

**EXCLUSIVE NEGOTIATING AGREEMENT FOR
1215 RED RIVER STREET AND 606 EAST 12TH STREET**

This Exclusive Negotiating Agreement for the redevelopment of 1215 Red River Street and 606 East 12th Street (this “Agreement”) is dated effective as of the 17th day of May, 2021 (the “Effective Date”), by and between the City of Austin, a Texas home rule city and municipal corporation (the “City”) and Aspen Topco II, LLC, identified as “Aspen Heights” in the proposal and City Council approval documents, (the “Developer”). The City and the Developer are collectively referred to as the “Parties” and individually as a “Party”.

In consideration of the mutual covenants and agreements contained herein, the City and the Developer agree as follows:

Article I. Definitions. As used in this Agreement, each of the following terms has the meaning given it in this Article or in the sections referred to below:

“Act” is the Texas Public Information Act, Chapter 552, Texas Government Code.

“Authorized Purposes” means conducting inspections, tests, examinations, surveys, studies, and appraisals, as set out and limited in Section 10.01.

“City Council” means the elected City Council of the City.

“City Property” means the Property and all other real and personal property, or property of any other kind or character, owned by the City.

“Claim” means all claims, demands, actions, damages, loss, liabilities, judgments, costs and expenses, including without limitation, reasonable legal fees, and court costs, as set out in Section 14.01.

“Community Benefits” are those benefits identified in Section 3.01(b)(vi).

“Confidential Information” is any information submitted by the Developer in the course of the negotiations carried out under this Agreement that is clearly marked "Privileged" or "Confidential" in accordance with Section 8.01.

“Desired Elements” are the elements identified in Section 3.01(b).

“Event of Default” are the events identified in Section 5.01.

“MDA” means the Master Development Agreement to be negotiated by the City and the Developer which will set forth the terms and conditions for the lease and/or purchase, and redevelopment, of the Property, including but not limited to: (i) purchasing and/or leasing the Property with any leasing being accomplished either through a fully capitalized long-

term ground lease with lump sum payment upfront or long-term ground lease with ongoing payments; and (ii) redevelopment of the Property, which MDA will include the MDA Master Plan.

“MDA Master Plan” means the graphics, text, and tables illustrating the development of the Property, to be attached as an exhibit(s) to the MDA.

“Plans” are all documents, plans, studies, analyses, and similar documents regarding the planning, engineering, infrastructure, and preparation of any public/private parking facilities, streets, utilities, and other public infrastructure for the Property, as identified in Section 3.03(b).

“Property” means certain real property located in the City of Austin, Travis County, Texas, together with a building located thereon at 1215 Red River Street and a parking garage located thereon at 606 East 12th Street, as more particularly described in the RFP and in the map attached hereto as **Exhibit A**.

“RFP” means the Request for Proposal 5500 SMW3002, dated November 18, 2019, issued by the City for the solicitation of Redevelopment of 1215 Red River Street and 606 East 12th Street (Former HealthSouth Rehabilitation Facility), including all exhibits and addenda issued by the City.

“RFP Response” means the response to the RFP submitted by the Developer to the City on April 23, 2020, and all supplemental materials submitted by the Developer in response to addenda or clarification requests by the City.

“Right of Entry” means the right to enter the Property, as identified and limited in Section 10.01.

“Source of Income” means lawful, regular, and verifiable income including, but not limited to, housing vouchers and other subsidies provided by government and non-governmental entities, child support, or spousal maintenance, but does not include future gifts.

“Term” is the term of this Agreement, as defined in Section 2.01.

Article II. Negotiations.

Section 2.01 Term. Unless sooner terminated as provided herein, the term of this Agreement will commence on the Effective Date and terminate on the date which is 9 months following the Effective Date (the “Term”). If, at the expiration of the Term, the Developer and the City have not agreed on the essential terms of the MDA, the Parties may further extend the Term for a successive three-month period upon mutual agreement. If, at the expiration of such extended Term, the Developer and the City have not agreed on the essential terms of the MDA, the City Manager of the City may further extend the Term for successive three-month periods upon written notice to the Developer. If the initial Term is extended, “Term” will mean the initial Term as it is so extended.

Section 2.02 Good Faith Negotiations. The City and the Developer agree to negotiate diligently and in good faith throughout the Term with the goal of completing the tasks set forth in Article III and negotiating the MDA.

Section 2.03 Exclusivity. During the Term, the City agrees not to negotiate with any other person or entity to act as a master developer of the Property or solicit bids or proposals to do so.

Article III. Roles and Responsibilities.

Section 3.01 Tasks. During the Term, the City and the Developer shall use good faith efforts to endeavor to negotiate, develop, and prepare the following documents and complete the following tasks:

(a) Due Diligence. Define the roles and responsibilities of the Developer and the City with respect to the completion of all due diligence regarding the Property.

(b) Desired Elements. The Parties shall negotiate the MDA, with a good faith effort to consider the following City Desired Elements consistent with Resolution No. 20181004-042, the RFP, and the January 27, 2021, City Council meeting minutes. If either the Developer or the City cannot or will not include one of these elements in the MDA, the Parties shall identify the reason(s) in writing for the City to provide to City Council:

(i) *Affordable Housing Development.* The City desires affordable housing to be a significant use of the Property. Accordingly, the Developer shall seek to offer in the range of 25% to 45% mixed-income for rent housing, with an emphasis on family-oriented multi-bedroom (2 and 3 bedrooms) housing for households earning at or below 60% median family income (“MFI”) on the Property. The Developer will use good faith efforts to investigate creative public and private methods to offer more on-site affordable housing and deeper levels of affordability such as (by way of example only) the reassessment of parking needs and decoupling parking from residential units.

(ii) *Affordable Housing Management.* To the extent feasible, the City desires for the management of affordable housing to adhere to City requirements as of January 1, 2021, including but not limited to:

- 1) Tenant protection provisions from the City’s Rental Housing Development Assistance Program Guidelines (RHDA) attached hereto as **Exhibit B**;
- 2) Require covenants on the affordable housing units to reserve the units as affordable for not less than the term of the ground lease and/or grant the City a “Right of First Refusal” upon expiration of the affordability terms;
- 3) Provide for Source of Income protection by accepting housing choice vouchers from the HUD Housing Choice Voucher program under 24 CFR Part 982, the City’s local housing vouchers, and other lawful, regular, and verifiable rental subsidies;
- 4) Limit rent charged (including utilities) in affordable rental units not to exceed 30% of a household's income at 60% MFI or 50% MFI income levels;
- 5) Adjust income restrictions (and rent restrictions) for household size under HUD guidelines;
- 6) Set sale price of affordable homes at no more than 3 times the household's annual income (or 3.5 times the household's income if someone in the household has completed approved homebuyer counseling or education);
- 7) subject ownership units to an equity cap in which the homeowner's equity can increase up to 2% per year for 30 years (at which point no additional equity can be earned).

(iii) *Early Childhood Care and Education.* The City desires the Developer to offer high-quality, affordable childcare on site.

(iv) *Live Music/Art Venues.* The City desires the Developer to offer live music and art venue space that could be leased to live music and art venue operators, prioritizing operators representing historically disenfranchised musicians.

(v) *Lease Terms.* To the extent portions of the Property are leased to the Developer, City desires the Developer to lease the Property either through a fully capitalized ground lease with lump sum payment upfront or ground lease with ongoing payments. Consideration for the lease and redevelopment of the Property shall consider profit-sharing for the City beyond a certain internal rate of return once costs are recovered, in addition to the payment of \$12.2 million for City expenses related to the Property.

(vi) *Community Benefits.* The City desires the Developer to offer the following community benefits to the extent feasible:

Commercial Uses

1) Plan to recruit and lease a significant percentage of local businesses including retailers, grocers, and restaurants. The recruitment plan shall include recruitment strategies for (i) a wide range of commercial and job-producing businesses; (ii) businesses of all types and sizes; and (iii) small and local businesses that will fill voids in the surrounding market and benefit residents and surrounding communities, all taking into account the size of the retail space contemplated for the redevelopment.

2) To the extent portions of the Property are leased to the Developer, use commercially reasonable effort to negotiate for commercial tenants to pay the City's living wage rate, as adjusted from time to time by the City, to its employees including custodial workers;

3) Alternative cross-subsidizing opportunities in lieu of, or in conjunction with, commercial office space;

Public Access

4) Use good faith efforts to cooperate with the City and adjacent property owners to improve connectivity by participating in available opportunities to restore original downtown street grid and ensuring all public right of way is pedestrian-oriented with ground-level activation;

5) Public access to the viewing deck without requiring to be a resident or retail customer;

6) Open space and/or green space which may include an aquatic amenity with public access and with conspicuous, street-level signage in English and Spanish languages;

Residential Uses

7) Communal “learning spaces”, computer labs, and other spaces with technological resources for residents, including children; and

8) Study from a qualified acoustical consultant documenting current sound conditions in the area and developing a plan for construction and design solutions to minimize sound impact to residential units.

(vii) *Potential Community Benefits.* To the extent feasible, the Developer will consider including the following in the MDA:

Street-Level Activation

1) Use good faith efforts to cooperate with the City and adjacent property owners to improve connectivity by participating in available opportunities to restore the urban grid such that the "new alley" on the north edge of the Property be designated as 13th Street and, if commercial uses are present, include ground-level pedestrian-oriented uses similar to other streets in the Central Business District;

2) Maintain public right-of-way along the existing east-west alley just north of 12th Street (including overhead connection across the alley);

3) Design and construct parking spaces that are consistent with the Austin Strategic Mobility Plan; underground parking; above-grade parking with horizontal floors and sufficient headroom for later conversions; ground-level, pedestrian-oriented uses; use of green walls; parking to be decoupled from other uses; and public parking for offsite uses;

City Assets

4) Identify opportunities to include the design and construction of City office space; and

5) Identify opportunities to include the design and construction of Austin Energy's district cooling plant facility .

(c) Conceptual Site Plan. The City desires for the Developer to initiate, produce, and revise a conceptual site plan in connection with the preparation of the MDA. The site plan should depict exterior elevations and building design with sufficient detail to convey the overall architectural style of the proposed project on the Property, the commercial and residential spaces, and a parking plan for the Property for review and comment by the City in its capacity as the landowner. However, the site plan need not include the same level of detail that would be required under the City's Land Development Code. The City shall review and comment on the site plan in its capacity as a landowner.

(d) Zoning and Subdivision. The Parties acknowledge that rezoning of the Property site will be initiated by the City. Developer acknowledges that the City zoning and subdivision staff do not act on behalf of or make binding decisions for the City Council, the Zoning and Platting Commission, the Planning Commission, and the other commissions of the City, or City staff acting in a regulatory capacity. The Parties agree that it will be mutually beneficial and advantageous to undertake certain activities with respect to the Property upon execution of the MDA. However, if the Parties reach agreement as to the desired rezoning and subdividing of the Property and that it would be reasonable and prudent to do so, the City, as the landowner and applicant, with the joinder of the Developer, may commence the process for the requisite rezoning and subdividing of the Property prior to execution of the MDA. All external materials, documents or instruments typically generated by the landowner of a property for such zoning and subdivision process (e.g., plats), will be generated by Developer, at its sole cost and expense, for approval by the City in its landowner capacity before being submitted for regulatory approval. The Developer shall be responsible for any fees or fiscal posting requirements concerning such zoning and subdivision. Developer may be eligible for certain fee waivers based on the availability, participation, and fulfillment of City programs as applicable.

(e) Mandatory Elements. The Parties acknowledge that the Developer shall meet certain requirements to be included in the MDA in accordance with applicable local, state, and federal laws, regulations, and policies including but not limited to:

(i) WBE/MBE subcontracting goals in accordance with City Code Chapter 2-9B and all other applicable codes, resolutions, rules, or ordinances; and

(ii) City Council "Third Party Resolutions," regarding the applicability of certain OSHA requirements, Prevailing Wage Rates, environmental design requirements, rest breaks, and M/WBE participation (without duplication as to (i) immediately above) in projects involving the private development of City Property.

(f) Public Comment and Outreach.

(i) The Parties shall allow public comment on the proposed conceptual site plan and MDA terms prior to City Council authorization of the MDA. This may include, but is not limited to, presentations to the City boards and commissions as well as posting relevant information on City websites. The Developer shall prepare conceptual site plans and other documents, at its sole costs and expense, as reasonably necessary for public comment and participate in public meetings as needed; and

(ii) The Parties will develop a community engagement plan that includes clear timelines, deliverables, and examples of how the Developer will engage and maximize participation with existing communities in relation to the redevelopment of the Property. The Parties will establish the method and responsibility for informing adjacent communities of construction activities throughout the redevelopment of the Property and, to the extent feasible, minimizing the impact of these activities on those communities as necessary.

