

Appendix B -Alameda County Affordable Housing Development Loan Terms

Key Terms for Alameda County Affordable Rental Housing Development Loans

These are Alameda County Housing and Community Development Department's Key Terms for the Affordable Housing Development Program. These Key Terms do not represent all requirements of the County funding. For additional detail, please see the Alameda County HCD Affordable Housing Development Program Policies and Procedures, Request for Proposals and Loan Documents available on HCD's website at: <https://www.acgov.org/cda/hcd/> that includes the following:

- Contract (must be approved at a Board of Supervisors meeting)
- Loan Agreement
- Regulatory Agreement
- Promissory Note
- Deed of Trust

Term	In general, a 59-year loan term and regulatory period is required for affordable housing projects funded by HCD. This term has, on occasion, been reduced with the Housing Director's approval to 55 years in tax credit projects, when borrower's counsel justifies the reduction due to tax credit requirements. The term begins as of the date of initial occupancy, which can be set by either the Certificate of Occupancy or by the first occupancy of the building as reported in the closeout report.
Interest Rate	3% simple interest, owed as of the date of disbursement unless the Promissory Note indicates otherwise.
Payments	<ol style="list-style-type: none">1. HCD loan may be amortized over a 59-year period, with equal payments throughout the term (amortized loan); or2. In special needs projects that serve Extremely Low-Income Households, payments may be deferred, at the Housing Director's discretion, in order to make the project financially feasible; or3. HCD loan may be repaid through a proportionate share of residual receipts. HCD may allow the General Partner of the borrower partnership to retain up to 50% of the residual receipts as an "Incentive Management Fee" but may restrict this to only 25% if there are soft lenders in addition to HCD sharing repayment from residual receipts. Should the Partnership Agreement not allow the GP to keep the full

	amount of the Incentive Management Fee, HCD will require that the amount of the soft lender share of residual receipts be increased to capture those funds.
Security	Deed of Trust recorded against fee title or leasehold interest.
Deed Restrictions	The County Regulatory Agreement must be recorded against the fee interest on the property and in senior lien position to bank loan documents. The County's Regulatory Agreement includes nondiscrimination based on the source of a tenant's income.
Income Restrictions	Income restrictions on units are based on the funding source invested in the project. All of the County units will be restricted at 50% or below the Area Median Income, with exceptions granted based on feasibility. The Regulatory agreement includes language that requires acceptance of rental assistance programs like Housing Choice Vouchers. The regulatory agreement will provide specific details. The number of units restricted is determined by the amount of the County loan and type of funds.
Rent Increases	Rent increases are subject to the requirements of the funding source(s) invested in the project. Rent may be increased by not more than 5% annually (unless approved in writing by the Housing Director in advance of the increase).
Replacement Reserve	0.6% of the replacement cost of the structure annually, up to \$600 per unit for family developments and \$500 per unit for senior developments. These amounts may change annually as part of the RFP process to reflect updates or changes to State HCD program requirements.
Operating Reserve	Three months of operating expenses must be capitalized at conversion. Developers must make payments in schedule approved by the County until the reserve reaches 6 months of operating expenses. The operating reserve must be maintained at the level of six months of operating costs and must-pay debt service during the term of the Regulatory Agreement. A larger deposit is encouraged.

Developer Fees	<p>For tax credit projects: Developer fees will be set to be in conformance with the State Tax Credit program. The maximum developer fee that may be included in project costs and eligible basis for both 4% and for 9% tax credit projects shall not exceed the maximum allowed under CTCAC Regulations (see CTCAC Regulations Section 10327), as those regulations may be updated from time to time. In determining the allowable costs included in the developer fee, sponsors shall use the definition of Developer Fee per the CTCAC Regulations. Please note HCD reserves the right to further reduce the Developer Fee in its sole discretion.</p> <p>Developer fees are contingent upon satisfactory completion of the project. Where project costs exceed the approved budget, developers will be required to contribute a portion of the developer fee toward the excess costs.</p> <p>Deferred Developer Fees: Any deferred developer fees shall be paid from the developer/sponsor's Incentive Management Fee. Any interest on deferred developer fees shall also be payable from the Incentive Management Fee.</p> <p>Contributed Developer Fees: The inclusion of contributed General Partner equity to increase tax credit basis and equity is allowable, as permitted by tax counsel, lenders and investors.</p> <p>Non-tax credit projects: In the event a project is not using tax credits, the developer fee will be negotiated with HCD based on existing policies and reasonable developer fees that are commensurate with similar programs given the project type and complexity.</p>
Retention	<p>HCD will require a retention of \$125,000 or 15% of loan amount, whichever is less, with a minimum of \$50,000. This will be budgeted from the developer fee and held as a performance retention, to be paid upon completion of construction and delivery of loan close out items.</p>
Incentive Management Fee	<p>HCD may allow the General Partner of the borrower partnership to retain up to 50% of the residual receipts as an "Incentive Management Fee" but may restrict this to only 25% if there are soft lenders in addition to HCD sharing repayment from residual receipts. Should the Partnership Agreement not allow the GP to keep the full amount of the Incentive Management Fee, HCD will require that the amount of the soft lender share of residual receipts be increased to capture those funds.</p>
Asset/Partnership Management Fees	<p>A Partnership Management fee is allowed to be paid annually to the General Partner of a tax credit project until expiration of the tax credit compliance period. An Asset Management fee is allowed to be paid</p>

