

AUSTIN HOUSING FINANCE CORPORATION

**ACQUISITION & DEVELOPMENT (A&D) –
HOMEOWNERSHIP PROGRAM**

Program Guidelines for General Obligation (GO) Bond Funding,
HOME Funds, CDBG, Housing Trust Fund,
and
Other Such Funding that may be Available to Develop Affordable Ownership Housing.

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I. PURPOSE

The purpose of the Acquisition and Development (A&D) Program (the "Program") is to:

- A. increase or maintain the community's supply of affordably-priced homes for low- to moderate-income homebuyers; and
- B. assist the City of Austin with meeting its stated affordable housing goals and objectives.

A low- to moderate-income household is defined as having a total annual household income at or below 80% of the Median Family Income as determined by the U.S. Department of Housing and Urban Development (HUD) for the Austin-Round Rock, San Marcos, TX Metropolitan Statistical Area (MSA). An affordably-priced home is defined as a completed home that can be purchased by a qualified, income-eligible household having the ability to obtain for a first lien mortgage from a recognized mortgage lender. Current income limits can be found at **Attachment 1**.

Subject to the requirements and limitations of General Obligation Bond (GO Bond) issuance authorized by voters in November 2013, in addition to any statutory requirements and limitations of federal fund sources, the Program is expected to provide financing to for-profit and non-profit developers, including Community Housing Development Organizations (CHDOs) for the acquisition, rehabilitation, and new construction for affordable ownership housing.

II. DISCLAIMERS

- A. The Austin Housing Finance Corporation (AHFC) reserves the right to fund projects at a lower amount than requested, and the right to deny applications that do not coincide with the City's FY 2014-15 Action Plan goals and policy direction from the Austin City Council. The Program is under no obligation to consider or fund any proposed project that does not meet program requirements and assist in meeting the City's affordable housing policy goals and/or objectives.
- B. The City of Austin/AHFC reserves the right to determine project eligibility and the fund source to be used for any proposed project. Funding decisions will be based on a variety of factors, not just application scores. Other factors considered are:
 - 1. the applicant's current workload;
 - 2. financial capacity;
 - 3. the project's potential for transformative impact on residents and the surrounding community,
 - 4. repayment of funds borrowed from AHFC; and
 - 5. whether the request for funding is for a project that has previously been awarded A&D funds.

Additional consideration is given to how the A&D Program can best maximize the effect of A&D funding and how that leverages other funds.

- C. These A&D Program Guidelines are not intended to address every circumstance that may be encountered in the development process, nor are they intended to be a verbatim restatement of all regulatory requirements. Omission of any federal or local regulatory requirements in these A&D Program Guidelines does not relieve the City of Austin, AHFC, or the recipient of A&D Program funds from their respective obligations as may be required by the funding source involved.
- D. Once a Loan Agreement has been executed between AHFC and a Borrower for the purpose of developing rental housing according to these A&D Program Guidelines, if there is a conflict between these A&D Program Guidelines and the project's Loan Agreement, the terms of the Loan Agreement shall prevail.
- E. A&D Program guideline changes required as the result of federal, state or local regulatory or legal requirements may be implemented immediately by the NHCD Director/AHFC Treasurer.
- F. Revision to these A&D Program Guidelines usually takes place once annually. However, additional revisions can be initiated by the NHCD Director/AHFC Treasurer at any time.

III. DEFINITIONS

The following definitions are utilized throughout the Program guidelines:

- **“Accessible”** means an individual dwelling unit, facility or a portion of a facility, when designed and constructed, can be approached, entered and/or used by individuals with physical disabilities.
- **“Adaptable”** means certain elements of a dwelling unit or facility can be added to, raised, lowered or altered to accommodate the needs of individuals with disabilities, or to accommodate the needs of persons with different types or degrees of disability.
- **“AHFC”** means Austin Housing Finance Corporation, a Texas, public non-profit corporation organized and operated under Chapter 394, Texas Local Government Code.
- **“CHDOs” or “Community Housing Development Organizations”** means a type of non-profit, community-based service organization that has, as part of its mission, the development of affordable housing for low- to moderate-income households. The U. S. Department of Housing and Urban Development (HUD) requires that the organization meet certain requirements pertaining to its legal status, organizational structure, relationship to other entities, capacity and experience. Further definition can be found at 24 CFR 92.300.
- **“CHDO Project Proceeds”** means the proceeds from the sale of CHDO developed homeownership housing that the CHDO at AHFC’s discretion, may or may not be allowed to retain. If the CHDO is allowed to retain the CHDO Project Proceeds, the proceeds must be used for other HOME-eligible activities and must be accounted for by the CHDO.
- **“Eligible Costs”** means project costs that can be paid with A&D Program funds. Eligible costs include, but are not limited to, the costs or partial costs of acquisition and/or verifiable hard construction costs, reasonable soft costs, architectural and engineering fees, surveys, market studies and legal fees.
- **“Eligible Household”** means a household with a yearly income at or below 80% of the median family income (MFI) as published by HUD for the Austin-Round Rock-San Marcos, TX MSA.
- **“Geographic Dispersion”** means locations or areas that provide greater opportunity for families in terms of education, economic, mobility and transportation, health and environment, and neighborhood quality as described in *“Geography of Opportunity: Austin Region”* by the Kirwan Institute for the Study of Race and Ethnicity, Ohio State University, 2012. **Please Note: As of this date, the 2012 Map for Austin has not been provided in a one-page PDF format as in the past. As soon as the map is available in that format, it will be posted online.**
- **“Low- to Moderate-Income Household”** means a household whose gross income does not exceed 80% of the median family income (MFI) according to household size as defined by 24 CFR 570.
- **“Median Family Income (MFI)”** means, for a given locality, the dollar amount separating ½ of the households with higher incomes from ½ of the households with lower incomes. In other words, at the median income level, there is an equal amount of households earning more than the median income and an equal number earning less the median income. The median income is adjusted based on the number of persons in a household. .
- **“NOFA”** means Notice of Funding Availability. A NOFA is posted to inform the public that funding for the Program is available and that proposals involving the use of the funds will be accepted.
- **“Non-profit Organization”** means a not-for-profit, non-sectarian organization which is certified by the Internal Revenue Service (IRS) as a 501(c)3 entity established for the purpose of benefiting low- and moderate-income individuals.
- **“Organization in Good Standing”** means an organization under one or more contracts or agreements with the City or AHFC and which has in the past met, or currently is in compliance with, meeting minimum contractual and performance requirements. An organization must be considered in good standing as a condition for consideration for future or additional funding or to amend existing contractual conditions.
- **“The Program”** means the Acquisition and Development (A&D) Homeownership Program administered by AHFC on behalf of the City of Austin.
- **“Program Income”** means the gross income received by the grantee (City of Austin) or subgrantee (Austin Housing Finance Corporation) directly generated by a grant-supported activity, or earned only as a result of the grant agreement during the grant period. To be considered program income, the grantee or a subgrantee must receive the income.
- **“Project Proceeds”** means proceeds resulting from the sale of the property.
- **“Very Low-Income Household”** means a household whose gross income is at or below 50% of the MFI as defined by 24 CFR 570.

IV. FUNDING AND FINANCING MECHANISMS

Subject to the requirements and limitations of A&D Program funding sources, the Program is expected to provide financing for the acquisition, rehabilitation, or new construction for affordable homeownership projects. The A&D Program is administered on behalf of the City of Austin by AHFC using a variety of funding sources, including:

A. FEDERAL FUNDS

1. HOME (Home Investment Partnership Program);
2. CDBG (Community Development Block Grants); and
3. HOME or CDBG Program Income funds.

B. NON-FEDERAL or LOCAL FUNDS

1. General Obligation (G.O.) Bond Funds
2. General Fund;
3. Housing Trust Fund; and
4. Other local funding that may be available from time to time.

C. OTHER FINANCING MECHANISMS

1. Private Activity Bonds issued by AHFC
 - i. to create a Mortgage Credit Certificate program
 - ii. to create a Mortgage Revenue Bond program
2. Community Land Trusts

V. ELIGIBILITY

A. Eligible Projects

Eligible projects may include acquisition, rehabilitation or new construction of affordable homeownership. Another type of eligible project is using Program funds to benefit a first-time homebuyer with a direct loan where funds are passed through the developer. The purpose of such loans is to fill the gap between the amount of mortgage the buyer can afford and the sales price of the house. For rehabilitation projects, funds may be used to make essential repairs or improvements to meet local code or federal housing quality standards (HQS), come into compliance with federal requirements of Section 504 or the Americans with Disabilities Act, abatement of lead-based paint, abatement of asbestos, essential energy-related repairs or improvements, and repair or replacement of major housing systems in danger of failure.

Minimum requirements for projects are as follows:

1. Located within the corporate City-limits of Austin.
2. Projects must consist of one (1) or more residential units.
3. Units must be used for residential purposes only.
4. New construction projects must be certified for and meet the City of Austin's S.M.A.R.T. Housing™ requirements.
5. Rehabilitation projects must have a minimum of one (1) condition that violates either the City's Housing Code or federal Housing Quality Standards (HQS).
6. The project must be owned, developed or sponsored by an organization in good standing with the City of Austin/AHFC.
7. If applicable, projects must meet HUD Environmental Review requirements.

The following project types or characteristics are preferred:

1. Projects that address "Geographic Dispersion" as defined above in these Guidelines.
2. Projects that meet the requirements of the City's Vertical Mixed Use (VMU) Ordinance, or are located in a Planned Unit Development (PUD) or a Transit-Oriented Development (TOD).
3. Projects that have ownership structures that ensure long-term affordability, such as Community Land Trusts or "Shared Equity with Right of First Refusal."