Section 3.02 Deposit. On the Effective Date, the Developer shall tender a deposit to the City in the amount of \$50,000 (“Deposit”). If a MDA is entered between the Parties, the Deposit will be applied to the initial payment of any consideration payable to the City under the MDA or any other documents executed pursuant thereto. If an MDA is not entered or this Agreement otherwise expires or is terminated other than due to a Developer Event of Default, the Deposit will be promptly refunded to Developer.

Section 3.03 Documents.

(a) Document Production. The City and its consultants shall initiate and produce each interim draft and final forms of the MDA. The Developer’s consultants will produce the MDA Master Plan, as well as those studies, cost estimates, infrastructure engineering, project proformas, and other development information reasonably necessary to support the MDA.

(b) Delivery of Documents; Ownership of Documents. The Developer shall provide the City with copies of all reports, studies, analyses, project proformas, and similar documents, prepared or commissioned by the Developer with respect to this Agreement and the Property, promptly upon their completion and after an internal review by the Developer. The City shall provide the Developer with copies of all reports, studies and analyses prepared or commissioned by the City with respect to this Agreement and the Property, promptly upon their completion and after an internal review by the City. Notwithstanding the provisions of this Section, in no event will any Party be required to disclose to any other Party information to the extent such information is protected by the attorney-client privilege. All documents, plans, studies, analyses and similar documents (the “Plans”) regarding the planning, engineering, infrastructure and preparation of any public/private parking facilities, streets, utilities, and other public infrastructure for the Property will be the sole property of the City subject to the rights of the consultants preparing same. All other plans prepared on behalf of the Developer shall be the property of the Developer or its consultants, as applicable.

Section 3.04 Basis for Negotiations. The negotiations conducted under this Agreement, as well as the principal and initial basis for preparation of the MDA, will be based on the redevelopment described in the RFP, the RFP Response, Resolution No. 20181004-042, and the January 27, 2021 City Council meeting minutes. It is expressly understood and stipulated that the development parameters set forth in the RFP Response have not been accepted, adopted or approved by the City, nor have such parameters or any of them been approved or selected as a preferred alternative. It is expressly understood and stipulated that, except as contained in the RFP Response, the development parameters set forth in the RFP, Resolution No. 20181004-042, and the January 27, 2021 City Council meeting minutes have not been accepted, adopted or approved by the Developer, nor have such parameters or any of them been approved or selected as a preferred alternative. The Parties acknowledge and agree that the final development parameters for the Property shall be negotiated in good faith and agreed upon in the executed MDA approved by City Council and the governing body of the Developer.

Article IV. Expense Payment. The Developer and the City shall each pay their respective costs incurred in connection with negotiation of and actions undertaken by the parties in furtherance of this Agreement.

Article V. Events of Default and Remedies.

Section 5.01 Event of Default. Each of the following circumstances will constitute an “Event of Default” hereunder.

(a) General Breach by Either Party. A breach of this Agreement (other than those listed in Section 5.01(b) or (c)) by either Party and such breach continues for a period of 30 days following written notice of such breach to the breaching Party, which notice must specify in reasonable detail the basis of such claim of breach;

(b) Breach by the Developer of Article VII (Assignment and Development Team). A breach by the Developer under Article VII of this Agreement and such breach continues for a period of 10 business days following written notice of such breach to the Developer;

(c) Bankruptcy or Insolvency. Bankruptcy or insolvency of the Developer.

Section 5.02 Failure to Agree Upon the MDA. Notwithstanding anything to the contrary in this Agreement, the failure to reach agreement upon the MDA will not be deemed an Event of Default by either Party. In the event the Term expires and the Parties have failed to reach agreement upon the MDA, this Agreement will terminate and neither Party will have any further rights or obligations under this Agreement, except those rights or obligations which expressly survive termination pursuant to the terms of this Agreement.

Section 5.03 Remedies.

(a) Developer Event of Default. In the event the Developer commits an Event of Default, the City may, as its sole and exclusive remedy, terminate this Agreement upon written notice to the Developer.

(b) City Event of Default. In the event the City commits an Event of Default, the Developer may, as its sole and exclusive remedy, terminate this Agreement upon written notice to the City and enforce by specific performance the City's obligation to refund the Deposit paid under Section 3.02.

(c) Damages and Equitable Relief. Each Party waives any right or claim of monetary damages or equitable relief against the other Party for such Party's default of this Agreement except as provided in Section 3.02.

(d) Effect of Termination. In the event this Agreement is terminated pursuant to its terms, neither Party shall have any further rights or obligations under this Agreement, except those rights or obligations that expressly survive termination pursuant to its terms. The Developer shall have no right to recover the Deposit paid under Section 3.02 except as provided in Section 5.03(b).

(e) Damages. Each Party expressly waives the right to recover damages from the other Party under this Agreement and neither Party may recover from the other actual, consequential, indirect, punitive, exemplary, special or other damages of any kind or nature whatsoever, except that the Developer may recover the Deposit paid under Section 3.02.

Article VI. Right to Terminate. Both the City and Developer have the right to terminate this Agreement at any time prior to the expiration of the Term upon written notice to the other Party.

Article VII. Assignment and Development Team.

Section 7.01 Assignment. The Developer shall not assign (it being agreed that for purposes of this Agreement, assignment includes, without limitation, a merger, dissolution, sale of stock or sale of assets, mortgage, pledge or otherwise transfer) its interests in this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion; provided, however that the Developer may assign its interests in this Agreement to an affiliate of the Developer upon the City approval not to be unreasonably withheld. The City acknowledges that the entity that will enter into any MDA will involve the parties that currently comprise Developer and may also include other entities or individuals. The City also acknowledges that the entity that will enter into any MDA may enter into joint ventures, partnerships or other co-development arrangements with other entities and individuals. Developer acknowledges that the City must be assured that Developer and the entity that enters into the MDA as the "developer" have the financial and development capabilities to satisfy its obligations under the MDA, and if such entities do not have such capabilities, the City may require a guaranty or similar assurance of such obligations. The City may transfer its interest in this Agreement to a

special entity or entities formed by the City to facilitate the development of the Property without the prior consent of the Developer but with written notice to the Developer of any such transfer.

Section 7.02 Developer's Development Team. As provided in the RFP Response, the Developer's development team shall include (1) STG Design as the lead architect; (2) Studio Balcones as the lead landscape architect; and (3) Civiltude Engineers & Planners as its civil engineers. The Developer shall use its commercially reasonable efforts to keep its development team consultants and individuals identified in the RFP Response (as updated in **Exhibit D** attached hereto) assigned to perform the responsibilities identified therein and to satisfy its obligations in the RFP Response. In the event of changes in consultants or personnel, consultants or individuals of substantially equivalent seniority, experience and qualifications will be assigned. The Developer shall provide written notice to the City of changes in its consultants and personnel and their respective responsibilities and shall furnish to the City information on the seniority, experience, and qualifications of any additional or substituted consultants or individuals.

Article VIII. Confidentiality of Information and Negotiations.

Section 8.01 Confidentiality. The City and the Developer enter this Agreement with the understanding that, during the negotiation of the MDA, the City may require, and if so, then the Developer shall provide, information of a privileged and confidential nature relevant to the Property or the RFP Response (which shall not include financial, operational or trade secret information about other Developer projects) to the extent necessary for the City to verify financial, operational, or trade secret information that is relevant to the negotiations. The City agrees that it will, to the extent not prohibited by the Texas Public Information Act ("Act"), Chapter 552, Texas Government Code, keep confidential and not disclose any information submitted by the Developer in the course of the negotiations that is clearly marked "Privileged" or "Confidential" ("Confidential Information") except for disclosures (a) in the process of discussions, meetings or conferences with its officers, agents, employees and representatives who reasonably need to know this information for purposes of evaluating, approving or effecting the transactions contemplated hereby and who are informed of this confidentiality requirement and who agree to be bound to it; (b) in response to a legal process or as otherwise required by law after giving the Developer the opportunity to contest any such process or requirement; or (c) in any manner to which the Developer consents in writing. Subject to any third party rights under the Act as discussed in Section 8.02, the City and the Developer agree that neither shall have the right to require the other to disclose attorney-client privileged communications or work product.

Section 8.02 Public Information Requests. The City shall use reasonable efforts to provide prompt written notice to the Developer of any request received by the City pursuant to the Act requesting Confidential Information or information collected, assembled or maintained for the City and to which the City has contractual access, for the purpose of providing the Developer an opportunity to seek to protect such information from disclosure. Under the Act, documents collected, assembled or maintained for the City and to which the City has access under the terms of a contract may be deemed public information, subject to the exceptions in the Act. The City makes no representation as to how the Attorney General of Texas will rule on any public information request, but agrees to reasonably cooperate with the Developer in asserting exemption claims under the Act, provided any extensive briefing or analysis of documentation will be the

responsibility of the Developer.

Section 8.03 Press Releases and Public Communications. The Parties acknowledge and agree that the proposed redevelopment of the Property is a matter of substantial interest to the community and will require regular, on-going communications by each Party, including responses to inquiries from officials of the City, members of community groups and neighborhood associations, and representatives of the media. The Parties agree to cooperate and coordinate in the responses to inquiries from media, elected and non-elected officials, and other members of the community. The Parties agree to coordinate press releases and other communications regarding the Property and proposed redevelopment prior to publishing.

Section 8.04 Survival. The terms of this Article VIII shall survive the expiration or earlier termination of this Agreement, but will be superseded by the terms of the MDA, if fully executed.

Article IX. Disposition, Outside Negotiations, and Existing Occupancies.

Section 9.01 Disposition. During the Term, the City shall not, without the written consent of the Developer (which consent will not be unreasonably withheld as to (i) below) (i) sell, lease, encumber or otherwise dispose of all or a portion of the Property in any manner which would affect Developer's right to develop the Property under the MDA, or (ii) except as specifically contemplated by this Agreement, engage in any development activities or construct any improvements on the Property. In no event may any such sale, lease, encumbrance, disposition, development activities or construction of improvements affect the Property in any adverse manner if it will extend into the term of the MDA, if an MDA is executed between the Parties, without the express, prior written consent of the Developer in its sole discretion.

Section 9.02 Outside Negotiations. During the Term, Developer shall have the exclusive right to negotiate with third parties to facilitate the development of the Property in accordance with the MDA, provided that any letter of intent or agreement between the Developer and such third party shall contain the following disclaimer:

Notwithstanding anything to the contrary contained herein, (a) [Developer] is acting in its capacity as the proposed independent master developer for the [Property] and is not authorized to make any warranty, representation or covenant on behalf of the City of Austin or to bind the City of Austin to any agreement or other contract, and (b) the potential transaction mentioned herein is subject to the final negotiation and execution of certain agreements between [Developer] and the City of Austin, including without limitation, a master development plan and a master development agreement.

During the Term, the City shall refer to the Developer all third party offers or requests for negotiations received by the City concerning the redevelopment of any portion of the Property.

Section 9.03 Existing Occupancies/Activities. Developer acknowledges that portions of the Property are currently occupied by various City departments and third parties under City

control as listed on **Exhibit E** attached hereto. Such occupancies will be terminated by the City in accordance with the applicable contract terms prior to any lease or purchase of the Property by the Developer in the event the MDA is finalized and executed. Developer acknowledges that improvements in the right-of-way and other construction activities not under the City's control are currently taking place on and/or near the Property.

Article X. Right of Entry and Insurance.

Section 10.01 Right of Entry. The City hereby grants the Developer, its employees, agents, and contractors, the right to enter the Property for the sole and limited purpose of conducting Authorized Purposes during the Term (the "Right of Entry"), subject to the following terms, conditions, and covenants:

(a) Notice. The Developer must provide written notice to Margaret Shaw, at margaret.shaw@austintexas.gov, at least 24 hours prior notice to exercising its right of entry.

(b) Costs. All inspections, tests, examinations, surveys, and appraisals performed by the Developer on the Property shall be at the Developer's sole expense and in accordance with applicable laws.

(c) Delivery of Insurance Certificates. Neither Developer, nor a Developer agent or contractor, may enter the Property until certificates of insurance have been delivered to the City evidencing that the insurance coverages required by Section 10.02 hereof have been obtained and are in force.

(d) Repair of Damage. If, for any reason, the Parties do not agree to the terms and provisions of the MDA, Developer shall repair any damage to the Property to the extent caused by Developer, or its agents, contractors or employees, arising out of or concerning this Right of Entry, and restore the Property to substantially the same condition it was in prior to the occurrence of damage. If the Developer fails to commence to repair such damage within a reasonable time after written notice from the City and diligently pursue the restoration of the Property to completion, the City may perform such repair and restoration work, and the Developer agrees to compensate the City for the actual cost thereof plus a 10% charge for overhead expenses promptly after receipt of an invoice. Developer shall cause its agents and contractors to execute and deliver to the City such waivers of liability as the City may reasonably request as a condition to entry upon the Property. The provisions of this subsection will survive the expiration or earlier termination of this Agreement.

