

Affordable Housing Performance Grants

APPLICATION PACKET

May 2024





OVERVIEW

The Economic Development Authority of the City of Richmond, Virginia (EDA) offers Affordable Housing Performance Grants in collaboration with the City of Richmond to further the development of affordable housing on a continuous basis throughout the year. Performance grant applications will be accepted, reviewed, and evaluated by the EDA and the City's Department of Housing and Community Development (HCD) staff. Based on the evaluation, staff recommendations are provided to the EDA Board of Directors and Richmond City Council for consideration and formal approval through their respective legislative processes. The outcome of the evaluation and approval process is **not guaranteed**.

BACKGROUND

To combat the affordable housing shortage, to further economic development, and specifically to incentivize the development of affordable housing across the Commonwealth, the General Assembly passed HB 1194 during the 2022 Session, and it became effective on July 1, 2022. HB1194 amended Ch. 49, Title 15.2 of the Code of Virginia, known as the "Industrial Development and Revenue Bond Act," to allow local Economic Development Authorities, in conjunction with their local governing bodies, the power to make grants associated with the construction of affordable housing.

In response to the housing crisis declared by Mayor Stoney and the City Council through Resolution No. 2023-R019 adopted on April 10, 2023, the EDA and HCD worked collaboratively to create the Affordable Housing Performance Grant Program to incentivize the development of safe and affordable rental housing in the City.

PROGRAM GUIDELINES

- The Affordable Housing Performance Grant is an inducement for affordable housing applicants to construct, own and operate affordable housing rental units in the City of Richmond for a minimum period of 15 years. The grant period may be extended another 15-year period for a total grant period of 30 years.
- Affordable Housing Performance Grant applicants must have a demonstrable gap in project financing, as evidenced by their development pro forma.
- Only applicants developing new construction multi-family residential rental projects are eligible to apply for the Affordable Housing Performance Grant.



PROGRAM GUIDELINES CONTINUED

- Eligible projects may be mixed-use (i.e., with commercial and residential components). The amount of the performance grant is based on the percentage of residential square footage to the total gross square footage of the structure(s) and the percentage of the number of affordable rental housing units to the number of total residential rental units.
- Affordable housing units are those units that will be rented to households with an annual income at or below 80% of the Area Median Income (AMI) as established by the United States Department of Housing and Urban Development (HUD) for the Richmond-Petersburg Metropolitan Statistical Area (MSA) for the applicable year of the grant period. Preference is given to residential multi-family housing projects that include affordable housing units that will be rented to households with annual income at or below 50% of the AMI as established by HUD for the Richmond-Petersburg MSA for the applicable year of the grant period.
- The Affordable Housing Performance Grant is calculated annually as an amount equal to the incremental new real estate taxes levied and collected for improvements on the Project Site.
- The Affordable Housing Performance Grant period commences on January 1st of the first real estate tax year following the applicant's completion of the project's construction, as evidenced by receipt of a temporary or permanent Certificate of Occupancy, and ends on last day of the 15th real estate tax year following the grant commencement date, or the 30th tax year, if the grant period is extended
- The Affordable Housing Performance Grant is payable by the EDA upon proof of full and timely payment of the property's real estate tax levy for the applicable payment period.
- The award of the Affordable Housing Performance Grant has a requirement for the project owner to strive for a goal of 30% minority and emerging small business participation during the construction phase of development.
- For projects with a 30-year performance period, the Project Owner will be required to make an agreed upon investment in capital improvements to the Project to ensure the ongoing upkeep and livability of all of the rental units prior to the 15th year of service.
- The EDA and HCD staff strongly encourage applicants to discuss their application with their lenders before submitting their Affordable Housing Performance Grant application as any restructure in the project's financing or change in the Affordable Housing Performance Grant Agreement after an award is approved may constitute a material change in the approved application. The EDA and the City of Richmond understand the fluidity in the current housing market and intend for this program to be as flexible as possible. However, a material or substantial change in the project structure may negate the approved grant award and the submission of a new application may be needed. If a new application is required, it must follow the same approval process as all performance grant applications. **There is no guarantee that an Affordable Housing Performance Grant will be approved.**
- **Beginning May 15, 2024, applications will not be accepted if construction work has started.**



SUBMISSIONS GUIDELINES

Please read and carefully review all information contained in this application packet, including the associated attachments, before completing the application. Applications must be submitted at least 70 days before an anticipated response is required. Incomplete applications will not be evaluated or considered for decisions until all required information have been provided. Completed applications are defined as applications for which all required documentation has been submitted, along with the completed application form and required attachments.