C. Eligible Costs

Through the Program, applicants may receive financing for acquisition, rehabilitation or new construction of homeownership housing projects. A&D funding may be used for the following as long as it is specifically related to the project:

- 1. Hard Costs** such as purchase of homeownership units, acquisition of undeveloped land for a specific project and acquisition of existing structures, site preparations or improvement including demolition, securing buildings, construction materials and labor and direct assistance to homebuyers.
- 2. Soft Costs** such as architectural and engineering fees (including specification and job progress inspections), financing costs, credit reports, title insurance, recording costs, transaction taxes, appraisals, environmental reviews, builders' or developers' fees, marketing costs, and management fees.

The successful applicant will be required to provide an accounting of expenditures made with funds on such periodic basis, as shall be determined by the AHFC or the City of Austin, to ensure that the expenditures are made in satisfaction of the public purposes approved by the voters at the November 2013 election.

D. Ineligible Costs

While the following list of ineligible items is not intended to be all inclusive, A&D funding *may not* be used for the repair or construction of:

wet bars; barbecue pits; bathhouses; burglar bars; carpeting for kitchen, bathrooms, or patios; window treatments (*e.g.* draperies, shades, curtains, mini blinds); parking lots; dumbwaiters; fireplaces (except repairs to existing); flower boxes; garage door openers; greenhouses; hot tubs or Jacuzzis; mobile homes; outdoor fireplaces or hearths; patios or decks (except repairs of existing); photo murals; swimming pools or swimming pool decks; television antennae; tennis courts; and permanently affixed kitchen appliances (ranges and refrigerator which are designed and manufactured to be freestanding are acceptable). AHFC reserves the right to disallow other project costs deemed nonessential to furthering the purpose of the project.

Generally speaking, luxury items will be found ineligible, and AHFC reserves the right to disallow other project costs deemed non-essential to furthering the purpose of the project. Also, the RHDA program will not reimburse for any sales taxes paid on materials or labor.

VI. LIMITS OF ASSISTANCE

A. Acquisition, Rehabilitation, and New Construction

Assistance is available in the amount of \$2,500,000 per project, or other such amounts as the AHFC Board may authorize, for:

1. **Acquisition of land for the development of affordable housing.**
 - a. Acquisitions must include existing units or vacant land that will facilitate the new construction of units. Assistance can be provided for the acquisition of land or existing ownership properties, only if the acquisition price is equal to or less than the fair market value of the property. The applicant must demonstrate the fair market value of the property by supplying one of the following:
 - i. a pre-construction appraisal on the property to be acquired, conducted less than six months prior to receipt by AHFC;
 - ii. an appraisal for comparable properties within the same neighborhood, conducted less than six months prior to receipt of a funding application by AHFC; or
 - iii. a tax assessment (less than one year old) for the property or for comparable properties within the same neighborhood.
2. **Acquisition of property to be rehabilitated and used for affordable housing.**
 - a. Property acquisition is described in the preceding Subsection VII.A.1. Rehabilitation costs for affordable ownership units are limited to \$60,000 per unit which is inclusive of the \$2,500,000 total assistance limit in Section VI.A. above.
 - b. For rehabilitation projects, funds may be used to make repairs or improvements to the property such that the property will:
 - i. meet local code or federal housing quality standards (HQS);
 - ii. come into compliance with federal requirements of Section 504 of the Rehabilitation Act of 1974, as amended,
 - iii. comply with the Americans with Disabilities Act,
 - iv. have been treated for identified lead-based paint hazards in properties constructed prior to 1978;
 - v. have proof that asbestos has been handled appropriately;
 - vi. have energy-saving repairs or improvements made and major housing systems repaired or replaced.
 - c. Each of these amounts is inclusive of the \$2,500,000 total assistance limit in Section VI.A. above.
3. **New construction of affordable housing.**
 - a. Hard and Soft Costs as defined previously will be limited to:
 - i. \$60,000 per unit in multi-unit structures, and
 - ii. \$80,000 per unit in single-unit structures.
 - b. Each of these amounts is inclusive of the \$2,500,000 total assistance limit in Section VI.A. above.

B. Developer Fee. A Developer Fee is compensation to the developer for the time and risk involved to develop the project. It is typically based on the size of the project, the total development cost and the risk associated with the project. The maximum

developer fee allowed by AHFC is 15% of total project costs. AHFC may require a lower percentage for the developer fee if the developer also holds an ownership stake in the project or stands to profit from managing the property. Project Management fees (i.e., those paid out on a monthly basis while the project is underway) are considered a part of the Developer Fee.

VII. AFFORDABILITY REQUIREMENTS

A. Assisted Units

When A&D funds are used to assist homeownership projects, certain income and sales restrictions apply to the A&D-assisted units for a defined term called the “affordability period.” Projects may have a mix of A&D-assisted and non-assisted units. The distinction between assisted and non-assisted units allows funds to be expended on mixed-income projects while targeting A&D assistance to income-eligible households. At least 10 percent of all units in the project must be designated as A&D-assisted units.

