City's Affordable Housing Loan Program assists affordable housing developers by providing loans for development financing. The loans are intended to be "gap" financing. The "gap" is defined as the difference between total development cost and the maximum potential project funding raised from private and public sources other than Elk Grove's AHF.

**Thus, the public purpose of the City's housing loan funds is to provide financial assistance to income-targeted housing that a for-profit or nonprofit developer cannot secure from non-city sources, helping to assure financial feasibility of the project.**

**II. OVERVIEW OF PROGRAM GOALS**

The Affordable Housing Loan Program goals, consistent with the City of Elk Grove's General Plan Housing Element, are as follows:

- a) Increase the supply of affordable housing through new construction;
- b) Ensure long-term affordability of very low- and low-income housing;
- c) Encourage the development of well designed, high quality, and energy efficient residential projects that meet the needs of individuals and families as well as seniors;
- d) Maintain quality living environments for residents of assisted affordable developments and surrounding properties;
- e) Support homeownership programs;
- f) Support the development of income-restricted apartment and/or single-family development projects;
- g) Encourage the production of the maximum number of units to be in compliance with the state mandated Regional Housing Needs Allocation (RHNA) requirement, determined by the Sacramento Area Council of Governments (SACOG) for the City.
- h) The current RHNA housing unit goals for the period between 2013 and 2021 are as follows:

<b>Income Category</b>	<b>2013-2021 RHNA</b>
Extremely Low	1,018
Very Low	1,017
Low	1,427
Moderate	1,377
<b>SUBTOTAL</b>	<b>4,839</b>
Above Moderate	2,563
<b>TOTAL</b>	<b>7,402</b>

### III. GENERAL PROGRAM AND POLICIES

The administration of the Affordable Housing Loan Program shall be guided by the following policies and procedures:

- a. Whenever the City has accumulated no less than five million dollars (\$5,000,000) in AHF fees available for loans, or such other amount as directed by the Council, the City will issue a Request for Proposals (RFP) from developers for new projects. The RFP issued at that time will detail the requirements. Proposal requirements may include, but are not limited to:
  - i. A project description, including unit count, affordability mix, conceptual site plan, and elevations.
  - ii. Project location, including a description of nearby amenities.
  - iii. Project schedule, including projected dates of financing commitments, land use approvals, plans and permits, construction, funding draws, and full occupancy.
  - iv. Preliminary pro forma, showing anticipated project costs and sources of funding.
  - v. Project team information, including any experience developing affordable housing.

Proposals will be due no less than thirty (30) calendar days after the release of the RFP.

- b. All loans are intended to be gap financing; the developer is expected to seek financing for the project from other state and local agencies, private investors, and banks. Prior to release of an RFP, the City will consider the timelines and deadline of other state or local agencies that may be offering loans and grants so developers have an opportunity to also apply for these other loans and grants.
- c. Proposals will be evaluated by staff and the Affordable Housing Committee (AHC). One or more developers will be selected to move forward to the loan application stage based on the strength of their proposal.
- d. Developers must apply for a loan using the City application forms. (Note: The City is unable to accept new loan applications from proponents of currently funded projects that are not in compliance with loan terms until any default is remedied by the applicant.)