Application materials must be remitted to the EDA through one of the following methods:

- **In-Person or By Mail:**
 - **Economic Development Authority of the City of Richmond**
 - 1500 E. Main Street
 - Suite 400
 - Richmond, VA 23219
- **Email Submission:**
 - Applications can be submitted via email to Glenna Chung at RichmondEDA@rva.gov

Note: Only applications that have been deemed complete will be considered. Please allow seventy (70) days for completed applications to be processed. Also, if an Affordable Housing Performance Grant is approved, awardees are responsible for an annual grant administrative fee equal to 1% of the annual grant value during the life of the grant.

The EDA and the City of Richmond reserve the right to update this application packet, including the program guidelines, and any other information related to the Affordable Housing Performance Grant Program without prior notice.

Attachments Included in This Packet:

- Affordable Housing Performance Grant Application Form
- Affordable Housing Performance Grant Program Calculation Form
 - [Download editable Microsoft Excel Version \(required\)](#)
- Sample Affordable Housing Performance Grant Agreement



ATTACHMENT 1

AFFORDABLE HOUSING PERFORMANCE GRANT APPLICATION FORM

COMPLETED BY EDA STAFF

Date Received: _____

Date Deemed Complete: _____

Name of Staff Person: _____

I hereby submit this application for consideration by the Economic Development Authority of the City of Richmond, Virginia (EDA) and the City of Richmond, as provided in the following city and State code sections, to be eligible to receive an Affordable Housing Performance Grant for the below-addressed property:

The City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities associated with the Affordable Housing Performance Grant Program.

Project Name (if known): _____

Applicant, or their Agent: _____

Name of the Associated Special Purpose Entity or Entities (SPE), if other than

Applicant's Name: _____

Property Address: _____

Parcel Number(s): _____

Total Site Acreage: _____

Current Tax Year: _____ Property Assessment (Total Value): _____

Is Property located in a Registered City Old and Historic District? __Yes: __No



AFFORDABLE HOUSING PERFORMANCE GRANT APPLICATION FORM CONT.

Is there a structure currently on the property that will be totally or partially demolished as a result of the proposed project? * Yes No

***If demolition activities will be undertaken, please attach a description of the structure(s) to be demolished and attach a map showing the demolition area and structures.**

Current Property Use: _____

Proposed Property Use: _____

Total Number of Residential Units Planned: _____

Number of Affordable Housing Units Planned: _____

Construction Start Date (anticipated): _____

Construction Completion Date (anticipated): _____

Proposed Total Development Cost*: _____

***Attach a copy of the Project's development pro forma and initial operating pro forma.**

Has the Project been awarded Low Income Housing Tax Credits (LIHTC) from Virginia Housing's LIHTC Program? * Yes No

If not, does the applicant plan to apply for LIHTCs? Yes No 9% LIHTCs ____; 4% LIHTCs ____

If applying for Tax Credits, when will the application be submitted? _____

***Note that if an Affordable Housing Performance Grant is approved, the EDA and City of Richmond require that the Property Owner provide annually a copy of the Annual Rents and Household Income Certifications for all affordable units in the project.**

Does the applicant agree, whether a LIHTC project or not, to restrict occupancy and rents of the Project according to standards promulgated by Virginia Housing (the State Housing Finance Agency)? Yes No



AFFORDABLE HOUSING PERFORMANCE GRANT APPLICATION FORM CONT.

The Affordable Housing Performance Grant period is for 15 years. If the Project has an extended use agreement with Virginia Housing, an additional 15-year Affordable Housing Performance Grant period is available.

Does the Applicant desire to extend the Affordable Housing Performance Grant period to a 30-year grant period? __ Yes __ No

Please share below any other project information that was not provided in response to the questions above, including listing the proposed lenders for the project:

Required Attachment Checklist

- Affordable Housing Performance Grant Program Calculation Form
 - Please complete the “[Affordable Housing Performance Grant Program Calculation Form](#)” included in this application packet to determine the potential affordable housing performance grant percentage to be applied to the property. If the application is submitted in person or by mail, **the Calculation Form must also be emailed to RichmondEDA@rva.gov in Microsoft Excel format.**
- Map of the project site with any and all existing structures located on the site.
- Project development pro forma.
- Initial Project operating pro forma.

