

AFFORDABLE HOUSING SUSTAINABLE COMMUNITIES IMPLEMENTATION AND COOPERATION AGREEMENT

THIS AFFORDABLE HOUSING SUSTAINABLE COMMUNITIES IMPLEMENTATION AND COOPERATION AGREEMENT (the “Agreement”) is made and entered into as of **December 1, 2017**, between the City of Alameda (“City”), and Eden Housing, Inc., a California nonprofit public benefit corporation (“Developer”, and collectively with the City, the “Parties”, or individually, a “Party”), upon the basis of the following facts, understanding and intentions of the parties:

A. The State of California, the Strategic Growth Council (“SGC”) and the Department of Housing and Community Development (“HCD”) issued a Notice of Funding Availability dated October 2, 2017 (the “AHSC NOFA”), under the Affordable Housing and Sustainable Communities (“AHSC”) Program established under Division 44, Part 1 of the Public Resources Code, commencing with Section 75200.

B. Eden Housing, Inc. (“Developer”) is applying for AHSC Funds in response to the AHSC NOFA to provide funding for (A) construction of the Alameda Site A Family Apartments affordable housing project in the City of Alameda, California (the “Housing Project”); (B) the construction of certain sustainable transportation infrastructure (the “STI Improvements”); and (C) the construction of certain transit related amenities (the “TRA Improvements”); and (D) certain costs related to AC Transit EasyPasses and bike share subsidies for all qualifying residents of the Housing Project (the “AHSC Programs”). These improvements are described in more detail in the Final Application to be submitted by January 16, 2018 (collectively, the “AHSC Application”).

C. The AHSC Application seeks an award to the Developer in an aggregate amount of \$7.8 million in AHSC Funds consisting of: (A) \$5.5 million of AHSC loan Funds for a permanent loan (“AHSC Loan”) which will be disbursed to a limited partnership formed by the Developer to construct, own and operate the Housing Project (the “Partnership”), for construction of the Housing Project; (B) \$1.8 million of the AHSC grant funds for the purpose of reimbursing the cost of the STI Improvements; (C) \$400,000 of AHSC grant funds for the purpose of reimbursing the cost of the TRA Improvements; and (D) approximately \$100,000 of AHSC grant funds for reimbursing the costs of the AHSC Programs. The AHSC grants shall be referred to collectively as the “AHSC Grants”. The AHSC Loan and the AHSC Grants are collectively referred to herein as the “AHSC Financing.”

D. The City and Developer are required to enter into this Agreement in order to comply with the specific AHSC Program Threshold Requirement stated in Section 106 (a) 11 (A) of the 2017 AHSC Program Guidelines dated July 17, 2017 (the “Transportation Agency Prior Experience Threshold Requirement”). This section of the guidelines dictates that applicants must demonstrate prior experience by providing evidence of at least two prior projects that are similar to the proposed AHSC project in scope and size, which have been completed by the applicant, or joint applicant, during the ten (10) years preceding the application due date. This section of the guidelines also states that the applicants may demonstrate the requisite experience by using the past experience of work completed of a non-applicant so long as the applicants can provide an executed agreement with that specific non-applicant for the completion of the related work in the AHSC Application for which funding is sought. The purpose of this Agreement is

to, amongst other things, comply with the Transportation Agency Prior Experience Threshold Requirement.

E. The City is a non-applicant, but, as set forth herein, will have obligations to perform the following specific STI Improvements, and TRA Improvements included in the AHSC Application (collectively, the “Transportation Obligations”):

Completion of the Cross Alameda Trail Segment
between Main Street and Constitution Way

Construct two segments of the Cross Alameda Trail between Main Street and Constitution Way that together total 0.9 miles and provide a safe dedicated pedestrian and pathway connection between the proposed Housing Project and the adjacent established neighborhood with residential, shopping, educational, recreational, employment and public transportation amenities:

- 1) Appezzato Parkway (Main to Webster Streets): Construct separate walking and bicycling paths, with a decomposed granite jogging path, in the abandoned railroad right-of-way to the south Appezzato Parkway, with the following additional features:
 - Connector paths to two intersecting streets: Fifth Street and West Campus Drive;
 - Pedestrian, bicycle and ADA improvements as well as wayfinding signs at the intersecting streets;
 - Lighting along the paths;
 - Bicycle lockers at Webster Street; and
 - Trees and a rain garden as landscaping and urban runoff control.
- 2) Atlantic Avenue (Webster Street to Constitution Way): Construct separated two-way bicycle lanes on the south side of this one block, and make improvements to each of these major intersections to facilitate safe pedestrian/bicycle crossings. Construct new mid-block crossing. This scope provides the final connecting piece of the Cross Alameda Trail to the recently completed Jean Sweeney Park, which is described in Recital F.

The STI Improvements include additional improvements which the City is not responsible for performing.