- e. Applications will be reviewed for completeness and staff will work with the applicant to identify the items required for completing the loan application. Underwriting will commence only with complete loan applications. A complete loan application consists of the completed City application forms, including but not limited to the supporting due diligence documents listed in Part 2 of the City loan application, "Supplemental Applicant Documents." Staff will provide notice to a loan applicant when their application is deemed complete in the form of a formal letter.
- f. Complete loans applications will be underwritten by staff, and underwriting will be completed in 45 calendar days. If more than one application is submitted, the strengths and weaknesses of the applications will be considered concurrently by staff and the AHC. If the developer is faced with internal deadlines for their project, such as land purchase and option requirements, they must consider the length of the underwriting process by City staff and the AHC; the City general processing times will not be modified.
- g. The underwriting process will include: (1) analysis of project pro-forma, (2) review of due diligence documents (including third party appraisal reports and market studies), and (3) negotiation of loan terms.
- h. Upon completion of underwriting, staff will submit to the AHC a recommendation which includes, but is not limited to, one of the following: 1) loan approval, 2) loan denial, or 3) a recommendation that the developer continue to make additional improvements to their proposal based on adherence to loan program policies and due diligence. The AHC will perform an independent review of the loan application, return the loan package to staff with their recommendation, which includes but is not limited to, 1) continued negotiation and collection of additional information requested from the developer, 2) a recommendation for loan approval by the City Council, or 3) a recommendation for denial by the City Council.
- i. The AHC will provide its recommendation for a loan application within 60 days of the first meeting to discuss the loan application. If the AHC does not provide a recommendation to Council within 60 days, the application will be deemed denied by the AHC and will be automatically forwarded to City Council for action.
- j. The AHC recommendations are not restricted by available funding but need to acknowledge in their recommendation any priority preferences.
- k. The AHC will consider for each proposed project the merits of the financing plan as well as conformance with the City's General Plan (including, but not limited to, H3 - Action 1 of the Housing Element).
- l. The AHC will be scheduled to meet on an as-needed basis, at a date and time determined possible by the Committee and staff. The meeting day and time will be posted by the City Clerk.

#### **IV. LOAN FUNDING CRITERIA**

##### **Project Readiness**

Project readiness will be a critical factor, as indicated by site control, supporting documentation of other private/public financial commitments and managing partners, and the status of the project's development review applications.

- a. Site Control. The property must be in the control of the applicant, through fee title, executed lease agreement or lease option of sufficient length, an enforceable contingent purchase and sale agreement or option, or a development and disposition agreement with a public agency.
- b. Project Development Review. Loan applicants are required to submit a complete development review application(s), as determined by the City's Planning Department, concurrently or within one week after submitting a complete affordable housing loan application. The development review applications contain critical information about the proposed project that must be considered concurrently with the loan application.
- c. Construction Completion. Projects are expected to be constructed within a short timeframe of receipt of development and affordable housing loan approvals.

#### **Units and Subsidies**

- a. Projects that maximize the development of affordable units per site are preferred.
- b. Projects located in close proximity to services, shopping, and public transportation are encouraged.
- c. The proposed project must have the purpose of addressing the goals outlined in the City's Housing Element and the RHNA requirements determined by SACOG.

#### **Use of City Funds**

Loans provided by the City are intended to be gap financing. Upon review of a loan application, the City will consider the developer's ability to leverage City funds, maximizing other sources of project financing. Loan applicants are responsible for preparing accurate development cost estimates for their proposed projects. While the City can assist with questions related to City administered development impact fees, the loan applicants are responsible for estimating all project costs, including fees charged by all entities. If applicants submit a loan application early in the development process, where cost estimates may be premature or not fully known, the City cannot be responsible for assisting in additional gap financing if any project costs, including fees, increase at a later time. Should project costs increase after City affordable housing loan approval, applicants are expected to secure revenue to cover such increased costs from non-City sources.

#### **Conditional Funding Commitments and Funding Commitments**

Conditional Funding Commitments. Loan applicants for projects which have not yet received approval of their complete development review application may obtain a Conditional Funding Commitment from the City Council. With a Conditional Funding Commitment, the loan amount and loan terms approved for a proposed project will be reserved for a maximum period of nine months, then the loan commitment automatically terminates if project entitlements are not received. Without exception, all conditions must be met to later obtain a Funding Commitment. Should the applicant need additional time to secure development entitlements, a written letter of request documenting the reasons for the request must be submitted to the City Planning Director for consideration for an additional three months to complete the entitlement process and execute the City loan. If a loan applicant seeks further consideration from the City of their proposed project after termination of a Conditional Funding Commitment, the loan applicant must submit a new loan application. After project entitlements are received, draft loan documents will be prepared by City staff for City Council review.