NOTE: Payment of the Performance Grant, if approved by the EDA and the Richmond City Council is conditioned upon applicant’s completion of the Project and the continued maintenance of the Project and the funds comprising payments of the Performance Grant will be calculated solely as a portion of the incremental real estate tax revenues generated by the Project (i.e., including both the fee interest (and leasehold interest, if applicable) in the land and all improvements).



AFFORDABLE HOUSING PERFORMANCE GRANT APPLICATION FORM CONT.

I CERTIFY THAT ALL OF THE INFORMATION ABOVE IS TRUE AND CORRECT AND THAT I HAVE READ THE ATTACHED SAMPLE AFFORDABLE HOUSING PERFORMANCE GRANT AGREEMENT.

Given under my hand on this _____ day of _____, _____

Print Name of Applicant: _____

Owner: _____

Agent: _____

Signature of Applicant: _____

Mailing Address of Applicant: _____

Email Address of Applicant: _____

Phone #: _____

THIS SECTION TO BE COMPLETED BY HCD STAFF

HCD APPLICATION #: _____

Date HCD received from EDA staff: _____


Date of Completed Review: _____

Reviewed By: _____

Recommendation: _____

ATTACHMENT 2 - SAMPLE CALCULATION FORM

This form must be completed in Microsoft Excel - [download it here.](#)

		INSTRUCTIONS: (1) Enter required information in the yellow fields only. (2) Attach this form in Microsoft Excel format to performance grant application. If the application is submitted in person or by mail, the Calculation Form must also be emailed to RichmondEDA@rva.gov in Microsoft Excel format.		
Name of Applicant:		Project Address:		Date Submitted for Review:
AFFORDABLE HOUSING PERFORMANCE GRANT PROGRAM CALCULATION FORM				
The Qualified Property is comprised of:			Amount	Percentage
	1	Gross square feet of Residential use		
	2	Gross square feet of Non-Residential use.	-	
	3	Total Building Gross Square Footage. (The sum of Rows 1 and 2)	-	
	4	Percentage of property that is for residential use. (Row 1 divided by Row 3)		#DIV/0!
The Qualified Property's Affordable Units will be comprised of the following number of units to be affordable to households at the designated affordability levels below:				
	5	Total number of residential units		
	6	Number of Affordable Units at or below 80% AMI but above 50% AMI;		
	7	Number of Affordable Units at or below 50% AMI Affordable Units.		#DIV/0!
	8	Total number of Affordable Units (The sum of Row 6 plus Row 7)	0	
	9	The Percentage (%) of Affordable Units in the property (Row 5 divided by Row 8)		#DIV/0!
	10	The Performance Grant Percentage. (Row 9 multiplied by Row 4)		#DIV/0!
A Performance Grant Percentage increase of two times the Performance Grant Percentage (up to 100%) is available to a Qualified Property when twenty (20%) or more of the residential units are at or below 50% AMI Affordable Units. (Row 10 multiplied by 2)		11	The Percentage (%) of Affordable Units in the property that are at or below 50% AMI that may qualify the property to receive a Performance Grant increase .	#DIV/0!
Name of Staff Reviewer:				Date Reviewed:

GRANT AGREEMENT

This **GRANT AGREEMENT** (the “Agreement”) is made and entered this ____ day of _____, 2023 (the “Effective Date”), by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”), _____, a Virginia Limited Liability Company, or its assigns or successors (the “Recipient”), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND**, a political subdivision of the Commonwealth of Virginia (the “Authority”).

RECITALS

- A. The Recipient plans to develop and operate on the Site, as defined below, the Project, as defined below.
- B. The City and the Authority have determined that the Project will result in significant investment and economic development on the Site, will promote safe and affordable housing in the City of Richmond, will result in substantial benefits to the welfare of the City and its inhabitants, is in the public interest, and serves governmental interests.
- C. The City plans to fund an economic development monetary grant (the “Grant”) by the Authority to the Recipient for the purpose of inducing the Recipient to construct and operate the Project in the City of Richmond.
- D. Payment of the Grant will be conditioned upon the Recipient’s completion of Project construction and continued maintenance of the Project, as defined herein, and the funds comprising payments of the Grant will be solely limited to a portion of the incremental real estate tax revenues for the Site generated by the Project (i.e., including both the fee interest (and leasehold interest, if applicable) in the land and all improvements), all as set forth herein.
- E. The City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Agreement. The Authority is authorized by the Code of Virginia to make grants to non-public organizations such as Recipient in furtherance of the purpose of promoting economic development and affordable housing.
- F. This Agreement sets forth the understanding of the parties concerning the Recipient’s obligations, the Authority’s obligations, and the incentives offered by the City, subject to the approval of the Authority’s Board and the Richmond City Council and subject to appropriations.