B. Affordability Period

When A&D funds are used to assist ownership projects, income restrictions apply to the A&D-assisted units for a defined period of time called the “affordability period.” An affordability period will be established for each residential unit assisted with A&D funding. AHFC will control the resale of the homebuyer property during the affordability period either by using *resale* provisions or by using *recapture* provisions, depending on the type of assistance provided, and as further described in the NHCD/AHFC Resale and Recapture Policies and Procedures document.

The minimum affordability period for homes assisted with G.O. Bond funds is 40 years utilizing a “Right of First Refusal/Shared Equity” as described below in this Subsection B. The **preferred** affordability period will be for a period of not less than 99 years, using either of two ownership models, a Community Land Trust (CLT) model of homeownership, or the “Right of First Refusal/Shared Equity” model.

A CLT functions to preserve public investment and to preserve and protect affordability. The CLT is an entity, typically a non-profit organization, that acquires and retains ownership of the real property and, in effect, sells only the improvements via a 99-year ground lease to a homeowner. In high-cost areas, removing the cost of the land has the effect of making the home affordable to the buyer. If the homeowner chooses to sell, the resale price restrictions contained in the ground lease stipulate a resale price formula which will provide for a fair return (not a “market” return) on the homeowner’s investment. The CLT will purchase the house from the owner per the resale price formula and sell the house to another low- to moderate-income buyer and enter into another 99-year ground lease. This arrangement between the owner and the CLT protects housing affordability in perpetuity by ensuring that the housing is always made affordable to low- to moderate-income persons.

The “Right of First Refusal/Shared Equity” model also uses a resale formula whereby the organization (usually a non-profit) that originally sold the affordable home has the opportunity to purchase the home from the original buyer and receive a predetermined percentage of any increase in equity realized, plus any amount of subsidy provided to the buyer to make the home affordable. Upon re-sale, the organization’s share of the equity will be used to provide a subsidy to the next low- to moderate-income buyer to make the home affordable. The new buyer will sign a Right of First Refusal, a note for the amount of subsidy provided and a deed of trust. The note signed by the buyer will contain the resale formula that will be used when the house is next sold. This is another method of keeping housing affordable in perpetuity.

AHFC at its discretion may require a longer affordability period than stated above. Affordability requirements and restrictions will remain in force throughout the Affordability Period regardless of transfer of ownership unless ownership of the property is transferred through foreclosure proceedings.

C. Income and Occupancy Requirements

A&D-assisted homeownership units must be sold to households earning 80% MFI or below. However, AHFC shall set the goal to provide assistance targeted toward households with annual incomes at or below 50 – 65% MFI.

D. Income Determination Method and Timing

The Applicant shall determine income eligibility using the “Part 5” annual gross income method of income determination (24 CFR 5.609). Guidance on determining whose income to count, what type of income must be included or is excluded, and the calculation of imputed income from assets is found in the *Technical Guide to Determining Income and Allowances for*

the HOME Program, available from AHFC or in PDF format from HUD's website, currently located at: <https://www.onecpd.info/incomecalculator/>. AHFC must review applicable source documentation to verify annual income. Income qualifications must be completed in accordance with the timeframes outlined above, and need not be reexamined at the time the assistance is actually provided.

The low-income household shall be income eligible according to the following timing:

1. In the case of a contract to purchase existing housing, at the time the purchase contract is signed
2. In the case of a contract to purchase housing to be constructed, at the time the purchase contract is signed.

VIII. PROJECT UNDERWRITING, DEVELOPER CAPACITY, FISCAL SOUNDNESS, AND ASSESSMENT OF MARKET NEED

- A. Project Underwriting.** A project feasibility, underwriting, and compliance evaluation will be performed on each proposal as part of the initial application review process.
- B. Developer Capacity.** The developer must have the organizational capacity to implement the project. Developer capacity will be evaluated based on information demonstrating experience and skills as provided in the AHFC funding application.
1. Experience. Factors to be considered include, but may not be limited to, the following types of experience:
 - a. Recent, Similar, and Successful experience;
 - b. Similar project location, size & scope;
 - c. Years of experience developing affordable (i.e., income-restricted) housing;
 - d. Marketing and selling affordable ownership housing;
 - e. Using multiple funding sources;
 - f. Staffing; and
 - g. Previous working history with AHFC.
 2. Skills. Factors to be considered include, but may not be limited to, the following skills of the developer and the development team:
 - a. Project Management
 - b. Market Analysis
 - c. Site Selection & Control
 - d. Planning and Construction
 - e. Design, Architecture, Engineering
 - f. Legal & Accounting
 - g. HOME funding rules
 - h. Other funding source rules (e.g., Private Activity Bond)
- C. Fiscal Soundness.** The Applicant will be asked to provide evidence of financial ability to implement the project. Applicants will be required to provide current financial statements and proof of sufficient reserves or a Line of Credit, if necessary, to complete the project.
- D. Market Need.** An analysis of the need for the type of proposed housing and the number of units being proposed in a project will be assessed by using one of the following methods:
1. an assessment will be conducted "in-house" using available economic data from a variety of sources;
 2. AHFC may elect to contract with a professional or a company specializing in marketing analysis; or
 3. AHFC may elect to review and verify a market analysis performed by others, such as a developer, development partner, or other funder (public or private).