(e) Occupants. In making any inspection or test hereunder, the Developer will use, and will cause any representative of the Developer to use, discretion so as not to unreasonably disturb the occupants of the Property.

Section 10.02 Insurance. Developer, and its contractors, shall carry and maintain throughout the Term the insurance coverage set forth in the attached **Exhibit C**.

Article XI. Real Estate Commissions. The Developer represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer agrees to indemnify and hold the City harmless from any claim by any broker, agent or finder retained by the Developer. The City represents that it has engaged no broker, agent or finder in connection with this transaction and the City, to the extent permitted by law, agrees to hold the Developer harmless from and against any claim by any broker, agent or finder from any claim by any broker, agent or finder retained by the City, and agrees that the City, not the Developer will be responsible for any such claim.

Article XII. Limitations of this Agreement.

Section 12.01 Submission Not an Offer. The submission of this Agreement by the City will not be construed as an offer. Until executed by the City and the Developer, the final terms and provisions are subject to revision.

Section 12.02 No Disposition or Exchange. By executing this Agreement, neither the City nor the Developer is committing itself to, or agreeing to undertake the: (a) exchange or transfer of land; (b) disposition of land to the Developer or the acquisition of land from the City; or (c) any other acts or activities requiring the subsequent independent exercise of discretion by, respectively, the City or any agency or department of the City, on the one hand, or the Developer, on the other hand. This Agreement does not constitute a disposition or exchange of property by the City or the Developer. Execution of this Agreement by the City and the Developer is merely an agreement to enter into a period of exclusive negotiations according to these terms, reserving final discretion and approval by the City Council, on the one hand, and the governing body of the Developer, on the other hand, of the MDA. If negotiations culminate in a MDA between the City and the Developer, such MDA shall become effective only after and upon the approval of the City Council and its execution by the City Manager pursuant to direction of the City Council, on the one hand, and by the Developer and its governing body, on the other hand.

Article XIII. The City's Right to Obtain Information and to Consult with Others. The City reserves the right to obtain information concerning the transaction described by this Agreement from any person, entity or group.

Article XIV. General Terms and Conditions

Section 14.01 Hold Harmless and Indemnity. The Developer will indemnify, defend and hold the City and its respective officers, directors, employees and agents harmless from, and reimburse the City and its respective officers, directors, employees and/or agents for and with respect to, all claims, demands, actions, damages, loss, liabilities, judgments, costs and expenses, including without limitation, reasonable legal fees and court costs (each a "Claim") which are suffered by, recovered from or asserted against the City or its respective officers, directors, employees and agents to the extent, but only to the extent, any such Claim arises from or in connection with any alleged, established or admitted negligent, willful, or wrongful act or omission of the Developer, its respective officers, directors, employees and agents, with respect to the Right

of Entry, the RFP Response, this Agreement or the negotiation of the MDA; provided, however, such indemnification, defense and hold harmless does not include any Claim to the extent (i) caused by the established or admitted negligent or wrongful act or omission of the City, or (ii) caused by wrongful act or omission solely of the City. **THE FOREGOING OBLIGATION TO INDEMNIFY, DEFEND AND HOLD HARMLESS SHALL INCLUDE CLAIMS REGARDING THE NEGLIGENT ACTS AND OMISSIONS OR STRICT LIABILITY OF BOTH THE CITY AND THE DEVELOPER (AS OPPOSED TO SOLELY THE NEGLIGENT ACTS OR OMISSIONS OR STRICT LIABILITY OF THE CITY).**

Section 14.02 Hold Harmless and Indemnity Parameters. If the City notifies Developer of any Claim, Developer shall assume the Claim on behalf of the City and conduct with due diligence and in good faith the investigation and defense of the Claim and the response to it with counsel selected by Developer but reasonably satisfactory to the City; provided, that the City shall have the right to be represented by legal counsel of its own selection and at its own expense; and provided further, that if any such Claim involves both Developer and the City and the City shall have been advised in writing by legal counsel that there may be legal defenses available to it which are inconsistent with those available to Developer, then the City shall have the right to select separate legal counsel to participate in the investigation and defense of and response to such Claim on its own behalf, and Developer shall pay or reimburse the City for all reasonable legal fees and costs incurred by the City because of the selection of such separate legal counsel. If any Claim arises as to which the indemnity provided for in this Section applies, and Developer fails to assume promptly (and in any event within 15 days after being notified of the Claim) the defense of the City, then the City may contest (or settle, with the prior written consent of Developer, which consent will not be unreasonably withheld, conditioned or delayed) the Claim at Developer's expense using legal counsel selected by the City; provided, that if any such failure by Developer continues for 30 days or more after Developer notified thereof, no such contest need be made by the City and settlement or full payment of any Claim may be made by the City without Developer's consent and without releasing Developer from any obligations to the City under this Section so long as, in the written opinion of legal counsel to the City, the settlement or payment in full is clearly advisable. So long as the Developer does not admit liability or agree to affirmative obligations on behalf of the City, the Developer is authorized to settle a Claim.

Section 14.03 City Indemnity Obligations. The City shall (a) provide prompt written notice to the Developer of a Claim, and (b) reasonably cooperate with the Developer in the investigation and defense of a Claim. In the event the City breaches its obligations contained in the previous sentence, the liability of Developer under this Article XIV shall be reduced by the amount such breach directly caused a material impairment of the defense of the Claim and any time period affected by the City breach will be extended accordingly.

Section 14.04 Survival. The provisions of this Article XIV will survive the expiration or earlier termination of this Agreement.

Section 14.05 Notices. When this Agreement requires the Parties to provide notice to each other, the notice shall be in writing. Notices must be addressed, hand-delivered, or emailed only to the person designated for receipt of notice. A mailed notice shall be considered delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested, postage prepaid. Hand-delivered notices are considered delivered only when the addressee receives those notices. Notices delivered by e-mail are considered delivered three (3) business days after transmittal or when received by the addressee whichever is earlier. The Parties may make routine communications by first class mail, email, or other commercially accepted means. Notices and routine communications to the City and Developer shall be addressed as follows:

Developer

c/o Aspen Heights Partners
Attn: Todd Gaines
Division President
Attn: John Guttman
Development Manager
Attn: Jenni Simmons
Director of Financial & Legal Administration
1301 S. Capital of Texas Highway
Site B-201
Austin, Texas 78746
tgaines@ahpliving.com
jguttman@ahpliving.com
jsimmons@ahpliving.com

with a copy to:

DuBois, Bryant & Campbell LLP
Attn: Rick Reed; Travis Siebeneicher
303 Colorado Street
Suite 2300
Austin, Texas 78701
rreed@dbcllp.com
tsiebeneicher@dbcllp.com

City of Austin

City of Austin
City Manager's Office
Attn: City Manager
301 W. Second Street
Austin, Texas 78701

with a copy to:

City of Austin
Economic Development Department
Attn: Director
301 W. Second Street
Austin, Texas 78701
margaret.shaw@austintexas.gov

with a copy to:

City of Austin
Law Department
Attn: City Attorney
301 W. Second Street
Austin, Texas 78701
ron.pigott@austintexas.gov

Section 14.06 Nonliability of the City. THE DEVELOPER (A) AGREES THAT IT DOES NOT NOW, AND SHALL NOT AT ANY TIME WHETHER BEFORE OR AFTER EXECUTION OF THIS AGREEMENT, HAVE OR MAKE ANY CLAIM OR CLAIMS AGAINST THE CITY OR THE CITY PROPERTY, (B) AGREES THAT THE CITY DOES NOT HAVE ANY LIABILITY WHATSOEVER OF ANY KIND OR CHARACTER, DIRECTLY OR INDIRECTLY EXCEPT FOR THE REFUND OF THE DEPOSIT UNDER SECTION 3.02 IN ACCORDANCE HERewith, AND (C) FURTHER EXPRESSLY AND ABSOLUTELY WAIVES ANY AND ALL CLAIMS AND CAUSES OF ACTION AGAINST THE CITY OR CITY PROPERTY, ARISING OUT OF OR CONCERNING THE RIGHT OF ENTRY, THE RFP, THE RFP RESPONSE, THIS AGREEMENT OR THE NEGOTIATION OF THE MDA EXCEPT FOR THE REFUND OF THE DEPOSIT UNDER SECTION 3.02 IN ACCORDANCE HERewith. IT IS THE INTENT OF THIS SECTION TO CONFIRM THAT THE DEVELOPER IS PROCEEDING AT ITS OWN RISK AND EXPENSE. As used in this Section, the term “Party” includes its respective members, officers, employees, agents, contractors, consultants, successors, and assigns.

Section 14.07 Non-Regulatory Capacity of the City. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, CITY IS EXECUTING THIS AGREEMENT SOLELY IN ITS CAPACITY AS THE OWNER OF THE PROPERTY AND NOT IN ITS CAPACITY AS A REGULATORY BODY (E.G., REGULATORY APPROVALS OR IN ANY OTHER REGULATORY CAPACITY). FURTHER, DEVELOPER SPECIFICALLY ACKNOWLEDGES THAT THE CITY CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWERS.

Section 14.08 Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The obligations of the Parties are performable in Travis County, Texas, and venue for any dispute arising hereunder will lie exclusively in the state courts located in Travis County, Texas.

Section 14.09 Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the negotiation of the MDA. This Agreement may be modified only by written agreement signed by the duly authorized representatives of the Parties hereto.

Section 14.10 Captions. Captions at the beginning of each Article and Section of this Agreement are for reference only and will in no way define or interpret any provision hereof.

Section 14.11 Construction. The provisions of this Agreement have been jointly drafted by the Parties and will be constructed as to the fair meaning and not for or against any Party based

upon any attribution of such Party as the sole source of the language in question.

Section 14.12 Counterparts; Electronic Transmission of Signatures. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same agreement. The use of electronically transmitted signatures, in place of original signatures on this Agreement is expressly allowed. The Parties intend to be bound by the signatures on such electronically transmitted document; are aware that the other Party will rely on the electronically transmitted signatures; and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

Section 14.13 Successor and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns, as long as the assignment was in accordance with Article VII.

Section 14.14 Severability. If any provision of this Agreement or the application thereof to any person or circumstances becomes invalid or unenforceable to any extent, the application of such provision to other persons or circumstances and the remainder of this Agreement will not be affected thereby and will be enforced to the greatest extent permitted by law.


Section 14.15 Relationship of Parties and No Third-Party Beneficiaries. This Agreement creates an independent contractor relationship of the Developer to the City. The City and the Developer are not partners or joint venturers, nor is either the principal or agent of the other, and nothing herein will be construed to create any such relationship between the Parties, or to render either Party liable for any obligations of the other. The only beneficiaries of this Agreement are the City and the Developer. There are no third-party beneficiaries.

Section 14.16 Time of Essence. Time is of the essence with respect to the performance of each of the obligations and deadlines contained in this Agreement.

Section 14.17 Attorneys' Fees. In consideration of the award and execution of this Agreement and in consideration of the City's waiver of its right to attorney's fees, the Developer knowingly and intentionally waives its right to attorney's fees under Section 271.153 of the Texas Local Government Code in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Agreement. This section does not, in any way, impact the handling of attorneys' fees in the indemnification requirements of Article XIV.

IN WITNESS WHEREOF, the Parties, who have had the opportunity to consult with their attorneys with respect hereto and who fully and completely understand the terms and provisions hereof, have executed this Agreement as of the date set forth below their signatures.