Funding Commitments. The City Council will provide a Funding Commitment after development review entitlements are approved. The City loan documents associated with a proposed project will be reviewed by City Council at the time a Funding Commitment is approved.

### **Project Performance**

Agreements for bond financing, investor equity, and other financial sources for project development must be fully executed/closed within four months of obtaining a Funding Commitment, or such other time as designated by the Council on a case-by-case basis. The City loan closing will be concurrent with the primary source of financing (i.e. first mortgage lender) for the project.

All building permits for a proposed project must be obtained within twelve months of obtaining a Funding Commitment. An extension of up to an additional three months may be allowed with written approval of the Planning Director, based upon documentation of circumstances beyond the control of the applicant.

### **Long Term Affordability Requirements**

All housing units financed by the AHF carry affordability restrictions into the future. These affordability restrictions shall exist for a minimum of 55 years.

### **Loan Repayment**

City loans are expected to be repaid. The City will prioritize projects that can provide repayment at the earliest point during the loan term.

## **V. MATERIAL CHANGES TO THE PROJECT**

Any changes to the project's design, including but not limited to unit count, unit configuration, etc. and/or financial structure subsequent to the submittal of the loan application and/or receipt of a Conditional Funding Commitment and Funding Commitment must receive City's prior written approval; otherwise, the City reserves the right to withdraw its loan commitment. Requests for material changes to a project must be submitted in writing to the City Manager, and a written approval would be provided on a discretionary basis.

A reduction in the number of affordable units proposed by a developer by one or more units is considered a material change, since a dollar subsidy is associated with each affordable unit. If a reduction to the affordable housing unit count is requested by the developer subsequent to receipt of a Conditional Funding Commitment or Funding Commitment, a pro-rata downward adjustment to the total loan amount, equivalent to the dollar subsidy associated with each affordable unit, will be applied. The City Manager may waive applicable downward adjustments to the loan amount for extraordinary conditions associated with a project.

## **VI. PROPERTY MANAGEMENT**

- a. Management Plan. A comprehensive management plan must be approved by the City prior to loan closing. The plan must address rental procedures, maintenance schedule and standards, eviction procedures, and overall day-to-day operations including safety and security. The loan agreement will specify all the provisions to be included in the management plan. The City requires approval of the management firm 1) as part of the Funding Commitment process and 2) upon any subsequent change.

- b. Project Operating Reports. In order to monitor the operating condition of projects in receipt of City financial assistance, the City requires receipt of the project's annual audited financial statement, consistent with generally accepted accounting principles (GAAP), including the balance, deposits, and withdrawals from the replacement reserves and operating reserves. The City also requires that project quarterly financial statements and rent rolls be provided by loan recipients.
- c. Property Inspections. The City will have the right to perform property inspections of all projects financed with City funds one or more times during a calendar year. Only properties with operational issues are likely to have multiple City property inspections in a calendar year.

## ATTACHMENT B INSURANCE REQUIREMENTS

- A. Prior to commencement of any work on the Project and continuing until issuance of a Certificate of Occupancy, Borrower and all contractors working on behalf of Borrower shall provide to the City proof of, and maintain in full force and effect at all times until the issuance of a Certificate of Occupancy, at its sole cost and expense, policies of insurance as set forth herein. Borrower and all contractors shall comply with all reporting and other provisions of the policies of insurance as set forth herein including, but not limited to, timely reporting of claims and suits, and fulfillment of self-insured retentions.
1. General Liability:
    - a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability, and product and completed operations liability.
    - b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
    - c. Claims-made coverage is not acceptable.
    - d. The limits of liability shall not be less than:

Each occurrence:	Two Million Dollars (\$2,000,000)
Products & Completed Operations:	Two Million Dollars (\$2,000,000)
Personal & Advertising Injury:	Two Million Dollars (\$2,000,000)
  2. Umbrella Liability Policy
    - a. The policy must follow form of the underlying general liability policies.
    - b. The limit of liability shall not be less than \$5,000,000 per occurrence.
  3. Automobile Liability:
    - a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
    - b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).
    - c. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars (\$1,000,000)
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    - d. If general liability coverage, as required above, is provided by the Commercial General Liability form, the automobile liability policy shall include an endorsement providing automobile contractual liability.
  4. Worker's Compensation
    - a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Borrower is a qualified self-insurer with the State of California), and Employers Liability coverage. The Borrower shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit E.