F. The City can demonstrate prior experience and provide evidence of at least two prior projects that are similar in scope and size which have been completed during the ten (10) years preceding January 16, 2018. Below is a list of these projects:

1. Cross Alameda Trail through Jean Sweeney Park

The Cross Alameda Trail through Jean Sweeney Park is a 3,600-foot section of a 4-mile bike and pedestrian trail that will traverse Alameda from Alameda Point at the former Naval Air Station to the Miller-Sweeney Bridge, which provides access to Oakland and Fruitvale BART. This Jean Sweeney Park section of the trail will be completed prior to January 16, 2018, and totaled close to \$4 million for planning, outreach, concept, design and construction.

2. Shore Line Bikeway

The City modified Shore Line Drive and Westline Drive to provide more bicycling options, reduce multi-use path conflicts, minimize traffic and parking impacts, reduce speeding and maintain the bay views along this two-mile stretch of Alameda. This project also reduced the number of travel lanes from four to two or three lanes depending on the street section, revised the parking lane on the beach side of the street, provided left-turn pockets at key locations, and installed loading zones, bicycle parking, disabled parking, beach parking signage, crosswalks, ADA upgrades, bus stop islands, benches and bus shelters. The City constructed a two-way bikeway on the beach side of the street for almost \$1 million with construction starting in October 2014 and completion in March 2015.

G. The City shall be responsible for developing and constructing the Transportation Obligations, and for all costs expenses related thereto, and Developer shall be responsible for constructing and developing the Housing Project, the STI Improvements not included in the Transportation Obligations, and providing the AHSC Programs (together, the "Developer Obligations"), and for all costs and expenses related thereto. In connection with the AHSC Grants and AHSC Loan, Developer is required to enter into standard agreements, disbursement agreements, and regulatory agreements with HCD where Developer will be liable for the full and timely performance by the parties to complete the obligations set forth therein, including completion of the Housing Project, completion of the STI and TRA Improvements, and funding of the AHSC Programs, as described in the AHSC Application. The AHSC Application and all standard agreements, disbursement agreements, regulatory agreements and any other agreements required by HCD in connection with the AHSC Financing shall be collectively referred to herein as the "AHSC Documents".

H. The City and Developer each acknowledge and agree that the inability or failure by either party to fully and timely complete each party's respective improvements required by the AHSC Documents may affect the timing and right of the other party to receive disbursement of AHSC funds due the other party notwithstanding the other party's full and timely performance of its obligations.

NOW, THEREFORE, in consideration of the recitals, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. Obligations. The City shall, in its sole responsibility, complete the Transportation Obligations in accordance with the terms of the AHSC Documents and the approved design and construction documents and in accordance with the terms of this Agreement. The Developer shall, in its sole responsibility, complete the Developer Obligations in accordance with the terms of the AHSC Documents and the approved design and construction

documents. For avoidance of doubt, the City shall not have any responsibility for any STI Improvements that are not included in the description of Transportation Obligations set forth in Recital E above. Each Party will provide the other Party with copies of all requisitions for work related to their respective work, the notice of completion, and other documents related to their respective work that another party may reasonably request.

2. Schedule of Performance; Progress Reports. Developer and City shall comply with the schedule of performance set forth in Exhibit A attached hereto for the completion of their respective obligations hereunder (the "Schedule of Performance") as such Schedule of Performance may be modified or adjusted in the AHSC Documents, provided, however, the City shall not be obligated to comply with any changes to the Schedule of Performance included within the AHSC Documents unless the City has consented to such changes. The City and Developer agree to give the other party a written quarterly status report on the progress toward the milestones listed in Exhibit A, i.e., the Developer will report on the Developer's progress on the Developer Obligations and the City will report on the City's progress on the Transportation Obligations. If any Party anticipates not meeting the targeted construction and grant disbursement milestones as established in the AHSC Documents, that Party will promptly notify the other parties in writing and will meet the other Party to discuss the reasons why the milestone dates may not be met and what actions the delayed party intends to take to meet the milestones or otherwise rectify the work schedule in order to maintain good standing with the terms and conditions established in the AHSC Documents.

3. Delegation. Notwithstanding the obligations of each party under this Agreement, each party shall be entitled to enter into sub-agreements with each other or with other parties to provide any assistance or services needed for each party to perform its obligations under this Agreement and the AHSC Documents.

4. Cost Overruns. Developer shall be responsible for paying all costs required to complete the Developer Obligations, irrespective of whether such costs exceeds the AHSC Loan. City shall be responsible for paying all costs required for the Transportation Obligations irrespective of whether such costs exceed the portion of the AHSC Grant designated for the Transportation Obligations.