ASPEN TOPCO II, LLC



Name

Dan Fuchs, Vice President

Title

5/14/21


Date

CITY OF AUSTIN, a Texas home
rule city and municipal corporation

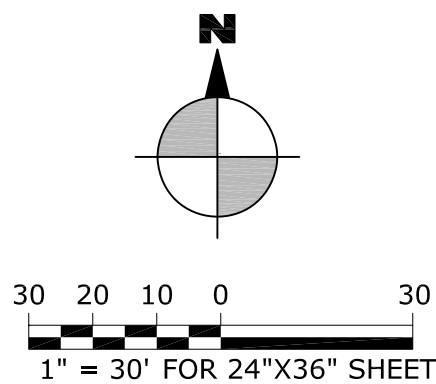
Rodney Gonzales
Rodney Gonzales, Assistant City
Manager

May 17, 2021
Date

APPROVE AS TO FORM

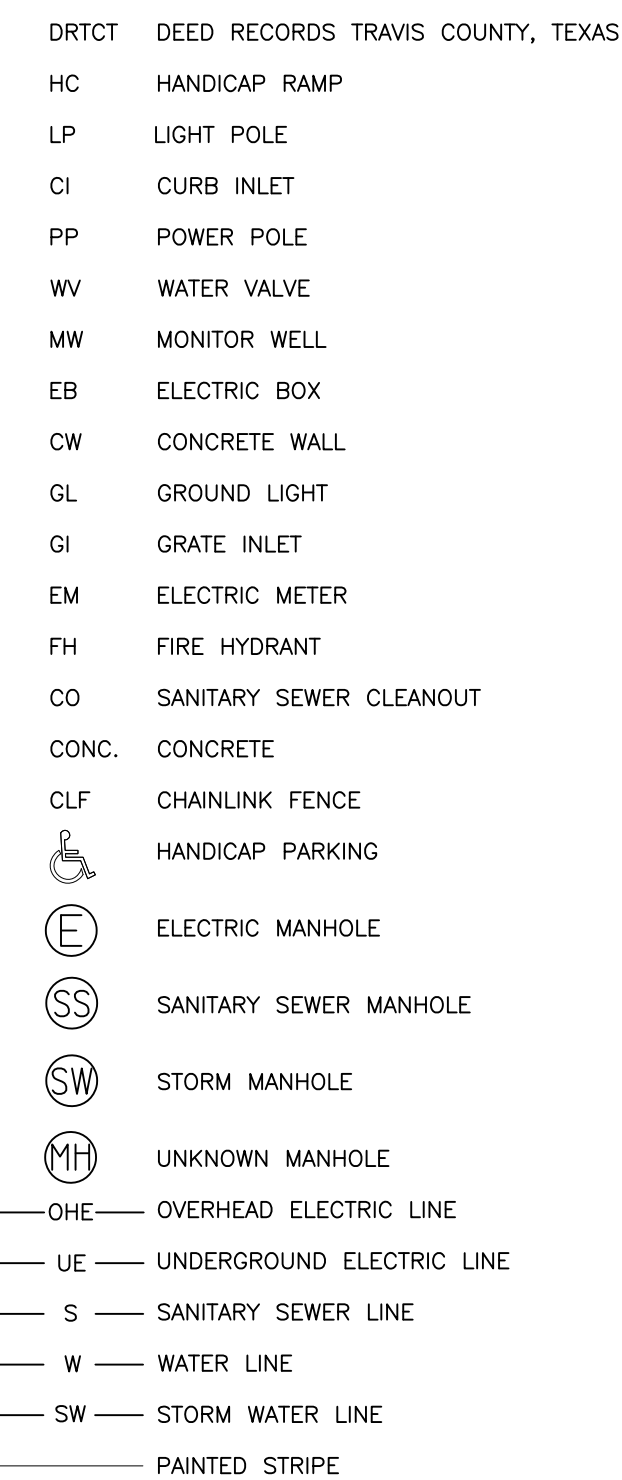


Ron Pigott
Assistant City Attorney



LINE BEARING		DISTANCE	
L1	S 16°46'32" W	20.29	
L2	N 13°59'59" E	12.24	

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	116.05°	590.00'	11°16'11"	N 04°51'30" W	115.86'
C2	21.47°	590.00'	2°05'05"	N 00°15'58" W	21.47'
C3	94.58°	590.00'	91°01'06"	N 05°54'03" W	94.48'



ISSUES / REVISIONS		
DATE	NO.	DESCRIPTION

PROPOSED RED RIVER STREET REALIGNMENT EXHIBIT

Exhibit B

PROGRAM GUIDELINES

Rental Housing Development Assistance Program (RHDA)

City of Austin

Austin Housing Finance Corporation

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I. PURPOSE

The purpose of the Rental Housing Development Assistance (RHDA) Program (the "Program") is to implement the [Austin Strategic Housing Blueprint](#), a multifaceted, integrated approach to creating and preserving affordable housing. Subject to the requirements and limitations of the sources of program funding, RHDA provides financing for the acquisition, rehabilitation, or new construction of affordable rental housing developments. Financing is provided to both for-profit and non-profit developers, including Community Housing Development Organizations (CHDOs).

The RHDA program scoring model includes criteria based on the following City of Austin plans and programs:

[Austin Strategic Housing Blueprint Implementation Plan](#)

[Imagine Austin Comprehensive Plan](#)

[2016 Mobility Bond Corridor Construction Program](#)

[2018 Affordable Housing Bond Implementation Plan](#)

[Capital Metro Project Connect](#)

This document outlines the framework of guidelines within which the RHDA program operations are carried out. RHDA Program Guidelines undergo an annual review with any necessary revisions made prior to the next application deadline; however, additional revisions can be initiated by the AHFC Treasurer/ HPD Director at any time. RHDA 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 RHDA Program Guidelines does not relieve AHFC/HPD, or the recipient of RHDA Program funds from their respective obligations as may be required by the funding source involved. RHDA Program guideline changes required as the result of federal, state or local regulatory or legal requirements will be implemented immediately by the AHFC Treasurer/ HPD Director.

The Austin Housing Finance Corporation (AHFC) reserves the right to deny an application, to partially fund an application, and/or to mandate specific loan terms. Competitive applications should align with the City's Action Plan goals, the Strategic Housing Blueprint, and other specified AHFC policies.

II. DEFINITIONS

Accessible	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	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.

Affordability Period	The length of time that the AHFC Unit(s) remain affordable and in compliance with the AHFC loan and other instruments maintained, beginning on the date the Certificate of Occupancy is issued.
Affordable Rent/ Eligible Rent	<p>Rent plus utilities paid by the tenant does not exceed rent limits according to household and unit size for properties developed with the following fund sources:</p> <p>For developments utilizing HOME and CDBG grant funds, or local non-federal sources, such as Housing Trust Fund or General Obligation Bond Funding, the HOME Program Rent Limits, published by HUD for the Austin-Round Rock, TX Metropolitan Statistical Area (MSA) will be used.</p> <p>For developments financed with Low Income Housing Tax Credits (LIHTC) and/or Multi-family Private Activity Bonds (PAB), the Rent Limits published by the Texas Department of Housing and Community Affairs (TDHCA) for the Austin-Round Rock, TX Metropolitan Statistical Area (MSA) will be used.</p> <p>If a combination of federal grant and/or local fund sources is used with LIHTC and/or PAB financing, AND if there is a difference between HOME and TDHCA rent limits, the more restrictive rent limits (i.e., lower dollar amounts for rents according to bedroom counts) will be used in order to ensure that the rent limits do not exceed those of the more restrictive funding source. If there is no difference between HOME and TDHCA rent limits, the HOME rent limits will be used.</p>
Affordability Unlocked	Affordability Unlocked is a development bonus program that waives or modifies certain development restrictions in exchange for dedicating a significant percentage of units to serve low- and moderate-income households.
AHFC	Austin Housing Finance Corporation, a Texas, public non-profit corporation organized and operated under Chapter 394, Texas Local Government Code.
AHFC Unit	Any rental unit in an AHFC subsidized development that has an income and rent limit restriction of 50% of Median Family Income (MFI) or below.

Continuum of Care	Continuum of Care (CoC) Units house households experiencing homelessness receiving services from community-based agencies who provide housing interventions that provide both rental assistance and services. A Continuum of Care Unit can only be filled by the Ending Community Homelessness Coalition (ECHO), who will refer households experiencing homelessness, taken off a central list, called Coordinated Assessment. Referred households will have wrap around support services and rental assistance from either a Rapid Rehousing or Permanent Supportive Housing program funded by a variety of federal and local funds. A Memorandum of Understanding, executed between ECHO and the development owner entity, will outline the specifics of referrals and screening of these units.
Developer Fee	Compensation in amounts defined in these RHDA Guidelines and paid by the development owner to the developer for services inclusive of compensation to consultants, development team members, or any subcontractor that performs developer-related services or provides guaranties on behalf of the development owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.
Development Proceeds	Proceeds resulting from the sale of the development, or any portion thereof, a refinancing of senior debt on the development in which there is a cash distribution to the development owner entity, or the long-term lease of the development where the borrower acts as the lessor, or any other event in which proceeds from a capital or other material event are paid to the borrower.
Good Standing	An organization that has no open Land Use Code violations, Building Code violations, Regulatory Agreement violations, restrictive covenant violations, or other regulatory violations; and is not the subject of pending legal action brought by any jurisdiction, group, entity, or person. Entities will also be assessed regarding any tenant complaints and adherence to cost estimates and construction schedules.
Loan	Financing for affordable housing provided by AHFC that is sourced from either federal or local funds and that is generally secured by a deed of trust and that has certain repayment terms specified in a note and other documents.
Material Change	An alteration, change, or revision to any aspect of the proposed development that warrants notification to AHFC and substantial re-review of the Application and that may ultimately require AHFC to amend the amount and/or terms of the Loan. Instances constituting a Material Change are outlined in Section V of these Guidelines.

MFI	“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. The median income is adjusted based on the number of persons in a household.
Partnership	An AHFC Program through which AHFC or its affiliate is the fee-simple owner of the land and ground lessor to an affordable housing development, acts as general partner or managing member of that development owner entity, and is able to compel title to the improvements in order to meet the statutory requirements of Tex. Local Gov’t Code Chapter 394, thereby providing a 100% ad valorem tax exemption to the development.
Person	Any person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and includes any group of Person acting in concert toward a common goal, including the individual members of the group.
Program Income	Gross income received by the grantee (City of Austin/HPD) or sub grantee (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 sub grantee must receive the income.
Right of First Refusal	An agreement to provide a series of priority rights to negotiate for the purchase of a development by AHFC or one of its affiliates. For LIHTC developments, the negotiated price as defined in Code 42(i)(7) will take effect upon expiration of the TDHCA affordability period or extended use period.
TDHCA	Texas Department of Housing and Community Affairs.
Threshold Score	The minimum application score that is required in order to be considered for RHDA or OHDA funding. The current Threshold Score for the RHDA program is 100 points.

III. TERMS OF FINANCING

A. Funding Sources.

The RHDA program is funded by federal funding sources such as HOME (Home Investment Partnership Program) and CDBG (Community Development Block Grant) and by local funding sources such as General Obligation Bonds, Housing Trust Fund, and other targeted local funds.

The authorizing statute of the CDBG program requires that each activity funded, except for program administration and planning activities, must meet one of three national objectives. The three national objectives are:

1. Benefit to low-and moderate-income (LMI) persons;
2. Aid in the prevention or elimination of slums or blight; and
3. Meet a need having a particular urgency (referred to as urgent need)

The resources found at this link [provide](#) information on CDBG Regulations, such as allowable housing activities, property improvements environmental review, fair housing, accessibility, labor standards and other areas.

HOME funds are allocated to participating jurisdictions using a formula designed to reflect relative housing need. All housing developed using HOME funds must serve low and very low-income families. Each year, HUD publishes the applicable HOME income limits by area adjusted for family size. The resources found at this link [provide](#) information on [HOME Regulations, such as](#) eligible development costs, property standards, income targeting for homeownership and rental units.

The [HOME-CDBG Guidebook](#) provides information on applicable regulations for developments funded with both CDBG and HOME funds.

B. Program Types.

Applicants can apply for three different types of assistance, depending on the stage of the development process.

1. **Acquisition.**
 - a. Applicants requesting acquisition assistance, wherein the total valuation of the land plus all improvements is greater than \$300,000, shall provide a purchase and sale agreement as well as a Summary Appraisal Report prepared by a third party in compliance with the minimum appraisal reporting requirements established by the latest edition of the Uniform Standards of Professional Appraisal Practice (USPAP). Applicants requesting assistance for acquisition wherein the total valuation is less than \$300,000 shall provide a purchase and sale agreement as well as the TCAD Appraisal Report.

- b. Where a Partnership has been proposed and is considered by AHFC, no recommendation for funding shall be made to AHFC Board until a Memorandum of Understanding is executed by all members of the proposed partnership. Following an award for acquisition assistance, AHFC shall acquire title and ownership of the land through an affiliate once all contingencies of the purchase and sale agreement have been met, including securing appropriate zoning. The affiliate shall ground lease the land to the development for a period of 55 years, with an option to extend up to 75 years, subject to negotiation. AHFC shall gain ownership of the improvements following the end of the ground lease. If the sale constitutes an identity of interest transaction, then the purchase amount shall not exceed the price that the seller originally paid for the property.
 - c. Where a partnership has not been considered or has been rejected by AHFC, following an award for acquisition assistance by AHFC Board, AHFC shall issue a loan for the acquisition of the property which shall include an executory interest clause. The Applicant shall secure construction financing before the expiration of the executory interest clause. If the Applicant is unable to secure appropriate financing, ownership of the property will transfer to AHFC. AHFC reserves the right to develop the site itself or release it through a formal solicitation. If AHFC releases the property, the original Applicant will be disqualified as a respondent. Under no circumstances will AHFC approve an identity of interest transaction not associated with a partnership and ground lease.
- 2. **Pre-Development Loans.** Available to Applicants that seek to plan, finance, and develop affordable housing. Applicants may apply for a pre-development Loan of up to \$300,000. Loan principal and interest shall be deferred until maturity. The loan generally will mature upon the earlier of (i) the closing of the related construction/permanent financing or (ii) three years after the funding of the original pre-development Loan.
- 3. **Construction Loans.** Available to Applicants in need of ‘gap financing’ for a proposed affordable housing development.
 - a. Loans will not be made to developer entities or other third parties. Loans shall only be made to ownership entities and/or property owners.
 - b. From the date of award or approval by the AHFC Board, the Applicant has 12 months to close on construction financing for the proposed development, subject to a six-month extension if the Applicant formally requests such an extension and AHFC grants it in writing. Failure to meet these deadlines may result in AHFC de-obligating its award to the applicant.