	<p>annually to the General Partner and/or Limited Partner/investor of a tax credit project until expiration of the tax credit compliance period. The combined Partnership and Asset Management annual fees paid for tax credit projects should not exceed \$34,000, and may increase at up to 3.5% per year from the placed-in-service date. Asset Management fees that are paid to the developer/project sponsor after expiration of the tax credit compliance period through the duration of operations of the project or that are for projects without tax credits may not exceed \$12,500 per year.</p> <p>Partnership Management and Asset Management fees may only be paid from project cash flow after debt service and deposits to reserves. Any fee amounts in excess of these maximums, and any deferred or accrued partnership/asset management fee can only be paid from the Incentive Management Fee.</p>
Loan Fees	HCD may charge a loan closing fee.
HCD's Costs	Borrower (or Project) to pay for required 3 rd party environmental review (NEPA/CEQA), HCD's legal costs associated with development and execution of project legal documents, wage monitoring associated with the project, and construction management costs associated with overseeing the progress of construction.
Monitoring Fees	HCD will charge a monitoring fee for each HCD-restricted unit. The current fee is \$300 per restricted unit per year.
Insurance Minimums	<ol style="list-style-type: none"> 1. Workers Compensation: to the extent required by law, including Employer's Liability coverage, at least \$1,000,000 each accident 2. Commercial General Liability: \$2,000,000 per occurrence 3. Commercial Automobile Liability: \$1,000,000 per occurrence 4. Directors and Officers Liability: \$1,000,000 per occurrence 5. Builder's Risk/Property: 100% of property replacement value 6. Commercial Crime: covering all officers and employees, for loss of HCD loan proceeds caused by dishonesty

	<ol style="list-style-type: none"> 7. Borrower must ensure that any general contractor or subcontractors maintain the insurance in #1-3 in the amount of \$1,000,000 each. 8. Commercial General Liability and Automobile Liability insurance policies must be endorsed to name as an additional insured HCD, and its officers, agents, employees and members of the County Board of Supervisors. <p>The County updates these requirements from time to time. Please visit the Alameda County Risk Management Unit webpage for more information.</p>
Records	Records related to Alameda County loans used to fund construction or rehabilitation of low-income housing, including individual homeowner loans and affordable housing rental developments, must be kept for the length of time the property is restricted plus 6 years. Records must be maintained for the length of time required by Federal requirements, or such longer period as required by applicable regulations
Reports	<ol style="list-style-type: none"> 1. Quarterly progress reports required during construction and with any invoice; 2. Quarterly reports required during the first year of operations, starting from certificate of occupancy; 3. Annual Reports required (within 180 days of the end of the fiscal year) after the first year and for the term of the loan.
Change Orders	For construction period loans, construction change orders are subject to HCD's approval.

Subcontracts	<ol style="list-style-type: none"> 1. Contractor must submit proof that subcontractors are not debarred prior to construction loan closing. 2. HCD requires competitive bidding for all subcontractors- but not for professional service contracts.
Construction Contingency	<ol style="list-style-type: none"> 1. New Construction: 10% required at initial application but can drop down to 5% remaining after construction bids are known. 2. Rehab: 15% construction contingency required.
Hiring	The County's loan may trigger Davis Bacon and/or Prevailing Wages, and First Source requirements may be triggered. If Borrower or its contractors and subcontractors create jobs due to the procurement of the County contract, they must follow certain requirements that are detailed in the County contract (i.e. First Source Program requirements and Federal Section 3 requirements). If prevailing wages are required by law, the Developer will be responsible for ensuring compliance with the labor code and for hiring a prevailing wage monitor, approved in advance by HCD, for the benefit of both Developer and the County.
Subordination	HCD will not accept standstill provisions or enter into a standstill agreement requested by senior lenders that prohibits HCD from exercising remedies during a specified period after a default