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises, and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Preliminary Provisions

1.1 Incorporation of Recitals. The foregoing recitals are incorporated herein by reference.

1.2 Definitions. For the purposes of this Agreement, the following terms shall have the following definitions:

“AMI” means area median gross income for the Richmond-Petersburg Metropolitan Statistical Area for each applicable year of the Grant Period.

“Base Real Estate Tax Revenue” means \$XXXXXX per year, being the amount equal to the real estate taxes levied on the Site for the current tax year as of the Effective Date.

“Grant” means a grant to be paid to the Recipient, or its successors or assigns, by the Authority pursuant to this Agreement.

“Grant Payment” means, for each real estate tax year during the Grant Period, an amount equal to _____ of the Incremental Real Estate Tax Revenue for such corresponding tax year. The Parties acknowledge that the annual real estate tax levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein “Grant Payment” shall include payments of Incremental Real Estate Tax Revenue for each installment payment corresponding to the applicable Real Estate Tax Levy as prorated for the applicable installment period.

“Grant Payment Request” means a written request for a Grant Payment, which shall include (1) documentation showing its full payment of the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below), and (2) the amount of the requested Grant Payment and explanation of the calculation thereof (i.e., Real Estate Tax Levy *minus* Base Real Estate Tax Revenue *equals* Incremental Real Estate Tax Revenue, as pro-rated for the applicable installment period).

“Grant Period” means that certain period commencing upon January 1st of the first real estate tax year following Recipient’s completion of Project construction, as shall be evidenced by receipt of a temporary Certificate of Occupancy (“Grant Commencement Date”) and ending on last day of the thirtieth (30th) real estate tax year following the Grant Commencement Date (“Grant Expiration Date”), subject to the provisions of Section 2.6 below. The parties acknowledge that the “Real Estate Tax Levy” for the last year of the Grant Period may not be received by the City until after the Grant Expiration Date and that a Grant Payment shall be paid to the Recipient corresponding to such Real Estate Tax Levy.

“Grant Management Fee” means one-time non-refundable fee and an annual payment equal to 1% of the Grant Payment to cover the administrative expenses of the Authority for managing the Grant during the Grant Period.

“Incremental Real Estate Tax Revenue” means, for each applicable real estate tax year during the Grant Period, the amount by which the Real Estate Tax Levy exceeds the Base Real

Estate Tax Revenue, provided the Recipient pays the Real Estate Tax Levy to the City in full and on time (except as provided in Section 3.3 below). In no event shall the Incremental Real Estate Tax Revenue (or the Grant Payment) include penalties, interest, or any other charges resulting from any delinquent payment. The Parties acknowledge that the Real Estate Tax Levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein “Incremental Real Estate Tax Revenue” shall be determined based on the applicable payment (or installment) of the Real Estate Tax Levy for each applicable real estate tax year.

“Maintain” means the Recipient’s continued maintenance and operation of the Project following completion of Project construction, as set forth by Section 2.3.2 of this Agreement.

“Project” means a development on the Site containing not less than ____ residential units, subject to income and rent restrictions as set forth in Section 2.5 and as shown on Exhibit A and monitored by the State Housing Finance Agency.

“Real Estate Tax Levy” means the amount of real estate taxes levied by the City on the Site (including both the fee interest (and leasehold interest, if applicable)) and Project (i.e., including land and all improvements) for a given real estate tax year, pursuant to Chapter 26 of the Code for the City of Richmond (“City Code”).

“Recipient” means _____, and its successors and assigns, to the extent permitted by this Agreement.

“Site” means, collectively, _____ acres currently owned by _____, located at _____ and currently referred to in the records of the City Assessor as Parcel Nos. _____.