- b. Employer's Liability Coverage shall not be less than the statutory requirements.
- c. If an injury occurs to any employee of the Borrower for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Borrower under this Agreement, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Borrower. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Borrower.

5. Builder's Risk

- a. Builder's Risk "Special Form" Completed Value upon the entire project which is the subject of this Agreement, including completed work and work in progress.
- b. The policy or policies of insurance shall name the Borrower and the City, its officials, officers, employees, agents, and volunteers as insureds as loss payees as their respective interests may appear.
- c. The Policy shall include an insurer's waiver of subrogation rights in favor of the Borrower and the City, its officials, officers, employees, agents, and volunteers.
- d. Such insurance may have a deductible clause, but the amount of the deductible shall be subject to the approval of the City.
- e. In no event shall the Builder's Risk Coverage be less than the total value of the Agreement.
- f. Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.
- g. In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to City.
- h. The policy's deductible shall not exceed Fifty Thousand Dollars (\$50,000).

B. Upon issuance of a Certificate of Occupancy and continuing until the maturity date of the Loan, Borrower shall provide to the City proof of, and maintain in full force and effect at all times until the maturity date of the Loan, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:

Each occurrence:	Two Million Dollars (\$2,000,000)
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Products & Completed Operations: Two Million Dollars (\$2,000,000)  
Personal & Advertising Injury: Two Million Dollars (\$2,000,000)

2. Umbrella Liability Policy
  - a. The policy must follow form of the underlying general liability policies.
  - b. The limit of liability shall not be less than \$5,000,000 per occurrence.
  
3. Automobile Liability:
  - a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
  - b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbols 7, 8, and 9 (owned, hired, and non-owned autos).
  - c. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars (\$1,000,000)
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  - d. If general liability coverage, as required above, is provided by the Commercial General Liability form, the automobile liability policy shall include an endorsement providing automobile contractual liability.
  
4. Worker's Compensation
  - a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Borrower is a qualified self-insurer with the State of California), and Employers Liability coverage. The Borrower shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit A.
  - b. Employer's Liability Coverage shall not be less than One Million Dollars (\$1,000,000).
  - c. If an injury occurs to any employee of the Borrower for which the employee or the employee's dependents, in the event of the employee's death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Borrower under this Agreement, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Borrower.
  - d. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Borrower.
  
5. Hazard/Property Insurance
  - a. Property/Hazard insurance on the Project, including improvements and personal property now existing or hereafter located on the Project, insured against all risks of loss including but not limited to fire, windstorm, vandalism, malicious mischief and allied perils, general boiler and machinery coverage, and business interruption

including loss of rental value insurance for the Project with extra expense insurance.

- b. If City so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Project does not conform to applicable zoning or land use laws, building ordinance or law coverage. In the event any updated reports or other documentation are reasonably required by City in order to determine whether such additional insurance is necessary or prudent, Borrower shall pay for all such documentation at its sole cost and expense.
- c. If any of the Project is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, Borrower shall insure such improvements against loss by flood.
- d. Borrower acknowledges and agrees that City's insurance requirements may change from time to time throughout the term of the Indebtedness.
- e. The policy shall be written on a full replacement value basis and shall name City as loss payee as its interest may appear. The full replacement value of the Project to be insured shall be determined by the company issuing the policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, either the operator or the City shall have the right to notify the other party that it elects to have the replacement value re-determined by the insurance company.
- f. Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Project that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.
- g. In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to City.
- h. The policy's deductible shall not exceed Fifty Thousand Dollars (\$50,000).