C. Loans.

Assistance through the RHDA Program is provided through Loans made directly to the development owner entity. All loans are governed broadly by the following guidelines.

- 1. Each loan will be secured by a deed of trust and any other collateral required by AHFC.

2. The Loans generally will be non-recourse, except for acts of willful malfeasance by the borrower or its partners/members. See section E (“Liens”) below. AHFC specifically reserves the right to require developer or third party guarantees for uncollateralized Loans such as pre-development Loans.
3. Under no circumstances shall Loan proceeds be used for any purpose other than approved development-related purposes.
4. In its sole discretion, prior to the closing of any Loan, AHFC may modify the terms and conditions of a Loan if AHFC determines that there has been a Material Change to the assumptions made in establishing the initial terms of the Loan development(e.g., additional loans, increased equity, etc.)
5. **Under no circumstances will the Program consider a request to renegotiate Loan terms and conditions or, after execution of the Loan, resubordinate the AHFC Loan, if equity is anticipated to be taken from the development that will not be used directly in the development itself or places AHFC in a lesser lien position without resulting in a reasonable and direct affordable housing benefit.**

D. Loan Terms.

1. The Loan will bear interest at a rate determined by AHFC in its sole discretion. The interest rate will typically be set at a below market interest rate. Unpaid interest will be accrued and compounded at an interest rate determined by AHFC.
2. Principal on the Loan may be deferred until maturity, although AHFC reserves the right in its sole discretion to require principal amortization payments on the Loan.
3. The terms of the Loan will be established by AHFC in its sole discretion. Generally, the term of the Loan will be for a period that is equal to the term of the related restrictive covenants. The term of the Loan will never extend beyond the term of the related restrictive covenants. The Loan will be repayable from development revenues to the extent required by AHFC. Generally, AHFC will permit the Loan to be repaid from surplus cash (that is, cash available after payment of operating expenses and senior loan debt service), but AHFC will in its sole discretion establish the priority of the Loan repayment in the surplus cash “waterfall” (and the portion – whether 100% or less – of the surplus cash flow required to be used to repay the Loan). Before closing on the Loan, AHFC must approve, in writing, the priority of the repayment of its Loan on the development owner’s cash flow distribution priority list, as reflected in the development owners or operating agreement.
4. The Loan will be subject to repayment upon the occurrence of certain events, including the refinancing of the development’s senior loan or the sale, assignment or other disposition of the development (or ownership interests in the development owner), or any other capital event that results in the distribution of proceeds to the development owner.
5. AHFC may in its sole discretion, determine to re-subordinate its Loan (and not require repayment), in whole or part, upon the occurrence of a repayment event or any other

event that requires re-subordination. For example, AHFC may determine to re-subordinate its Loan to a senior loan if the senior loan refinancing is not a “cash-out” refinancing, the interest rate on the senior loan is materially reduced, and the refinancing costs are reasonable. With respect to any “cash-out” refinancing, AHFC will require repayment of the Loan in whole or in part prior to any equity distributions to members or partners of the development owner entity.

6. The Loan will be repayable in the event of a default requiring acceleration of the Loan. An event of default also triggers an annual interest rate of 10% of the loan principal outstanding, prorated on a 365-day basis, and accrues until the default is cured or all outstanding principle and interest amounts are paid.
7. AHFC reserves the right to require the borrower to pay for AHFCs outside counsel fees, including from the proceeds of the AHFC Loan at the time of its closing.

E. Liens.

AHFC will place a lien on the property for which a Loan has been made. AHFC will generally agree to subordinate its lien position to the primary (senior) lender. In such situation, AHFC will require a second lien deed of trust. If there are other subordinate loans with respect to the development, AHFC will determine, in its sole discretion, whether it will further subordinate its Loan. Further subordination may require a change in the Loan terms. The AHFC lien shall remain in effect until all Loan terms and conditions have been fulfilled. The lien will be released only upon full repayment and fulfillment of all terms and conditions of the Loan Agreement, the restrictive covenants, and any other applicable agreement or document.

F. Reporting of Development Proceeds.

If, during the term of the Loan, the Borrower sells the development or any portion thereof, refinances the related senior debt, or is the lessor on a long-term lease for an RHDA-assisted property, all or a portion of the net proceeds on the sale, cash-out refinancing, or long-term lease are considered Development Proceeds and must be reported promptly to AHFC. **Net operating income generated from rent revenues or other income expressly acknowledged in the original pro forma submitted in the RHDA application to AHFC is not considered Development Proceeds.**

Borrowers are subject to Development Proceeds Reporting and an Annual Risk Analysis to determine audit requirements for Development Proceeds. Failure to report Development Proceeds permits AHFC to call the loan at its sole discretion.

G. Program Income.

For federally funded developments, Program Income is defined as gross income received by the recipient or a sub recipient directly generated from the use of the federal funds. When program income is generated by an activity that is only partially assisted with federal funds, the income shall be prorated to reflect the percentage of federal funds used. Program Income must be tracked and handled according to the Program Income requirements AHFC has established for the development.

IV. ELIGIBILITY REQUIREMENTS

A. Applicant Eligibility.

1. All organizations, both for-profit and non-profit, that are parties to the development, whether owner, developer, or sponsor, must be in Good Standing, as defined herein, with AHFC/HPD and other local governments as applicable.
2. Applicants seeking to use an instrumentality of a Housing Finance Corporation (HFC) or Public Facility Corporation (PFC) as the general partner or managing member of the development **must use an instrumentality of AHFC as the general partner or managing member**, unless otherwise expressly approved in writing by AHFC.
3. Applicants representing for-profit developers seeking to use a private nonprofit, such as a 501(c)(3) organization, as the general partner or managing member of the development owner **must request approval** in writing from AHFC. In such cases, AHFC reserves the right to require that the RHDA loan recipient select an AHFC affiliate as the general partner or managing member of the development owner. AHFC will underwrite the proposed development in light of the partial property tax exemption provided by the nonprofit partner or member and reserves the right to resize its loan and/or adjust the terms of its loan if AHFC permits a private nonprofit to act as general partner or managing member.

B. Minimum Requirements for Developments.

1. Development must be located completely within the corporate limits of the City of Austin.
2. Development must consist of one (1) or more residential units.
3. Units must be used for residential purposes only.
4. Eligible developments may include the acquisition, rehabilitation, or construction of developments for affordable rental housing.
5. Developments assisted must be operated and maintained on a long-term basis in accordance with these RHDA program guidelines and other requirements based on applicable federal, state, and local regulations.
6. AHFC also issues Private Activity Bonds and these are typically used in conjunction with non-competitive Low-Income Housing Tax Credits awarded by the Texas Department of Housing and Community Affairs. If an RHDA loan recipient requires bond or tax-exempt loan financing, AHFC **must be the issuer of the bonds or tax-exempt loan**. An issuer other than AHFC is **not allowed**, unless otherwise expressly approved in writing by AHFC.
7. New construction developments must be certified for and meet the City of Austin's S.M.A.R.T. Housing requirements.

8. Rehabilitation developments must have a minimum of one (1) condition that violates either the City's Housing Code or federal Uniform Physical Condition Standards (UPCS).
9. All assisted units must be made available to households with Housing Choice Vouchers from the Housing Authority of the City of Austin and the Housing Authority of Travis County. Property owners are not required to adjust the rent amount for unassisted units.
10. If applicable, developments must meet HUD Environmental Review requirements.
11. If proposing Continuum of Care units, developments must execute a Memorandum of Understanding with ECHO (Coalition for Ending Homelessness), a service agreement with an approved Supportive Housing service provider, and meet all requirements detailed below.
12. The development owner entity must provide a Right of First Refusal (ROFR) to AHFC that permits AHFC (or an affiliate) to purchase the development by matching a bona fide offer from an unrelated, third party to purchase the development. The AHFC ROFR will be subordinate to any TDHCA ROFR.
13. Notwithstanding the foregoing paragraph, if AHFC is, in addition to being the lender, a ground lessor and/or partner or member in the development ownership entity, then the terms of the applicable ROFR will be negotiated in light of AHFC's additional roles.

C. General Requirements for Partnerships.

An Applicant that seeks a Partnership with AHFC for a proposed development must commence Partnership discussions with AHFC before applying for an RHDA loan. An Applicant must be approved by AHFC prior to participating in the AHFC Partnership program by responding to the AHFC Partnership Request for Qualifications (RFQ) and Guidelines. AHFC reserves the right to engage in Partnership negotiations with an Applicant that completes the RFQ process after such negotiations commence.

An RHDA award will not be made to the Applicant until the Applicant has first signed a memorandum of understanding or development agreement (MOU) with AHFC regarding the key terms of the Partnership. If an RHDA award is made to an Applicant that terminates the MOU, AHFC reserves the right to amend the terms and amount of the Loan.

Partnership requirements are described in the Partnership RFQ and Guidelines. The MOU will set forth all the actual key terms of the Partnership. The MOU can be expected to address provisions relating to the following

1. Deeper levels of affordability, in addition to those required by the RHDA award
2. Developer Fee split
3. Cash Flow split
4. "Back-end" (capital event) refinance and sale proceeds split

5. Annual administrative fee for AHFC affiliate partner/member
6. Required annual expenditures on resident services
7. Option/ROFR provisions for AHFC's benefit
8. Ground Lease payments (initial and ongoing)

Applicants should note that Partnership applications are not evaluated on the same timeline as RHDA applications. Applicants are asked to refer to the Partnership RFQ and Guidelines for application deadlines and are asked to contact the Housing Development Manager if they have any questions.

D. Rehabilitation and New Construction.

At least 10% of all units in the development must be designated as RHDA assisted. AHFC Units may be fixed or floating units.

1. **Rehabilitation.** Acquisition assistance for existing residential structures or structures intended for adaptive reuse as residential structures may be provided only if the acquisition price is equal to or less than the fair market value of the property.

Funds may be used to make repairs or improvements to the property such that the property will:

- a. meet local code or federal Uniform Physical Condition Standards (UPCS);
 - b. come into compliance with federal requirements of Section 504 of the Rehabilitation Act of 1974, as amended;
 - c. comply with the Americans with Disabilities Act;
 - d. have been treated for identified lead-based paint hazards in properties constructed prior to 1978;
 - e. have proof that asbestos has been handled appropriately;
 - f. have energy-saving repairs or improvements made and major housing systems repaired or replaced.
2. **New construction.** Cost per unit must be reasonable and compatible with prevailing rate for affordable housing, based on HPD's staff underwriting of previous RHDA loan awards.

E. Eligible Costs.

Through the Program, applicants may receive financing for acquisition, rehabilitation or new construction of rental housing developments. The successful applicant will be required to submit invoices detailing eligible costs for reimbursement. AHFC/HPD staff will verify that

expenditures are made in satisfaction of public purposes. RHDA funding may be used for the following if it is specifically related to the development and listed in the Loan as such:

1. **Hard Costs.** Acquisition of existing structures; site preparations or improvement including demolition or construction; may include materials and labor.
2. **Soft Costs.** Predevelopment costs such as architectural and engineering fees (including specification and job progress inspections); financing costs such as credit reports, title insurance, recording costs, transaction taxes, and appraisals; or other service fees such as environmental reviews, builders' or developers' fees, marketing costs, and management fees.
3. **Developer Fee.** The maximum Developer Fee allowed by AHFC/HPD shall be no more than 15% of total development's costs for applicants proposing 50 Units or more, and shall be no more than 20% of the development's costs for applicants proposing 49 Units or fewer. Development costs generally include hard and soft costs, but do not include land costs, offsite costs, costs for commercial space that will be leased to other parties, or the cost of any amenity or space that is not available to residents for free (e.g., parking garages). All fees to Affiliates for work or guarantees to be completed or provided by the developer or Principal(s) of the developer will be considered part of the Developer Fee. At least 25% of the Developer Fee must be deferred.