“State Housing Finance Agency” means Virginia Housing (formerly known as Virginia Housing Development Authority), a political subdivision of the Commonwealth of Virginia, or its successor.

Section 2. Recipient’s Obligations

2.1 Grant Management Fee.

The Recipient shall pay annually to the Authority 1% of the Grant Payment for the duration of the Grant Period. The Authority will invoice the Recipient on or before October 1 of each year and the Recipient shall remit payment within 30 days of issuance of the invoice.

2.2 Completion of Project Construction; Timeline.

2.2.1 Plan of Development. Recipient shall submit a Plan of Development or similar submission for the Project to the City’s Director of Planning and Development Review no later than nine (9) months after the Effective Date, which Plan of Development or similar

submission shall comply with the relevant provisions of the Richmond City Code and shall contain all elements of the Project as defined herein.

2.2.2 Commencement of the Project Construction. Recipient shall commence construction of the Project within eighteen (18) months of the Effective Date, (the “Construction Commencement Date”), which shall be evidenced by the issuance of all permits necessary for the commencement of construction of the Project.

2.2.3 Completion of Project Construction. The Recipient shall complete the Project within three years of the Construction Commencement Date, which shall be evidenced by the issuance of a temporary certificate of occupancy for the Project.

2.2.4 Failure to Comply. If the Recipient fails to timely comply with any of the provisions of this Section 2.2 then the City’s Chief Administrative Officer (“CAO”), in his sole discretion, may either extend the time by which the Recipient must comply with the corresponding requirement or provide written notice of the City’s intent to terminate this Agreement. If Recipient fails to cure its failure to comply within 30 days of such written notice, then this Agreement, including all rights and obligations herein, shall, upon the City’s election, terminate and neither the City nor the Authority shall have any further obligation to the Recipient and Recipient shall no longer be eligible for any Grant Payments hereunder.

2.3 Continued Maintenance and Operation of Project.

2.3.1 Continued Control of the Project by Recipient. Recipient shall continue to own, lease, or otherwise control the Site until completion of Project construction pursuant to Section 2.2.3 of this Agreement and thereafter shall continue to own, lease, or otherwise control the Project until expiration of the Grant Period. Notwithstanding the foregoing, Recipient may transfer the ownership or control interest in the Project to third parties (“Transferee”), and Recipient may (1) assign this Agreement, including the rights and obligations herein to such party or parties at the time it transfers ownership of the Project (including any leasehold interests), and (2) if the Agreement is assigned, Recipient shall provide the City and Authority 30 days prior written notice of its intent to transfer ownership or control of the Project, which notice shall include the contemplated date of transfer, the name of the party or parties to which it intends to transfer, and a written statement from such party that it is aware that this Agreement, including the rights and obligations herein, will be assigned to such party. Following the transfer of ownership in the Project to the Transferee as provided above, the term “Recipient” as used herein shall mean the Transferee.

2.3.2 Continued Maintenance and Operation of the Project. Following the Recipient’s completion of Project construction as set forth in Section 2.1.3 of this Agreement, the Recipient, or its successors or assigns, shall continue to Maintain the Project until the expiration of the Grant Period. For the avoidance of doubt, the Recipient’s obligation to Maintain the Project includes the Recipient’s ongoing compliance with the provisions set forth in Section 2.5 (Affordable Housing) of this Agreement.

2.4 MBE Participation.

2.4.1 Goal. The Recipient agrees to diligently work towards the following goal: Where capacity, capability, and competitive pricing among minority business enterprises and emerging small businesses exist, 30% of all expenditures for construction costs of the Project that will be paid to third-party subcontractors unaffiliated with the Recipient will be spent with minority business enterprises and emerging small businesses that perform commercially useful functions with regard to the prosecution and completion of the Project. The terms "minority business enterprise" and "emerging small business" have the meaning ascribed to them in Chapter 21 of the City Code. The Recipient shall include this goal in its contracts with all assignees, contractors, and subcontractors who will be providing any portion of the Project.