IX. OWNERSHIP REQUIREMENTS

A. Types of Ownership.

The program requires ownership of the property using one of the approved forms of ownership described below. Families and individuals own the property if they:

1. Have fee simple title to the property, or
2. Maintain a 99-year leasehold interest in the property through a Community Land Trust or other similar vehicle, or

3. Own a condominium, or
4. Own or have a membership in a cooperative or mutual housing project that constitutes homeownership under Texas law, or
5. Maintain an equivalent form of ownership approved by the AHFC.

B. Principal Residence.

Purchasers of A&D-assisted affordable housing must occupy the properties as their principal residence for the applicable term of the affordability period. This requirement will be reflected in a restrictive covenant running with the land and/or in loan documents between the purchaser and the AHFC. The AHFC and/or the City of Austin may take such additional measures deemed necessary to ensure and/or enforce compliance with this requirement.

X. PROJECT FEASIBILITY

A. Application Underwriting

Projects considered eligible for assistance must meet the following underwriting criteria:

1. It must be demonstrated that the project is not “economically feasible” without Program assistance.
2. Applicant must provide evidence of financial ability to implement and complete the project.
3. Applicant must have the organizational capacity to implement and complete the project.

B. Threshold Requirements for all A&D-Assisted Projects

1. The project must be owned, developed or sponsored by a for-profit or non-profit organization in good standing with the AHFC.
2. The project must be located within the city limits of the City of Austin.
3. Projects may consist of as few as one (1) dwelling unit.
4. Units must be used for residential purposes only.
5. Contracts or Loan Agreements of \$200,000 or more and that are assisted with federal A&D funds must comply with HUD Section 3 Requirements throughout the development of the project.
6. If applicable, properties must pass the HUD Environmental Review and other environmental reviews.
7. Rehabilitation projects must have a minimum of one (1) condition that violates either the City of Austin’s Land Development Code or federal Section 8 Housing Quality Standards (HQS).

XI. CONDITIONS OF FINANCING

The program staff will review and underwrite applications and make recommendations as to eligibility, funding, terms and conditions. The amount of assistance will be determined on a case-by-case basis. Under no circumstances shall financial assistance be used for any reason or cost other than for direct costs associated with and approved by the program. Construction activities shall be governed by the specifications based on approved plans.

A. Timing Requirements

Acquisition of vacant land can be financed with A&D funds, only if construction will begin on the project within 12 months of purchase. Demolition of an existing structure may be funded through A&D, only if construction will begin on the project within 12 months following demolition.

B. Lien

A lien will be placed on the property for which a loan has been made. The lien shall remain in place until all loan terms and conditions have been fulfilled. A Release of Lien will be issued upon full repayment of the loan and fulfillment of all contractual terms.

In the case of a multi-property project or subdivision, the lien will be partially released as each home is sold to an Eligible Household and, if required, after repayment to AHFC is made for the release amount of the property as described in the Loan Documents.

C. Loan-to-Value Ratio

AHFC loan amounts will not exceed 80 percent of the after-built home value.

D. Collateral

Any assistance provided will be secured by a Deed of Trust or other acceptable collateral. The AHFC Deed of Trust may be subordinated to private or other financing only if determined necessary for project implementation. Assistance generally will be non-recourse with recovery rights limited to the encumbered collateral and any income there from.

E. Renegotiation of Loan Terms

At its sole discretion, the AHFC may consider renegotiation of loan terms and conditions if by doing so increases the creation of the number of affordable ownership housing units, and/or achieves a more favorable interest rate on any superior loan. Under no circumstances will the Program consider a request to renegotiate loan terms and conditions, if to do so takes equity from the project that will not be used directly in the project itself or places the Program in a lesser lien position without resulting in a reasonable and direct affordable housing benefit. The Program is under no obligation to consider any request to renegotiate any existing loan terms and conditions. It is the intent of the Program that all approved terms and conditions will be honored and met by the project and its owners. It is the policy of the Program that only under certain limited circumstances or situations will any such request be considered. At its sole discretion, the Program may consider renegotiation of loan terms and conditions if by doing so increases the creation of the number of affordable housing units.

F. Grants

At its sole discretion, the AHFC may offer small grants of non-federal funds in amounts up to \$125,000 and subject to funding availability. Grant awards are considered on a case-by-case basis and are always needs-based. Grants are not available for projects that are considered completed. Although the grant itself will have no long-term monitoring requirement, grants will only be made for projects that will have a long-term monitoring requirement upon completion.

The following criteria must be met:

1. need (the project has exhausted its AHFC funding)
AND
2. an extraordinary circumstance exists
OR
3. there is an unanticipated opportunity to improve a project's sustainability features (water conservation, energy-efficiency, mobility, connectivity, etc.)

If approved, a Grant Agreement will be executed with specific performance measures to be carried out.