F. Ineligible Costs.

1. Facilities considered to be homeless shelters are not eligible.
2. The RHDA program will not reimburse for any sales taxes paid on materials or labor.
3. **The RHDA program will not reimburse expenses incurred prior to execution of the loan agreement, unless allowed by AHFC, on a case by case basis, and the loan agreement reflects this reimbursement as a specific use of funds.**

V. APPLICATION REVIEW PROCESS

Program assistance is made available through the review and evaluation of information outlined in the RHDA Application. Developments are evaluated according to the application evaluation criteria and established AHFC/HPD procurement policies and procedures in place at the time of application. AHFC staff will review each application and perform an underwriting and scoring analysis. Each Loan will be analyzed on a case-by-case basis. In its analysis, AHFC will consider any confirmed participation by AHFC as a partner or member of the ownership entity and/or as ground lessor as well as any prior commitment of funds for the development. Subject to available funds, developments determined to be the most responsive to Austin City Council policy directives, the current fiscal year's City of Austin Action Plan submitted to U.S. Department of Housing and Development, and which achieve the goals and initiatives detailed in the Austin Strategic Housing Blueprint may be selected and approved to receive assistance. AHFC/HPD reserves the right to determine development eligibility and the fund source to be used for any proposed development. Funding decisions will be based on a variety of qualitative and quantitative factors, in addition to the application scores.

A. Application Submittal.

On a quarterly basis, all applications received prior to the quarterly deadline will be processed and reviewed for completion and to ensure that the proposal achieves the Threshold Score. If an application is incomplete or does not meet the threshold score, staff will coordinate with the applicant to resolve any deficiencies.

Within two weeks of the quarterly deadline, applicants will be notified if their application remains incomplete or deficient and that it has been rejected. Applicants may resubmit rejected applications in a subsequent review cycle. All complete applications that achieve the threshold score will be posted to the City website and will proceed through the review process.

B. Application Components. The complete application is comprised of seven components plus required attachments:

1. Instruction Sheet
2. Application Checklist
3. Development Summary Form
4. Development Timeline
5. Development Budget
6. Operating Pro Forma
7. Scoring Sheet

C. Required Attachments. The applicant is required to submit the following attachments in the application. The attachments are grouped under four major categories – Applicant Entity, Development Team, Development Proposal, and Property:

1. APPLICANT ENTITY.

- a. **Introduction.** Brief description of the applicant entity and any relevant experience.
- b. **Certificate of Status.** Issued by the Texas Secretary of State certifying that the applicant has filed for registration and is in existence as an entity in good standing within the State of Texas.
- c. **Applicant Capacity.** Curriculum Vitae (CV) for all principals of the applicant entity, highlighting relevant experience in the development of affordable housing and noting the following elements:
 - i. development management
 - ii. market analysis

- iii. site selection and control
 - iv. planning and construction
 - v. design, architecture and engineering
 - vi. legal and accounting
 - vii. federal funding rules; and
 - viii. Other funding source rules (e.g. Low-Income Housing Tax Credits).
- d. **Statement of Confidence.** If development experience of any principal of the applicant team is primarily outside the territorial boundaries of the City of Austin, an endorsement of the applicant entity or principal member issued by the appropriate department of the jurisdictional government, must include:
- i. The total number of units provided by the identified development and the number of units at each level of affordability.
 - ii. References to the timeliness of the development and if the schedule adhered to the proposed timeline.
 - iii. References to the cost estimate of the development, the public investment in the development, and the number of times the applicant requested funds for the development.
- e. **Financial Capacity.** Provide narrative information on recent, similar, and successful experience in affordable housing development. Include experience using multiple fund sources and previous working history with the Austin Housing Finance Corporation, if any.
- f. **If developer is a non-profit.**
- i. Federal IRS certification granting non-profit tax-exempt status.
 - ii. Certified financial audit for most recent year - Include the auditor's opinion and management letters.
 - iii. Board resolution approving the proposed development and authorizing the request for funding.
- g. **If developer is a for-profit.** Current financial statement. If audited statements are unavailable, unaudited statements will be accepted.

2. **DEVELOPMENT TEAM.**

- a. List of persons or entities anticipated to be involved in the development (i.e. lenders, attorneys, accountants, architects, engineers, general contractor, sub-contractors, consultants);
- b. Include contact information and indicate if any person or entity involved is certified by the City of Austin as a minority or women-owned business enterprise (MBE/WBE), or if any of the entities are also non-profit organizations.
- c. Curriculum Vitae for all members of the Development Team highlighting relevant experience in the development of affordable housing

3. **PROPERTY MANAGEMENT TEAM.**

- a. Provide Curriculum Vitae for the Property Management Team highlighting experience in the management of affordable rental housing.
- b. Provide up to three Compliance Reports issued by the HPD or its representative, citing no open violations for properties located in the City of Austin and managed by the Property Management team.
- c. If the CV includes developments outside the territorial boundaries of the City of Austin, please attach a Compliance Letter stating the number of properties managed by the team, number of years of management and citing no violations, issued by the appropriate department of the jurisdictional government.

4. **DEVELOPMENT PROPOSAL.**

- a. **Development Description.** Applicant shall provide a brief development description to include the following details:
 - i. Describe the proposed resident population, income levels, and services, if any, to be provided to or made available to residents. Indicate the number of units designed to meet accessibility requirements for persons with mobility or sensory impairments; the number of units dedicated to the Continuum of Care; and the number of rental assistance vouchers dedicated to the development.
 - ii. Identify the appropriate Neighborhood Plan and describe the Development's compatibility with it. In the absence of a Neighborhood Plan, describe the Development's compatibility with the Imagine Austin Comprehensive Plan.
 - iii. Summarize the key financials of the development, clearly indicating the total development cost; the amount and intended use of AHFC/HPD funds being requested; the amount and use of any prior funding that the development may have received from AHFC; and the amount(s) and

provider(s) of other funding and the status of those funding commitments.

- iv. Indicate whether the development meets the requirements of the City's Vertical Mixed-Use (VMU) Ordinance or is in a Planned-Unit Development (PUD) or Transit Oriented Development (TOD) or any other City of Austin density bonus program.
- b. **Financial Commitment.** Applicant shall provide Statements of Commitment from all funding sources identified in the Development budget. Staff will consider only those sources supported by Statements of Commitment in underwriting the application.
- c. **Market Assessment.** Applicant shall briefly describe the submarket conditions in terms of rents and occupancy comparative to property conditions. Applicant shall address *pricing* and *absorption* relating to the whole development, and not just the units being funded. Market analysis shall include the following:
 - i. **Evaluate general demographic, economic, and housing conditions** in the community:
 - Target population(s) of the development, and area demographic makeup
 - Overall economic conditions and trends
 - General housing conditions and trends in the community
 - ii. **Identify the geographic area** from which the majority of a development's residents or buyers are likely to come. Identify the primary market/geographic area, based on US census tract or neighborhood boundaries
 - iii. **Quantify the pool of eligible residents** or buyers in terms of household size, age, income, tenure, and other relevant factors.
 - iv. **Analyze the competition** by evaluating other housing opportunities with an emphasis on other affordable rental developments or sales opportunities in the market area. Identify comparable units based on location, year of construction, target population, property condition, unit mix, unit amenities, and occupancy and turnover.
 - v. **Assess the market demand** for the planned units and determine if there is sufficient demand to rent/sell the units.
 - vi. **Evaluate the effective demand and the capture rate**, usually expressed as a percentage (the development's units divided by the applicant pool). The capture rate is the percentage of likely eligible and interested households living nearby who will need to rent units in the

proposed development in order to fully occupy it. The lower this rate, the more likely a development is to succeed.

- vii. **Estimate the absorption period.** Plan how many units can be successfully leased or sold each month and how long it will take to achieve initial occupancy/sale of the units and stabilized occupancy for the development. Absorption should be calculated using comparable units only.
- d. **Continuum of Care.** Developments participating in the Continuum of Care may qualify for Project Based Rental Assistance provided by AHFC. To qualify for the Project Based Rental Assistance, the application shall include the following:
 - i. **Memorandum of Understanding (MOU) with the Ending Community Homelessness Coalition (ECHO)** executed prior to submission of the application for RHDA funds. The MOU is to include the location of the property, the number of dedicated CoC units, the CoC tenant screening criteria to include income, rental history, credit history and criminal background criteria in accordance with Section XI of these guidelines. The MOU will also outline processes and timelines for occupying CoC units both at development lease-up and then through unit attrition.
 - ii. **No less than 15 units or 10% of total projected units, whichever is more,** shall be dedicated as CoC units. MOU shall state the total number of units provided.
- e. **General Residential Services.**
 - i. A description of the services to be provided to residents and/or clients, and the estimated annual cost of providing those services. If the development will also be applying for LIHTC, please reference the specific services as allowed for by TDHCA's Qualified Allocation Plan (QAP).
 - ii. The number and types of residents/clients expected to be served annually.
 - iii. Developer's experience and qualifications in providing the services to be offered, if services are offered by the developer.
 - iv. Description of the organization(s) providing the services and a memorandum of understanding or some other type of signed agreement that indicates the relationship between the developer and service provider, if the services are provided by an external organization.
 - v. Resumes of key personnel who will be actively involved in the delivery of services including information on certifications, licenses, years of experience, and education.

vi. Financial capacity of the Services provider:

- Identify sources and amounts of funds that will be or are expected to be utilized to provide supportive services for 3 years from the date of issuance of the Certificate of Occupancy.
- Include a services budget which reflects current and anticipated funding and expenses associated with the provision of services for three (3) years

f. **Affordability Unlocked Certification.** If the development proposal assumes the waived or relaxed site regulations associated with Affordability Unlocked, then the Affordability Unlocked certification letter must be submitted along with the application. Program details and contract information are available on HPD's website. The letter must be dated no more than six months prior to the application deadline.

g. **S.M.A.R.T. Housing.** All new construction developments 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 developments. The S.M.A.R.T. housing program certification letter must be submitted along with the application. Program details and contact information are available on HPD's website. The letter must be dated no more than six months prior to the application deadline.

5. **PROPERTY.**

a. **Map of the property.** Attach a map generated by the City of Austin ArcGIS showing the location of the development in reference to the geographic priorities established in the Strategic Housing Blueprint, such as:

- i. High Opportunity Census Tracts
- ii. Tracts at risk of Displacement or Gentrification
- iii. Imagine Austin Centers and Corridors with 0.5-mile buffer
- iv. High-Frequency Transit Stops with 0.25-mile walking distance
- v. Transit Stops with 0.75-mile walking distance
- vi. Mobility Corridor with 0.5-mile buffer
- vii. Healthy Food Access with 1-mile buffer
- viii. 100-year Flood Plain

b. **Real Estate Appraisal.** The application must include either a real estate appraisal, current tax documentation, or broker's opinion of value that

substantiates the value of the property. If AHFC is contemplating purchasing the land of a proposed development, Applicant shall provide an appraisal of the property to be acquired, conducted less than six months prior to receipt of an application by AHFC/HPD.

c. **Site Control.**

- i. Include evidence of site control, such as a warranty deed or a Purchase and Sale Agreement.
- ii. If there are existing structures, provide documentation from the taxing authority or another third-party source indicating the year the structure(s) was built.

d. **Zoning Verification Letter.** Include a letter from the appropriate staff at the Housing and Planning Department (HPD) verifying that the current zoning of the site for the proposed development is compatible with the anticipated use, or include documentation verifying that a request to change current zoning has been submitted to HPD. The development will not be approved for funding by the AHFC Board until the appropriate zoning has been secured. If the appropriate zoning has not been secured within six months from Application submission, then that Application will be terminated.

e. **Neighborhood Plan.** Include a link to the applicable City of Austin Neighborhood Plan for the area in which the development is to be located. If no adopted neighborhood plan exists, reference the relevant section of the Imagine Austin Comprehensive Plan. HPD encourages each developer to engage with the surrounding neighborhood to allow for an opportunity to exchange information and to foster a positive, open dialogue.

f. **Tenant Relocation Plan.**

For a property that is occupied at the time of the application, a tenant relocation plan is to be submitted with the application. The tenant relocation plan has to be in compliance with the [City of Austin's Tenant Relocation Program Rules](#) and outline details of alternative housing, tenant expense reimbursement, tenant communication plan and other related information. If an RHDA Loan is awarded using federal funds, it will be the responsibility of the developer to certify that the proposed Tenant Relocation Plan complies with the HUD Uniform Relocation Act, prior to execution of the Loan.

Regardless of the source of funding, the following notices are required. Chapter 2 of the [HUD Handbook 1378](#) provides additional guidance.

- i. **General Information Notice (GIN).** Informs affected persons of the project and that they may be displaced by the project.