C. Prior to commencement of any work on the Project and continuing until the maturity date of the Loan, Borrower and all contractors working on behalf of Borrower shall abide by the following:

1. All general and auto liability policies required by this Agreement shall contain the following provisions and endorsements:
  - a. The City, its officers, officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Borrower, products and completed operations of the Borrower, premises owned, occupied, or used by the Borrower, or automobiles owned, leased, hired, or borrowed by the Borrower on a separate endorsement acceptable to the City.
  - b. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed by the Borrower.
  - c. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
  - d. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Borrower's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.

2. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII**.
3. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
4. The Borrower shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Agreement. At anytime at the written request of the City, Borrower agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
5. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the Agreement by giving 30 days written notice.
6. The Borrower shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
7. If the Borrower fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Borrower under the Agreement.
8. Failure of the City to obtain such insurance shall in no way relieve the Borrower from any of its responsibilities under the Agreement.
9. The making of progress payments to the Borrower shall not be construed as relieving the Borrower or its agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
10. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
11. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Borrower are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Borrower under the Contract.

**EXHIBIT A**

**Certificate of Compliance With Labor Code § 3700, Release and Indemnification**

The undersigned, on behalf of and as the duly certified representative of Borrower, certifies as follows:

1. Borrower is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Borrower has complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor Code §§1860, 1861.)
2. Should Borrower fail to secure Workers' Compensation coverage as required by the State of California, Borrower shall release, hold harmless, defend and indemnify City of Elk Grove from and against any damage, liability, claim, cause of action and any other loss, including without limitation, court costs, reasonable attorney's fees and costs resulting from any failure to take and/or maintain Workers' Compensation insurance as required by law. The provisions of this Exhibit shall survive termination, suspension and/or completion of this Contract. It is further understood and agreed that this release and assumption of risk is to be binding on Borrower's successors, heirs and assigns.

BORROWER

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

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT C**  
**PAYMENT AND PERFORMANCE BOND TEMPLATES**

**FAITHFUL PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

**THAT, WHEREAS,** the City of Elk Grove, hereinafter designated as the "City", and \_\_\_\_\_ (hereinafter designated as "Principal") have entered into an agreement whereby Principal agrees to install and complete certain designated improvements, which said agreement is identified as Affordable Housing Loan Agreement, Development Loan for \_\_\_\_\_ Affordable Housing Project (\$ \_\_\_\_\_) ("Agreement"), and is hereby referred to and made a part hereof; and

**WHEREAS,** said Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement;

**NOW, THEREFORE,** we, \_\_\_\_\_, as Principal, and \_\_\_\_\_ (corporate surety), a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Elk Grove hereinafter called ("City"), in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) lawful money of the United States, said sum being not less than one hundred (100) percent of the total Agreement amount, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH, THAT,** if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Agreement and any alterations thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Agreement, the above obligation in said amount shall hold good for a period of one (1) year after the completion and acceptance of the said work, during which time if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect the City from loss or damage made evident during said period of one year from the date of acceptance of said work, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in the said sum shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety hereunder shall continue so long as any obligation of the Principal remains.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms

of the Agreement or to the work or the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

In the event suit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all costs incurred by the City in such suit, including reasonable attorney's fees to be fixed by the Court.

**IN WITNESS WHEREOF**, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Address of Surety

\_\_\_\_\_  
Telephone No. of Surety

By: \_\_\_\_\_  
Attorney-in-Fact

Principal: \_\_\_\_\_

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

\_\_\_\_\_  
(Print Name & Title)

and

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

\_\_\_\_\_  
(Print Name & Title)

**NOTE:** If Principal is a Partnership, all partners must execute Bond.

**IMPORTANT:** Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

**NOTICE:** The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence of the signatory's appointment as attorney in fact and authority to bind the Surety.