2.4.2 Reporting. To enable the City to measure the achievements of the Recipient and its assignees, contractors, and subcontractors with regard to the participation goals set forth above, during the period prior to completion of Project construction, the Recipient shall submit a report upon request detailing all expenditures with minority business enterprises and emerging small businesses, showing, at a minimum, (i) the name of the business, (ii) an itemization of what the business provided, (iii) the amount paid for each item, (iv) the total amount of spending to date with minority business enterprises and emerging small businesses and (v) the percentage of total expenditures for the quarter spent with minority business enterprises and emerging small businesses. If the City chooses, the Recipient shall submit these reports on forms prescribed by the City. The City will use these reports in evaluating the good faith minority business enterprise and emerging small business participation efforts, as defined in Section 21-4 of the City Code, of the Recipient and its assignees, contractors, and subcontractors that compete for City contracts.

2.5 Affordable Housing.

The Recipient shall restrict occupancy and rents of the Project according to the schedule shown on Exhibit A, according to standards promulgated by the State Housing Finance Agency. Ongoing compliance monitoring and approvals by the State Housing Finance Agency, as provided to the City upon the City's request, shall serve as evidence of the Recipient's compliance with this section.

2.6 Continued Investment and Capital Improvements

For purposes of continued investment and upkeep of the Project to the benefit of its tenants, payment of Grant Payments after the initial fifteen (15) years of the Grant Period shall be contingent upon receipt of proof that the Recipient has at a minimum made capital improvements to the Project in an aggregate amount of Two Million Seven Hundred and Sixty Thousand dollars (\$2,760,000) since the Grant Commencement Date. On each fifth anniversary of the Grant Commencement Date, the Recipient shall upon request submit a report of capital improvements made to the Project since the Grant Commencement Date.

Section 3. Disbursement of Grant.

3.1. Grant. During the Grant Period, the City shall pay to Recipient (or such party to which Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), through the Authority, the Grant Payments for such real estate tax year subject to the provisions of this Section 3.

3.2. Grant Payment Requests. The Recipient shall submit each Grant Payment Request to the CAO, with copies to the Department of Economic Development, the Authority, and the Office of the City Attorney at the respective addresses set forth in Section 8.

3.3. Disbursement of Grant Payment. Upon receipt of a Grant Payment Request, the City shall review the accuracy of the request. The City shall not make a Grant Payment if the Recipient did not make full and timely payment of the Real Estate Tax Levy for the applicable installment (except when Recipient (i) makes full payment within 60 days after the date such payment was due to the City and (ii) pays all penalties and interest for such late payment in accordance with any applicable provisions of the Richmond City Code) and shall not make a Grant Payment if Recipient is delinquent in payment of any other taxes levied by the City for the Project (except when all penalties and interest for such late payment have been paid in accordance with any applicable provision of the Richmond City Code). Within fifteen (15) business days of receipt of a Grant Payment Request, the City shall notify Recipient either that (1) the City denies the request and will not make a Grant Payment for the foregoing reasons, (2) the City approves the request and intends to make a Grant Payment in the amount requested, or (3) the City approves making a payment to Recipient but in a different amount than the amount requested because the amount requested is inconsistent with this Agreement, in which case the City shall indicate the correct Grant Payment amount it intends to make. Notwithstanding the foregoing, the City's failure to respond within fifteen (15) business days shall not constitute approval of a requested Grant Payment and the Recipient shall not be entitled to any such payment due solely to the City's failure to timely respond. Subject to any necessary City Council action, including any necessary budget amendment or appropriation of funds, the City agrees to, within fifteen (15) business days of the City's approval of any Grant Payment, transfer the funds for the Grant Payment to the Authority. The Authority agrees to pay the Grant Payment to the Recipient (or such party to which the Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), within fifteen (15) business days of receipt of the funds from the City.

3.4 Recipient's Relief. Should the Recipient believe the City failed to comply with Section 3.3 of this Agreement, the Recipient may seek relief in accordance with Section 9.2 of this Agreement. Provided, however, Recipient's sole remedy shall be to receive payment for a Grant Payment to which it was entitled (subject to the restrictions set forth in this Agreement, including, but not limited to, Sections 3.3 and 9.5) and for which it did not receive payment.

Section 4. General Administration of Grant

4.1 The City agrees to transfer to the Authority, as and when appropriated by

the City Council, the funds necessary for the Authority to meet its obligations under this Agreement relating to the Grant. No administrative fees or expenses shall be paid by the City.

4.2 The Authority's obligation to undertake the activities herein is specially conditioned upon the City providing funding on a timely basis; provided, however, the City's obligation is subject to appropriation by the City Council and availability of funds.