- ii. **Notice of Relocation Eligibility.** Informs persons that they will be displaced by the project and establishes their eligibility for relocation assistance and payments.
 - iii. **90 Day Notice.** Informs displaced persons of the earliest date by which they will be required to move. This notice may not be issued unless a comparable replacement dwelling is available, and the displaced person is informed of its location and has sufficient time to lease or purchase the property.
- g. **Phase I Environmental Assessment.**
- i. Developments with more than 4 units must provide a Phase I Environmental Site Assessment (ESA) report prepared by qualified environmental professionals.
 - ii. Applicants must provide mitigation strategies for concerns raised in the Phase I ESA report
 - iii. City of Austin's Austin Resource Recovery Department provides free environmental assessments for eligible entities. For more information contact the Brownfields Office: brownfields@austintexas.gov, 512-974-6085.

h. **State Historical Preservation Officer Consultation.**

Section 106 of the National Historic Preservation Act of 1966 requires federal agencies to consider the effects of their undertakings on historic properties and consult with the State Historic Preservation Officer (SHPO). **If there are any buildings, structures, designed landscape features (such as parks or cemeteries), or historic districts, 45 years old or older and potential or known archeological resources within the development area, consultation with the SHPO is required.** Information required for SHPO consultation is available

at:
http://www.thc.texas.gov/public/upload/forms/SHPO_Consultation_Form_Instructions-Ver0811.pdf

The applicant needs to provide the required information (including maps, photographs etc.) along with the application and AHFC/HPD will conduct the SHPO consultation as required.

D. Application Scoring.

All applications are assessed against the quantitative goals and initiatives detailed in the Austin Strategic Housing Blueprint, Implementation Plan, and Atlas of Existing and Historical Conditions. Any application for funding must achieve a minimum Threshold Score to be considered under additional stages of review. Threshold Score will be established annually. **Submission of an application that meets or exceeds the minimum score does not**

guarantee that the proposed development will be funded. The following metrics are conceptual tools that allow AHFC staff to holistically evaluate an application.

1. **Unit Score.** Unit scores are based upon the percentage of the goal achieved through the proposed development. Units with deeper affordability are given additional weight.
2. **District Goal.** [The Austin Strategic Housing Blueprint Implementation Plan](#) has identified specific numerical goals for each Council district to achieve the overall goal of creating or preserving 60,000 housing units affordable to households at or below 80% median family income (MFI) by 2027.
 - a. **High Opportunity Areas.** 15,000 units of affordable housing will be placed in areas of Higher Opportunity, defined as those areas with high measures of upward mobility and positive socioeconomic outcomes for existing residents. High Opportunity areas are Census Tracts that rank above average for at least six of the nine Opportunity 360 Indices. District goals are established by the proportion of Opportunity Areas in each district as of the adoption of the [Austin Strategic Housing Blueprint Implementation Plan](#).
 - b. **High-Frequency Transit.** 15,000 units of affordable housing will be placed in areas which are within a quarter mile of High-Frequency Transit routes. High frequency refers to a transit route that provides service every 15 minutes or better throughout most of the day, on weekdays and weekends. As Capital Metro continues to implement [Project Connect](#), more areas will be served by High-Frequency Transit. District goals are established by the proportion of high-frequency transit in each district as of the adoption of the [Austin Strategic Housing Blueprint Implementation Plan](#).
 - c. **Imagine Austin Centers and Corridors.** In 2012, the City of Austin adopted the [Imagine Austin Comprehensive Plan](#) which established a vision of the City in 2039. This vision includes a network of activity centers and corridors which have been identified as future transit-oriented, mixed-use centers of activity connected by walking, bicycling, transit, or automobile. 15,000 units of affordable housing will be placed in areas which are no more than one half mile of Imagine Austin Centers and Corridors. District goals are established by the proportion of Imagine Austin Centers and Corridors in each district.
 - d. **High Displacement Risk Areas.** 15,000 units of affordable units will be placed in High Displacement Risk Areas, as defined by “[Uprooted: Residential Displacement in Austin’s Gentrifying Neighborhoods and What Can Be Done About It](#),” a report on gentrification and displacement produced by researchers at the University of Texas at Austin. High Displacement Risk Areas are measured at the Census Tract level. District goals are established by the proportion of High Displacement Risk Areas in each district.
 - e. **Geographic Dispersion.** 15,000 units of affordable housing will be placed according to the geographic dispersion of affordable housing units within the ten Council districts as of the adoption of the [Austin Strategic Housing Blueprint](#)

[Implementation Plan](#). A primary goal of the Strategic Housing Blueprint has been to maximize geographic dispersion of subsidized affordable units across the city. Districts which have fewer units received a higher proportion of the 15,000 units.

- f. **Mobility Bond Corridors.** Austin voters approved \$720 million in bonds in 2016 for transportation and mobility improvements throughout the city. The [2016 Mobility Bond Corridors](#) were analyzed using the University of Texas' Corridor Housing Preservation Tool to establish affordable housing production and preservation goals within one half mile of each corridor scheduled for improvements through the 2016 Mobility Bonds.
3. **Initiatives and Priorities Score.** The Austin Strategic Housing Blueprint establishes a set of initiatives and priorities for the production of affordable housing units and the targeted populations that these units are intended to serve. These initiatives also receive an additional weighted score based upon the [Opportunity 360 indices](#) that would best serve the targeted populations
- a. **Continuum of Care Housing.** A main initiative for the Austin Strategic Housing Blueprint is the provision of housing for persons exiting homelessness. Continuum of Care points are weighted with the following factors:
 - i. Mobility
 - ii. Access to Jobs
 - iii. Community Institutions
 - iv. Social Cohesion.
 - b. **Multi-generational Housing:** The Blueprint calls for no less than 25% of all affordable housing units to have two or more bedrooms and a system to provide opportunities for families with children. Family Friendly units are scored as a percentage of the total affordable units provided. Family Friendly units are weighted with the following factors:
 - i. Cumulative TEA letter grade of the Elementary, Middle, and High School attendance zones
 - ii. Educational Attainment
 - iii. Environment
 - iv. Community Institutions
 - v. Social Cohesion
 - vi. Economic Security

- c. **Accessible Housing:** In all new construction developments funded through the RHDA program, 100% of all ground floor units shall be adaptable for individuals with mobility or sensory impairments. No less than 10% of the total number of units shall be Accessible for persons with mobility disabilities and 2% of AHFC Units shall be Accessible for persons with sight/hearing disabilities. The application must state the number of units that will be Accessible to individuals with mobility impairments and the number of units accessible to individuals with sensory impairments.

Developments receive points for additional Accessible units beyond the minimum requirement. These units are scored as a percentage of the total number of affordable units. Accessible Housing will be weighted with the following factors:

- i. Housing Stability
- ii. Health
- iii. Mobility
- iv. Community Institutions

4. **Financial Score.** The financial score for a proposal is based on four metrics to determine the most reasonable use of RHDA funds.

- a. **Debt Coverage Ratio.** Debt coverage ratio must be provided as part of the Operating Pro Forma. Debt coverage ratio in Year 5 should be between 1.15 and 1.35, unless the proposed development contemplates having no debt, in which case a DCR may not be required.
- b. **Leverage.** A maximum leverage ratio for RHDA assisted development is established as no more than 50% of the total development cost. A lower ratio represents a greater leveraging of RHDA funds.
- c. **Subsidy per AHFC Unit.** The total RHDA assistance requested is divided by the proposed total number of units affordable to households below 50% of the median family income. A lower amount of assistance per unit represents a stronger investment for RHDA funds. AHFC aims to provide a subsidy at less than \$50,000 per unit.

AHFC Units or developments that meet the following criteria may be eligible for a higher per unit subsidy award:

- i. An AHFC Unit:
 - Is dedicated as a COC unit, as confirmed by an MOU with ECHO;
 - Has three or more bedrooms;

- Is Accessible and is in addition to the minimum Accessibility requirements detailed in the RHDA Guidelines.
- ii. The development:
- Is located within the attendance zones of elementary, middle, and high schools that each have either an 'A' or 'B' rating from TEA.
 - Meets other criteria specified by AHFC, such as, but not limited to, that outlined in the AHFC Partnership RFQ and other AHFC/HPD programs.
- d. **Subsidy per Bedroom.** Multiple-bedroom units cost more to develop than single-bedroom units and efficiencies. To compensate for this increased cost the cost per bedroom is scored along a similar scale to the cost per unit. The total amount of RHDA assistance requested is divided by the total number of bedrooms proposed within the units affordable to households below 50% of the median family income. A lower amount of assistance per bedroom represents a stronger investment for RHDA funds.
- e. **HOME Maximum Per-Unit Subsidy Limits.** HUD's Office of Multifamily Housing updates the Section 234 basic mortgage limits annually and publishes them in the Federal Register. The Office of Multifamily Housing also establishes high cost percentage exceptions (HCP) for specific areas. The HOME maximum per-unit subsidy limit that HUD can approve for a participating jurisdiction cannot exceed 240% of the Section 234 basic mortgage limit. Annually, HPD staff requests the maximum HOME per-unit subsidy limit for the City of Austin from the Community Planning and Development Division in the San Antonio Field Office of HUD. All applications are assessed against these limits to ensure that no AHFC subsidized unit exceeds the maximum per unit subsidy limit, regardless of the funding source. This analysis is memorialized in a memorandum added to the file for each application at the close of the application process, when per-unit subsidy amounts are finalized.

E. Internal Panel Review.

Applications that meet the minimum threshold requirements are reviewed and scored by a panel of AHFC/HPD staff members with expertise in evaluating different aspects of the application. The panel reviews the application and all required documentation to arrive at a tier ranking (I, II or III) for each application. The tier ranking will be based on the following risk-reward matrix. For example, an application evaluated to be high risk and low reward potential will be classified as a Tier III application. Applications received during a quarterly review cycle are compared with each other and independently to arrive at this rating.

Benefits from funding the application	Risks in funding the application		
	HIGH	MEDIUM	LOW
HIGH	TIER II	TIER I	TIER I
MEDIUM	TIER III	TIER II	TIER I
LOW	TIER III	TIER III	TIER II

Based on the results of the internal panel review and HDA staff review, the underwriting report is updated. The report will address applicant capacity including financial capacity; development team and development management history; development feasibility; and property assessment. Risk factors pertaining to developments are highlighted in the report and communicated to the applicant for redressal. If applicable, operating pro forma must generally meet HOME Subsidy Layering parameters outlined in HUD-CPD Notice 98- 01.

F. Housing Investment Review Committee.

The Housing Investment Review Committee (HIRC) is a group of persons appointed by the HPD Director and charged with reviewing all RHDA/OHDA funding applications. The purpose of their review is to ensure that applications have been scored and follow the RHDA Program Guidelines. The role of the HIRC is advisory only. The HIRC does not have the authority to recommend or disapprove of applications, but they provide feedback on each application that are considered by the HPD Leadership team. The HIRC panel is provided with the application information and during the meeting, members raise questions and clarify with staff or Developer Applicants, document their feedback and provide a tier rating for each application. Meetings of the HIRC are public meetings but are not subject to the requirements of Chapter 2-1 of the City of Austin Code of Ordinances. Developer applicants are required to attend the HIRC meetings to address concerns and answer questions raised by the Committee members.

G. HPD Leadership Team Review.

Applications that are likely to be recommended for funding will receive further consideration by the HPD Leadership team. Applications that are recommended for funding to the AHFC Board by the leadership team will be notified by a Recommended for Funding letter. The Recommended for Funding letter outlines the next steps in the application review process and an expected date for a final decision by the AHFC Board.

Immediately following the HPD Leadership Team Review, AHFC may award funds for applications requesting less than \$300,000, the maximum award permitted for administrative review. AHFC will consider the score of the application, the timing of the award, and the phase of development when determining if an administrative award should be offered. Though not required, AHFC reserves the right to bring all recommendations for award to the AHFC Board of Directors for Final Approval.

H. Final Decision.

Based on the funding amount requested, the final decision to fund an application is determined by the Austin Housing Finance Corporation Board of Directors. Following the AHFC Board meeting, staff will email the applicant a Funding Award Letter to inform them of the final decision.

VI. MATERIAL CHANGES TO THE APPLICATION POST-AWARD

If there is a Material Change to the Development after submission of an Application to AHFC, the Applicant must report that Material Change to AHFC. A Material Change may warrant amending the amount and/or terms of the Loan. Failure to report a Material Change is cause for AHFC to cancel the Loan award, amend its amount and/or terms, or, if the Loan has already been executed, call the outstanding principal and interest of the Loan prematurely. If the proposed development is a LIHTC development, AHFC staff will compare the development information presented to TDHCA with the information in the RHDA Loan application. The information presented to both agencies must match.

Material Changes that must be reported to AHFC include:

- A. A change in the number of units in the proposed development, including AHFC Units (units at 50% AMFI and below) and all other units.
- B. A change in the bedroom mix of the units subsidized by the AHFC Loan (e.g., changing the number of 1, 2, 3, and 4-bedroom units).
- C. A reduction in the average AHFC Unit(s) square footage by more than 5% of the amount originally presented in the AHFC Loan application.
- D. A change in the proposed income levels (affordability levels) of the unit mix.
- E. A change to the total development cost schedule that exceeds 5% of the amount originally presented in the AHFC Loan application.
- F. A change of more than 5% to the Developer Fee amount as originally presented in the AHFC Loan application.
- G. A change to the sources of financing for the proposed development, including, but not limited to, securing an additional hard or soft financing source, a change of more than 5% of the equity investment as originally presented in the AHFC Loan application, a senior loan interest rate reduction of more than 50 basis points, or a reduction of 5% or more of the total developer fee amount that is being deferred.
- H. A change of more than 5% or \$5,000, whichever is greater, to the expected annual expenditure to be dedicated to resident services.
- I. A change to the developer entity, owner entity, and/or AHFC Loan borrower entity.