XII. APPLICATION and REVIEW PROCESS

All requests for funding shall be submitted in the form of the **Application for Financing for Homeownership Projects & Scoring Criteria**. Projects are evaluated according to the application evaluation criteria and established AHFC procurement policies and procedures in place at the time of Application. Subject to available funds, projects determined to be the most responsive Austin City Council policy directives, the current fiscal year's HUD Action Plan, and which meet other Program criteria may be selected and approved to receive assistance.

The Program will notify the Applicant in writing of a decision to approve or deny any application. Unless provided in writing by the Program, no person or organization shall construe any discussions held with Program staff or written information provided to constitute an acceptable application or an obligation or commitment for funding.

A. AHFC Staff Review

Applications are given an initial review by a Single Point of Contact (SPOC) for completeness and to ensure the minimum threshold requirements are met. Applications must meet a minimum score in order to be considered further. **However, submission of an application that meets or exceeds the minimum score is not a guarantee that the proposed project will be funded.** Incomplete applications may be returned to the Applicant with deficiencies noted. In addition, the Program reserves the right to accept or reject in part or in whole any complete application.

Applications that meet the minimum threshold requirements are scored by a panel of management-level AHFC staff members knowledgeable in the housing development process. The panel is convened by the SPOC and uses the Scoring Criteria developed for the Program.

Applications that are likely to be recommended for funding will receive further consideration by a Project Review Team composed of NHCD and AHFC executive team and other key staff. The Project Review Team will discuss programmatic, regulatory, and administrative aspects of a proposed project before a final recommendation is made.

It may take up to 60 days from the date a complete application is accepted to determine whether the project may be recommended for funding or denied.

Applications that meet the minimum threshold requirements are scored by a panel of at least 3 AHFC staff members (Scoring Staff) knowledgeable in the development process. The Application Review Staff are not involved in scoring applications. The scoring panel uses the A&D Scoring Criteria developed for the Program. Applications must meet a minimum score in order to be considered further. **However, submission of an application that meets or exceeds the minimum score is not a guarantee that the proposed project will be funded.**

Applications that are likely to be recommended for funding will receive further consideration by a cross-departmental Project Review Team composed of NHCD and AHFC staff. The Project Review Team will discuss programmatic, regulatory, and administrative aspects of a proposed project before a final recommendation is made.

The Program may take up to 60 days from the date a complete application is accepted to determine whether the project may be recommended for funding or denied. Although not all inclusive, the Program may not provide any obligation or commitment for funding to any proposed project unless the project meets the following minimum consideration criteria and those stated in other sections of these guidelines:

1. All other required project financing must be in place or have evidence of funding obligation and/or commitment;
2. All requested documentation and/or information by the Program has been provided;
3. If required, all applicable environmental review and assessment has been performed.

XIII. PAYMENTS

Payments for eligible project costs are made according to the conditions described in the AHFC Loan Agreement and not more often than once monthly, unless otherwise authorized by AHFC. Eligible project costs must be documented with each request for payment for the purpose of supporting the amount requested. AHFC will verify the work completed and determine the amount of funds to be paid. AHFC will disburse the funds reasonably in proportion to the progress of the project with the right of retaining a portion of such funds pending final completion of the project, in accord with the Loan Agreement. AHFC will disburse a final payment of any retained amounts per the conditions described in the Loan Agreement.

The Program retains the right to withhold or temporarily suspend payments to any project that:

- has failed to perform according to the terms and conditions of the Loan Agreement,
- is behind in submitting required, timely or incomplete reports, documents or information required or requested by the Program, or
- has not resolved any outstanding monitoring findings or concerns identified by the Program within the timeframes identified.

At such time that AHFC has determined the project has adequately addressed any performance-related issues, the Program will disburse any pending payments.

XIV. REPORTING/RECORD KEEPING

Borrowers must maintain complete and accurate books of account and other records reflecting the results of the development of the property and shall furnish, or cause to be furnished, to AHFC:

1. immediate notice of any material adverse change in the property's financial condition or business prospects or any lapse of coverage with respect to the Insurance Requirement;
2. all reports required by the AHFC Loan Agreement and Statement of Work; and
3. upon request of monitors, and at developer's expense, such other operating, financial, insurance coverage and credit information as may be reasonably requested with respect to the property.

The status of applications and recommendations will be updated regularly on the AHFC website, and through reports made to the Community Development Commission.

XV. LONG TERM COMPLIANCE

Long-term compliance requirements for homeownership include, but may not be limited to:

- Owner-occupancy of the assisted unit; and
- Income determinations for homebuyers prior to resale (for those homes subject to the “resale” provisions);

XVI. ADDITIONAL REQUIREMENTS

A. S.M.A.R.T. Housing™

All new construction projects will be required to obtain S.M.A.R.T. Housing™ certification prior to loan application. S.M.A.R.T. Housing is not applicable to rehabilitation projects.

B. City of Austin Visitability Ordinance

All single-family, duplex and triplex dwellings newly constructed with financial assistance provided through the Austin Housing Finance Corporation must be visitable in accordance with the City of Austin Visitability Ordinance No. 981007-A.