5. Disbursement of AHSC Grant Funds. Developer and City agree that the AHSC Grants for the Transportation Obligations shall be reimbursed directly to City. The parties further agree that all of the AHSC Loan funds shall be disbursed directly to the Partnership. Notwithstanding the foregoing, if required by the AHSC Documents, the City shall submit to Developer all draw requests for AHSC Grant funds for the costs associated with the Transportation Obligations and Developer shall timely submit such requests to HCD and immediately disburse to the City any such funds received from HCD. City shall apply any such proceeds received to pay the invoices submitted in connection with the draw request. Failure of the Developer to timely submit the submitted City draw requests to HCD or to immediately disburse any funds received from HCD for the Transportation Obligations to the City shall be a default under this Agreement and shall excuse the City from performance of the Transportation Obligations.

6. Implementation Agreements. The City and the Developer recognize that each party may need additional assurances from the other party regarding the AHSC Grant and AHSC

Loan before commencement of construction of the Housing Project and the Transportation Obligations, including assurances for lenders and investors. The parties agree to cooperate with each other to reach mutual agreement on amendments to this Agreement, Implementation Agreements or estoppel certificates necessary to provide reasonable assurances and indemnifications. The Developer recognizes that any such amendments to this Agreement, Implementation Agreements or estoppel certificates may require City Council approval.

7. Notices. Formal notices, demands, and communications between the parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:

City: City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager
Telephone: 510-747-4700
Facsimile: 510-865-1498
Email: jkeimach@alamedaca.gov

With a copy to: City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney
Telephone: 510-747-4752
Facsimile: 510-865-4028
Email: jkern@alamedacityattorney.org

To Developer: Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541
Attn: President

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

(a) A Party fails to perform any of its obligations under this Agreement, and does not cure such failure within 30 days after written notice of such failure has been delivered to the defaulting party in accordance with Section 6 above; or

(b) A Party purports to revoke this Agreement or this Agreement becomes ineffective for any reason.

9. Termination. This Agreement shall terminate upon the earlier of: (i) completion of the all obligations under the AHSC Documents related to the Transportation Improvements; or (ii) mutual agreement of the parties hereto.

10. Third Party Beneficiary. The Partnership shall be a third party beneficiary of this Agreement and shall be entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were a party to this Agreement.

11. Assignment. City hereby acknowledges and approves the assignment by Developer and the Partnership to the Housing Project's senior lender ("Construction Lender") of all of their respective right, title and interest in, to and under the Agreement (the "Collateral") as collateral security for the Partnership's obligations to Construction Lender under, and in connection with Construction Lender's loan to the Partnership. In the event Construction Lender forecloses upon the Collateral, City hereby agrees that Construction Lender shall have all of Developer's rights and interests under the Agreement. Construction Lender is hereby made an express third party beneficiary of this Section 10, and the parties hereto shall not amend, modify or terminate the Agreement without Construction Lender's express written consent.

12. Miscellaneous.

(a) Nothing in this Agreement shall be construed to limit any claim or right which any party may otherwise have at any time against an Indemnitor or any other person arising from any source other than this Agreement, including any claim for fraud, misrepresentation, waste, or breach of contract other than this Agreement, and any rights of contribution or indemnity under any federal or state environmental law or any other applicable law, regulation, or ordinance.

(b) If any party delays in exercising or fails to exercise any right or remedy against a Party, that alone shall not be construed as a waiver of such right or remedy. All remedies of any Party against the other Party are cumulative.

(c) This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective representatives, heirs, executor, administrators, successors, and assigns. This Agreement may not be amended except by a written instrument executed by the parties hereto.

(d) This Agreement shall be deemed to have been delivered and accepted in the State of California and governed exclusively by the internal substantive laws of the State of California as the same may exist at the date hereof. The parties hereto hereby agree that any action hereon between the parties hereto and their successors in interest may be maintained in a court of competent jurisdiction located in the State of California, and consent to the jurisdiction of any such California court for the purposes connected herewith.

(e) Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto.

(f) This Agreement may be executed in multiple counterpart copies, any one of which when duly executed, with all formalities hereof, shall be fully binding and effective as the original of this Agreement.

(g) This Agreement shall be effective as of the date first written above, provided however that in the event that the parties do not receive an award of the AHSC Financing, this Agreement shall automatically terminate and be of no further force or effect.

[Signatures on following page]

Each of the undersigned hereby executes this Agreement in the spaces provided below to evidence their respective agreement to the terms of this Agreement.

City:

CITY OF ALAMEDA

Jill Keimach,
City Manager

Date: _____

Recommended for Approval:

Jennifer Ott,
Base Reuse Director

Date: _____


Approved as to Form:

Andrico Q. Penick
Chief Real Estate Counsel

Date: _____

Developer:

EDEN HOUSING, INC



Linda Mandolini,
President

Date: 12/1/2017

EXHIBIT A

Schedule of Performance- Cross Alameda Trail Ralph Appezzato Memorial Parkway

Capital Project Milestone Schedule	Date
Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority.	February 2018
Commencement of construction.	August 2018
Construction complete and the filing of the Notice of Completion.	April 2019
Program funds fully disbursed.	October 2019