4.3 The Authority agrees to provide the City's Chief Administrative Officer, or the designee thereof, with copies of all documents related to this Agreement, and will keep the CAO fully and timely informed of all matters related to this Agreement.

4.4 The Authority agrees that all funds transferred by the City to the Authority for the Grant shall be deposited by the Authority within a Project Fund, to be used only to satisfy the obligations contained in this Agreement related to the Grant.

4.5 It is the intent of the parties not to impose upon the Authority any responsibility, duty, or obligation other than what may be required to implement the Grant. Accordingly, the Authority does not assume any responsibility or liability whatsoever except as specifically stated herein. If litigation involving the Grant is initiated or expected to be filed against the Authority, the Authority shall immediately notify the City Attorney and CAO.

4.6 The Authority shall keep records of its financial transactions, if any, related to the Agreement in accordance with generally accepted accounting principles. The City Auditor or his designee may at any time audit the financial transactions undertaken under this Agreement. The Authority shall cooperate to ensure that the City Auditor is granted reasonable access on a timely basis to all books and records of the Authority necessary to complete such audits.

4.7 The Authority shall not be required to furnish the City with a blanket corporate fidelity bond with surety.

Section 5. Representations of the Recipient

5.1 The Recipient is empowered to enter into this Agreement, to be bound hereby, and to perform according to the terms hereof.

5.2 Any and all actions necessary to enable the Recipient to enter this Agreement, and to be bound hereby, have been duly taken.

5.3 The person or persons executing or attesting the execution of this Agreement on behalf of the Recipient has or have been duly authorized and empowered to so execute or attest.

5.4 The execution of this Agreement on behalf of the Recipient will bind and obligate the Recipient to the extent provided by the terms hereof.

5.5 There exists no litigation pending against the Recipient or to the Recipient’s knowledge threatened, which if determined adversely, would materially and adversely affect the ability of the Recipient to carry out its obligations under this Agreement or the transactions contemplated hereunder.

Section 6. Default.

6.1 Events of Default. Each of the following events (hereinafter called an “Event of Default”) shall be a default hereunder by the Recipient as described:

6.1.1 Failure by the Recipient to maintain its corporate existence or the declaration of bankruptcy by the Recipient.

6.1.2 The failure of Recipient to comply with Section 2 of this Agreement; and

6.1.3 The failure of Recipient to pay annual Real Estate Tax Levy.

6.2 Effect of Event of Default. In the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall, at the City’s option, terminate ninety (90) days after the City’s notice to Recipient and Recipient’s designated lender, unless Recipient cures the Event of Default to the City’s satisfaction within such ninety (90) days, and neither the City nor the Authority shall have any further obligation relating thereto and the Recipient shall no longer be eligible for any Grant Payments hereunder. Notwithstanding the foregoing, Recipient’s obligations hereunder will remain in force and effect throughout the Grant Period and the City shall be entitled to any remedies available at law and equity, including, but not limited to, specific performance.

Section 7. Recipient Reporting.

The Recipient shall provide, at the Recipient’s expense, detailed updates and verification reasonably satisfactory to the City of the Recipient’s progress regarding the completion of Project construction and, following Project construction, of Recipient’s continued compliance with Section 2.3 of this Agreement.

Section 8. Notices.

Any notices required or permitted under this Agreement shall be given in writing and shall be deemed to be received upon receipt or refusal after the mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Recipient, to

(Applicant’s Information)

with a copy to:

(Applicant’s Legal Counsel As Applicable)

if to the City, to

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, 14th Floor
Richmond, VA 23219

with a copy to:

Department of Economic Development
City of Richmond, Virginia
1500 East Main Street
Richmond, VA 23219

if to the Authority, to

Economic Development Authority
of Richmond VA – Attn: Chairman
1500 East Main Street
Richmond, VA 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street Suite 400
Richmond, VA 23219

Section 9. General Terms and Conditions.