C. **“Section 3” Compliance.** “Section 3” refers to Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u).

1. Section 3 becomes applicable for:
 - A. projects that receive over \$200,000 in A&D funds, whether federal or non-federal funds, for the construction or rehabilitation of housing; **and/or**
 - B. projects where any contractor or subcontractor receives over \$100,000 in A&D funds, whether federal or non-federal, for the construction or rehabilitation of housing.
2. The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
3. Because NHCD receives HUD funding, Section 3 requires NHCD to ensure that employment and other economic and business opportunities generated by the HUD funding will, to the greatest extent feasible, be directed to:
 - a. Qualified low- and very low-income persons residing in the metropolitan area.
 - i. “Qualified” means the prospective employee has the proper qualifications for the work to be performed.
 - ii. “Low-income persons” means families (including single persons) whose total household incomes are at or below 80 percent of the Median Family Income (See Appendix A) for the Austin-Round Rock-San Marcos, TX Metropolitan Statistical Area (MSA). (Hereafter referred to as “Section 3 Residents.”)
 - iii. “Very-low income persons” means families (including single persons) whose total household incomes do not exceed 50 percent of the Median Family Income (See Appendix A) for the Austin-Round Rock-San Marcos, TX MSA. (Hereafter referred to as “Section 3 Residents.”)
 - iv. “Metropolitan Area” means the 5-county Austin-Round Rock, San Marcos, TX MSA which includes Bastrop, Caldwell, Hays, Travis, and Williamson counties.
 - b. Businesses that employ low- to very-low income persons;
 - i. “Businesses that employ low- to very low-income persons” means a business that has at least 30% of its employees who are Section 3 Residents as defined in Subsection 1(b) and 1(c) above, or those that within three years of the date of first employment with the business were Section 3 Residents. (Hereafter referred to as “Section 3 Businesses.”)
 - c. Businesses that are owned by low- to very low-income persons;

- i. “Businesses Owned by low- to very-low income persons” means a business that is 51% or more owned by a Section 3 Resident as defined in Subsection 1(b) and 1(c) above. (Hereafter referred to as “Section 3 Businesses.”)
- d. Businesses that provide evidence of a commitment to subcontract in excess of 25% of the dollar amount of all subcontracts to be awarded to businesses that meet the following qualifications:
 - i. “Businesses that provide evidence of a commitment to subcontract in excess of 25% of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described in Subsections 3.b. and 3.c. (above) means businesses that provide a certification or actual proof that they have subcontracted or currently have subcontracts with businesses owned by Section 3 Residents as defined in Subsection 3.a.ii and 3.a.iii above. (Hereafter referred to as “Section 3 Businesses”)

Guidance on how to comply with the requirements of Section 3 can be found in the Neighborhood Housing and Community Development Office’s Section 3 Plan.

E. Environmental Review

AHFC may require the owner of a project to provide a Phase I Environmental Review prior to executing loan documents to ensure that no environmental hazards exist on or near the project site. For acquisition and/or rehabilitation of properties built prior to 1979, the project must include an inspection for asbestos prepared by a firm certified by the State of Texas.

F. Lead-Based Paint

If a Project has the potential for lead-based paint hazards, the owner/developer must ensure that the required procedures for testing of surfaces, completion of the rehab work, further testing and clearance examinations on the property are followed throughout the project, and that all personnel conducting those activities have obtained the appropriate state certifications to authorize their work. For any project involving non-exempt activities, the owner/developer must work closely with AHFC to design a detailed plan to abate the hazard.

G. Contractor Selection

Owners/developers shall provide to the AHFC/City construction specifications and costs estimates for work proposed. To ensure completeness, cost efficiency and market competitiveness, the AHFC/City will review the project specifications and associated costs that will be mutually agreed to by both parties. Owners/developers will select construction contractors most capable to complete the project in accordance with the approved specifications and costs. The AHFC/City will conduct on-site inspections at various intervals throughout the construction of the project to assure the project is completed as required.

H. Debarment and Suspension

Owners and contractors are prohibited from employing, awarding contracts, or funding any contractors or subcontractors that have been debarred, suspended, proposed for debarment, or placed on an ineligibility status by the federal government, or by the City of Austin. In addition, any owners who are debarred, suspended, proposed for debarment, or placed on an ineligibility status by the federal government will be prohibited from receiving A&D funding. Developers are required to screen the status of all contractors and subcontractors by consulting the “System for Award Management” or “SAM” website at www.sam.gov.

I. Fair Housing Opportunity

The Borrower must comply with:

1. The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100: Executive Order 11063, as amended, (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (non-discrimination in Federally Assisted programs) and implementing regulations issued at 24 CFR Part 1;
2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146;
3. The prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; and
4. The requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60.
5. The prohibitions against discrimination based on actual or perceived sexual orientation, gender identity or marital status under the requirements of the Equal Access to Housing Rule, also known as the Lesbian, Gay, Bisexual, or Transgender (LGBT) Rule, published as additions and revisions to the non-discrimination provisions in 24 C.F.R. Part 5.