**MANDATORY:** The Surety shall be authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer." (See Cal. Code Civ. Proc. § § 995.310, 995.311, 995.320)

**APPROVAL:** Bonds must be approved by the City. In order to verify the status of the Surety as an admitted surety, the Surety shall provide the City with at least one of the following: (1) a print-out of information from the web-site of the Department of Insurance confirming the Surety is an admitted surety insurer and attaching it to the bond; or (2) a certificate from the Sacramento County Clerk that the certificate of authority of the Surety has not been surrendered, revoked, cancelled, annulled or suspended and confirming that the Surety is an admitted surety and attaching the certificate to the bond. (See Cal. Code Civ. Proc. Code § 995.311).

**PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

**THAT, WHEREAS,** the City of Elk Grove, hereinafter designated as the “City”, and \_\_\_\_\_ (hereinafter designated as “Principal”) have entered into an agreement whereby Principal agrees to install and complete certain designated improvements, which said agreement is identified as Affordable Housing Loan Agreement, Development Loan for \_\_\_\_\_ Affordable Housing Project (\$ \_\_\_\_\_) (“Agreement”), and is hereby referred to and made a part hereof; and

**WHEREAS,** under the terms of said Agreement, Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Elk Grove to secure the claims to which reference is made in Division Fourth, Part 6, Title 3, Chapter 5 of the Civil Code of the State of California.

**NOW, THEREFORE,** we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City, in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), said sum being not less than one hundred (100) percent of the total Agreement amount payable by the City, under the terms of the Agreement, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH, THAT,** if the Principal, his or its heirs, executors, administrators, successors and assigns or subcontractors shall fail to pay for any materials, provisions, goods or other supplies or teams, implements or machinery used in, upon, for or about the performance of the Work contracted to be done, or shall fail to pay for any work or labor thereon of any kind, or shall fail to pay any persons named in Civil Code section 9100, or shall fail to pay for amounts due under the Unemployment Insurance Code with respect to such work or labor as required by the provisions of Division Fourth, Part 6, Title 3, Chapter 5 of the Civil Code, or shall fail to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work or labor, and provided that the claimant shall have complied with the provisions of that Code, the Surety or Sureties hereon will pay for the same in amount not exceeding the sum specified in the Agreement, otherwise the above obligation shall be void. In case suit is brought upon this bond, the Surety shall pay all court costs, expenses and reasonable attorney’s fee to the prevailing party to be fixed by the court.

This bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Section 9100 of the Civil Code, so as to give a right of action to them or to their assigns in any suit brought upon this bond.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Principal to the work or to the specifications.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Principal: \_\_\_\_\_

\_\_\_\_\_  
Name of Surety

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

\_\_\_\_\_  
Address of Surety

\_\_\_\_\_  
(Print Name & Title)

and

\_\_\_\_\_  
Telephone No. of Surety

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

By: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Print Name & Title)

**NOTE:** If Principal is a Partnership, all partners must execute Bond.

**IMPORTANT:** Surety companies executing bonds must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in California.

**NOTICE:** The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence of the signatory’s appointment as attorney in fact and authority to bind the Surety.

**MANDATORY:** The Surety shall be authorized and licensed by the California Insurance Commissioner as an “admitted surety insurer.” (See Cal. Code Civ. Proc. § § 995.310, 995.311, 995.320)

**APPROVAL:** Bonds must be approved by the City. In order to verify the status of the Surety as an admitted surety, the Surety shall provide the City with at least one of the following: (1) a print-out of information from the web-site of the Department of Insurance confirming the Surety is an admitted surety insurer and attaching it to the bond; or (2) a certificate from the Sacramento County Clerk that the certificate of authority of the Surety has not been surrendered, revoked, cancelled, annulled or suspended and confirming that the Surety is an admitted surety and attaching the certificate to the bond. (See Cal. Code Civ. Proc. Code § 995.311).