9.1 Entire Agreement; Amendments; Assignments. This Agreement constitutes the Entire agreement among the parties hereto and may not be amended or modified, except in writing, in proper notice, and signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that in no event may this Agreement or any of the rights, benefits, duties, or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give, except that Recipient may assign its right to receive payment to another entity authorized to transact business in Virginia by furnishing the City and the Authority with notice identifying the entity and providing both contact and payment information in a form acceptable to the City and the Authority. Notwithstanding anything to the contrary herein, (a) Recipient shall have the right to assign its interest in the Site and Project to any future owner of the Site, the Project, or both, provided the Recipient first shall have complied with the requirements set forth in Section 2.3.1 of this Agreement and shall have submitted to the City the form of all instruments by which it purports to make such assignment and shall have obtained the City's prior written approval thereof, which approval shall not be unreasonably withheld, in which event the assignor shall be released from all obligations and liabilities under this Agreement; and (b) Recipient shall have the right to grant to a lender a security interest in, and assignment of, Recipient's rights hereunder as collateral for the loan to be provided by a lender providing funds for the development of the Project, and any action taken by such lender or successor in interest to realize on such security interest or assignment and performance thereafter shall be deemed permitted under this Agreement, provided the Recipient first shall have submitted to the City the form of all instruments by which it purports to grant such security interest and assignment and shall have obtained the City's prior written approval thereof, which approval shall not be unreasonably withheld, but no such consent shall be required to the exercise by lender or any assignee of lender of its right to perform Recipient's obligations hereunder after a default by Recipient under the applicable loan documents. The City agrees that the lender shall not have any liability for any act or omission of Recipient hereunder and shall ~~only~~ be liable hereunder for obligations arising during

such time as it is the owner of Recipient's interests in the Site and Project pursuant to foreclosure, deed in lieu of foreclosure or otherwise.

9.2 Governing Law; Venue. All issues and questions concerning the construction, enforcement, interpretation, and validity of this Agreement, or the rights and obligations of the parties shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. All disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceeding arising from this Development Agreement.

9.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

9.4 Severability. If any provision of this Agreement is determined to be unenforceable, invalid, or illegal, then the enforceability, validity, and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

9.5 Subject-to-Appropriations. All payments and other performances by the City and the Authority under this Agreement are subject to City Council approval, Authority Board approval, and annual appropriations by the City Council. It is understood and agreed among the parties that the City and the Authority shall be bound hereunder only to the extent of the funds available, or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's or the Authority's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

9.6 Public Disclosure.

9.6.1 Applicable Law. The parties to this Agreement acknowledge that records maintained by or in the custody of the City and the Authority are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76 through 42.1-90.1, and the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 2.2-37 14 and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

9.6.2 Challenges to Nondisclosure. If a party submitting records to the City or the Authority requests that those records not be disclosed under applicable law and the City or the Authority consequently denies a request for disclosure of such records based on the submitting party's request, and the City's or the Authority's denial of a request for disclosure of records is challenged in court, the submitting party shall indemnify, hold harmless and defend the City or the Authority, their respective officers and employees from any and all costs, damages, fees and penalties (including attorney's fees and other costs related to litigation) relating thereto.

9.7 No Waiver. Neither failure on the part of the City or the Authority to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the City or the Authority to enforce the same right in the event of any subsequent default.

9.8 Effective Date of the Agreement. The effective date of this Agreement shall be the date upon which it has been fully executed by the parties following approval by the City Council and by the Authority's Board of Directors.

9.9 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstance whatsoever as creating and establishing the relationship of copartners or creating or establishing a joint venture between or among any of the parties or as designating any party to the Agreement as the agent or representative of any other party to the Agreement for any purpose.

9.10 No Third-Party Beneficiaries. The parties agree that (i) no individual or entity shall be considered, deemed, or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, or the Recipient; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Recipient under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

9.11 Signature Authority. Except as specifically otherwise set forth in this Agreement, the CAO or the designee thereof may provide any authorization, approvals, and notices contemplated herein on behalf of the City.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

CITY OF RICHMOND, VIRGINIA
a municipal corporation of the
Commonwealth of Virginia

By: _____
J.E. Lincoln Saunders Date
Chief Administrative Officer

Authorized by Ordinance No. _____

Approved as to Form:

By: _____
City Attorney's Office

_____, a Virginia limited liability company

By: _____
Date

Name: _____
Title: _____

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF
RICHMOND, VIRGINIA,**
a political subdivision of the
Commonwealth of Virginia

By: _____
Chairman Date

Approved as to Form:

By: _____
General Counsel to the Authority

EXHIBIT A

Affordable Housing Schedule

The Project shall restrict occupancy and rents to an average income designation of XX% of AMI, according to standards promulgated by the State Housing Finance Agency, for a minimum of _____(XX) years.