J. Fair Housing in Marketing

With projects of five (5) or more units, developers will be required to use affirmative fair housing marketing practices in soliciting buyers, in determining eligibility, and concluding all transactions. Each developer must affirmatively further fair housing in the same manner as a project that is required to comply with 24 CFR 92.351. These requirements include:

1. The City/AHFC will require the developer to solicit applications for unsold units from persons in the housing market who are least likely to apply for the housing without benefit of special outreach effort.
2. Advertising for unsold units must include the equal housing opportunity logo or statement. Advertising media may include newspapers, radio, television, brochures, leaflets, etc.
3. While units remain unsold, the developer must maintain a file containing all marketing efforts (i.e. copies of newspaper ads, memos of phone calls, copies of letter, etc.) to be available for inspection by the City/AHFC.

Where a developer fails to follow the affirmative marketing requirements, corrective actions shall include requiring extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other appropriate sanctions the City/AHFC deems necessary.

K. Insurance Requirements

Developers shall obtain, maintain and keep in full force and effect insurance coverages for general liability, auto, and property hazard insurance in such amounts and in such manner as required by the AHFC's Loan Agreement. A&D program funds may not be used in connection with the rehabilitation of a property located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless flood insurance is obtained and maintained throughout the term of the loan.

L. Audit Requirements for Non-Profit Developers

Non-profit developers/owners must submit to the AHFC a complete set of audited financial statements and the auditor's opinion and management letters in accordance with 24 CFR 84.21, and the Single Audit Act of 1984, as amended, covering each fiscal year until the termination of this Loan Agreement. Developer must use the procedures outlined in the Loan Agreement for securing the audit.

M. Non-Discrimination

The City of Austin/AHFC is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call 974-3100 (voice) or 974-3102 (TDD) for assistance. For a sign language interpreter, please call 974-3100 at least four to five days in advance. The City of Austin/AHFC does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs and activities.

XVII. DEFAULT ACTIONS AND SANCTIONS

- A.** The AHFC/City retains the right to determine, in its/their sole discretion, whether a default has taken place in an A&D funded project. The AHFC may exercise default actions if the AHFC determines that the default or violation(s) of the terms and conditions of the executed agreement has or may take place by the developer. A default or violation may occur as a result of action or inaction taken by the project developer, organization, agency, contractor, individual or duly appointed representative of the developer. A default or violation may include, but not be limited to the following:
1. Developer fails to address adequately the applicable local, state or federal rules and/or regulations governing the acquisition, construction and/or initial occupancy requirements of the project, or
 2. Any breach of any covenant, agreement, provision or warranty made by the developer, or
 3. If A&D Program funds are used for any purpose other than authorized in the A&D Program contract, or
 4. Developer fails to meet any conditions of the AHFC/City's loan documents, or
 5. Developer fails to comply with information submitted by the Developer to the AHFC/City through the project selection process, or
 6. Developer or developer's project is found to be in violation of local, state or federal law, or
 7. Developer fails to maintain adequate documentation in support of project requirements.
- B.** Default sanctions available to AHFC may include, but not be limited any one or any combination of the following:
1. Call the project note due and payable in accordance with the terms and conditions of the note;
 2. Call the note due and payable for the full amount of the AHFC funds provided to the project;
 3. Temporarily suspend the project until corrective action is taken;
 4. Terminate the agreement and associated documents with the project;
 5. Request a review or investigation by local or federal authorities if applicable;
 6. Debar the project organization or individual from consideration of any future funding opportunities from the AHFC.

According to the terms of the Loan Documents, should the AHFC exercise any of the above referenced sanctions, the AHFC will provide written notice at the Borrower's address as stated in the Loan Agreement. The AHFC shall make the final determination as to whether any proposed corrective action undertaken as the result of an event of default is sufficient to cure the default.

XVIII. APPEALS/GRIEVANCE PROCESS

Persons aggrieved by any action or inactions of the A&D program which occurs in the implementation of these guidelines, and who wish to appeal said action or inaction, must do so by submitting an appeal in writing to the AHFC Real Estate Development Manager within 30 days of the action or inaction deemed aggrieving by said person(s).

The AHFC Real Estate Development Manager is charged with the administration for reviewing an appeal or grievance. The Real Estate Development Manager shall submit to the AHFC Treasurer a written summary of each grievance received along with explanations of the administrative action taken or recommended, within 15 days of his/her receipt of a written grievance. The AHFC Treasurer shall constitute the highest administrative personnel in the process.

Dolores Gonzalez is the City's ADA/Section 504 Coordinator. Her office is located at 505 Barton Springs Road, Suite 600. If you have any questions or complaints regarding your ADA/Section 504 rights, please call the ADA/Section 504 Coordinator at 974-3256 (voice) or 974-2445(TTY).

This publication is available in alternative formats. Please call 974-3100 (voice) or 974-3102 (TDD) for assistance.