VII. LOAN DISBURSEMENTS

Once a Loan Agreement has been executed between AHFC and a borrower for the purpose of developing rental housing according to these RHDA Program Guidelines, if there is a conflict between these RHDA Program Guidelines and the development's Loan Agreement, the terms of the Loan Agreement shall prevail.

- A. Payments will be made for eligible development costs according to the conditions described in the AHFC Loan Agreement. Eligible development costs must be documented with each request for payment for the purpose of supporting the amount requested. AHFC/HPD will verify the work completed and determine the eligible amount to be paid. The method of invoicing AHFC/HPD for a disbursement of loan proceeds shall be described in each loan agreement.
- B. **Deficiencies.** AHFC retains the right to withhold or temporarily suspend payments if the Borrower:
 - 1. has failed to perform on any existing loan (whether one or more) from AHFC in accordance with the terms and conditions of the Loan Agreement(s); or
 - 2. is behind in submitting required, timely or incomplete reports, documents or information required or reasonably requested by AHFC/HPD; or
 - 3. fails to comply with any RHDA loan agreement covenants; or
 - 4. has not resolved any outstanding monitoring findings or concerns identified by AHFC/HPD within a specified time period.
- C. At such time that the borrower has adequately addressed the identified deficiencies, and in AHFC/HPD's sole discretion, AHFC/HPD may resume development payments. The list above is not intended to be all-inclusive, and the terms and conditions of the Loan Agreement shall further describe penalties for non-performance or non-compliance by the borrower.
- D. **Retainage** AHFC may reserve up to 5% of the total AHFC Loan as retainage to be disbursed as a portion of the Developer Fee. This retainage shall be disbursed as a final draw to be issued upon completion of the development and submittal of all required documentation, including all Tenant Income Certifications and the Final Development Summary. The Final Development Summary shall include but not limited to total development cost including total construction hard costs; final development schedule including number of days from start of construction until construction completion; summary of tenant selection process and tenant protections including proof of compliance with Section XI of these program guidelines; summary of all units by bedroom count, MFI level, and accessibility; any awards or recognitions received throughout development from the neighborhood, media or public; name and contact info of the property management company; and any other information requested from AHFC needed to close-out the loan.

VIII. REGULATORY REQUIREMENTS

The borrower shall comply with the following requirements at each stage of the process including application, construction, post construction, leasing, affordability, etc. as required by the funding source.

A. City of Austin Visitability Ordinance.

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

B. “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). Section 3 covers the expenditure of any portion of those funds for any activity that involves housing construction, rehabilitation, or other public construction. **All contractors (Developers) or subcontractors that receive covered contracts in excess of \$100,000 in federal funds for housing construction, rehabilitation, or other public construction are required to comply with the requirements of Section 3.** It requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very- low income residents in connection with developments and activities in their neighborhoods. **HUD Guidance on Section 3 can be found at https://www.hud.gov/sites/dfiles/documents/19580_SECTION3.PDF and <https://www.hud.gov/section3>**

C. Davis Bacon requirements.

The Davis-Bacon and Related Acts (DBRA) apply to all developments comprising at least eight units financed with CDBG funds and to all developments comprising at least 11 units financed with HOME funds. Contractors and subcontractors receiving federal funds for work performed on developments where DBRA regulations apply and have contracts in excess of \$2,000 must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar developments in the area. It is the responsibility of the borrower to ensure that all DBRA reporting requirements have been met for all applicable contractors and subcontractors. If reporting requirements are not met, AHFC reserves the right to withhold reimbursement payments until the development is brought into compliance.

D. Environmental Review.

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

The developer must submit mitigation plans for environmental concerns such as presence of toxic substances, underground storage tank, elevated noise levels etc. noted in the Phase I

Environmental Review. Environmental reviews are required to be submitted by HPD to HUD for all federally funded developments.

E. Lead-Based Paint.

All owners/developers using RHDA funds on a rental development are required to provide tenants of pre-1978 housing with the *Protect Your Family from Lead in Your Home* brochure and document receipt of the document. The Borrower is responsible for obtaining the brochure and the appropriate disclosure forms from AHFC/HPD. If a Development 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 development, and that all personnel conducting those activities have obtained the appropriate state certifications to authorize their work. For any development involving non-exempt activities, the owner/developer must work closely with AHFC to design a detailed plan to abate the hazard.

F. Contractor Selection.

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

G. 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, the Texas Department of Housing and Community Affairs, or by AHFC/HPD. 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 RHDA 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.

H. 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.

I. Fair Housing in Marketing.

1. In developments of five (5) or more units, development developers/owners/sponsors will be required to use affirmative fair housing marketing practices in soliciting tenants in determining eligibility and concluding all transactions. Each participating entity must affirmatively further fair housing in the same manner as a development that is required to comply with 24 CFR 92.351. These requirements include:
 - a. The City/AHFC will require the development owner to solicit applications for vacant units from persons in the housing market who are least likely to apply for the rehabilitated housing without benefit of special outreach effort.
 - b. Advertising for vacant units must include the equal housing opportunity logo or statement. Advertising median may include newspapers, radio, television, brochures, leaflets, etc.
 - c. The development owner 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 at least annually by the City/AHFC.
 - d. The development owner shall maintain a listing of all residents residing in each unit at the time of requesting assistance throughout the entire compliance period.
2. Where an owner fails to follow the affirmative marketing requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions the City/AHFC deems necessary.

J. Insurance Requirements.

Development developers/owners 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. The insurance provisions need to be verified and approved by the City of Austin Risk Management Department prior to final

submission to AHFC/HPD. RHDA 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.

K. Audit Requirements for Non-Profit Developers.

Non-profit developers/owners must submit to the AHFC/HPD a complete set of audited financial statements and the auditor's opinion and management letters in accordance with 24 CFR 200.501 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.

L. Non-Discrimination.

AHFC/HPD 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 AHFC/HPD does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs and activities.

IX. OCCUPANCY REQUIREMENTS

A. Initial Occupancy.

The Borrower must provide the necessary documentation to demonstrate that all applicable initial occupancy requirements have been met. The documentation will be submitted in a form as prescribed by the Loan Agreement. Initial occupancy documentation must support and include, but may not be limited to the following:

1. Designation of floating or fixed units.
2. Income determination of all tenants in accordance with Part 5 requirements and/or S.M.A.R.T. Housing requirements (depending on use of HOME or CDBG funding).
3. Submission of tenant roster.
4. Identification of current Fair Market Rents and rents charged to occupying tenants.
5. Identification and contact information of property manager or owner responsible for providing initial occupancy information and annual documentation submission.

B. Affordability Period.

When RHDA funds are used to assist rental developments, income and rent restrictions apply to the AHFC Units for a defined period of time called the "Affordability Period." A development's Affordability Period is enforced using a legally binding document, a "Restrictive Covenant Running with the Land" that will be filed for record in the Official Public Records of

the County. At a minimum, all RHDA funded developments are required to be affordable for a 40-year minimum period regardless of the funding amount. AHFC/HPD, at its sole discretion, may require a development to utilize a longer Affordability Period than those stated above. The Affordability Period shall not be shortened for any reason, including if the loan is repaid before the end of the Affordability Period. 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.

Throughout the established Affordability Period, RHDA-assisted units in developments must be occupied by households with annual incomes at or below 50% of the MFI for the Austin-Round Rock, TX MSA.

1. **Income Determination Method:** The Applicant shall determine income eligibility of each household using the method established in 24 CFR Part 5, commonly referred to as the “Section 8” method of income determination prior to executing sales contract. 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 HUD’s *Technical Guide to Determining Income and Allowances for the HOME Program*, available from the AHFC/HPD or in PDF format from HUD’s website, currently located at: <https://www.onecpd.info/incomecalculator/>
2. **Income Recertification Schedule:** Borrower shall adopt a schedule for annual recertification, a copy of which shall be provided to the AHFC/HPD, of resident income either by recertifying income on the anniversary of the original income evaluation, at lease renewal, or on an annual schedule whereby all tenants are recertified during the same month. Borrower shall recertify income eligibility either by collecting source documentation as with the initial eligibility determination or by obtaining from each household a completed Annual Tenant Information and Income Certification. If the latter method is used, Borrower shall collect original source documentation for each tenant every sixth year during the Affordability Period.
3. **Restrictive Covenant:** A development’s resident income requirements for RHDA-assisted units will be enforced using the Restrictive Covenant Running with the Land.

D. Rent Limitations.

1. Rents are to be strictly controlled during the Affordability Period. The owner is responsible for obtaining the Affordable Rent and Income levels (released by HUD every year around June/July) from AHFC/HPD. If the tenant pays any utilities, the maximum allowable rents must be reduced by the amount of the applicable utility allowance established annually by HUD for the Austin area.
2. **Temporary Exceptions:** Two temporary periods of noncompliance with the above occupancy and rent restrictions are acceptable. The exceptions are based on the principle that tenants should not be displaced if their income rises to a level higher than the eligible

household income during the lease term. The temporary periods of acceptable noncompliance are as follows:

- a. If the development is occupied at the time the RHDA-assistance is awarded to the development, existing tenants who earn more than 50% MFI must pay no more than 30% of their adjusted income in rent. Similarly, an existing tenant in the designated 50% MFI unit whose income rises to more than 50% MFI must pay no more than 30% of their adjusted income in rent, and only when the tenant chooses to leave or not renew the lease, the unit must then be rented to a new tenant who earns no more than the 50% MFI limit.
- b. All new tenants must earn no more than 50% of MFI at initial certification. In the event that a tenant's household income increases above the 50% of MFI limit after initial occupancy, the rent must be adjusted at the annual recertification, to an amount at or below 30% of their adjusted income in rent and utilities.

E. Accessible and Adaptable Units.

Assistance may not be used for the purpose of building or acquiring rental units that will not allow an AHFC/HPD determined portion of the units to be made accessible to persons with disabilities (townhouses, walk-ups, structures on impractical sites, etc.). Developments must contribute to increasing the number of accessible and/or adaptable units available to persons with disabilities through the following minimum requirements:

1. **New Construction Developments.** The greater of one (1) unit or 10% of all new units constructed must be Accessible to persons with mobility disabilities, and all other ground floor units constructed must be Adaptable to accommodate the needs of persons with mobility disabilities. In addition, the greater of one (1) unit or 2% of all new units constructed must also be Accessible to accommodate the needs of persons with hearing and/or visual disabilities. All developments receiving assistance must comply with accessibility design standards established by the City's S.M.A.R.T. Housing Ordinance.
2. **Distribution of Accessible Dwelling Units.** All ground-floor units for multi-family housing developments must be Adaptable. To the greatest extent possible, Accessible units should be distributed on ground-floor units throughout the development and should be available in a sufficient range of sizes and amenities so that: an individual with disabilities' choice of unit is comparable to that of other prospective tenants; and Accessible units are not concentrated in one area of the property. This should not be construed as a requirement to install an elevator for the sole purpose of allowing Accessible units to be located above the ground floor.
3. **Occupancy of Accessible Dwelling Units.** Owners/managers of multifamily developments that have accessible units should ensure that information regarding the availability of Accessible units reaches individuals with disabilities. In addition, owners/managers of multifamily developments that have Accessible units should take non-discriminatory steps to maximize the utilization of Accessible units by qualified individuals with disabilities whose disability requires the Accessibility features of a

particular unit. This can be done by maintaining a waiting list for Accessible units and offering vacant Accessible units to applicants in the following order:

- a. First, to a current occupant of another unit in the same property, or other comparable property within the owner's/manager's control, who has a disability requiring the Accessibility features of the vacant unit and who currently occupies a unit that does not have those features.
- b. Second, to a qualified applicant on the waiting list who has a disability requiring the Accessibility features of the vacant unit
- c. Third, to a qualified applicant who does not have a disability requiring the Accessibility features of the unit; however, the owner/manager may incorporate language in the lease that the applicant will agree to move to a non-Accessible unit when one becomes available.

X. COMPLIANCE AND MONITORING

- A.** 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/HPD:
 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.
- B.** Any developments with CoC units must participate in the Homeless Management Information System or ensure that partner service providers are capturing all required data for the system.
- C.** During Construction and until completion of initial leasing of the property, developers must submit monthly development updates to AHFC/HPD.
- D.** Developer must submit an affirmative marketing report to AHFC/HPD prior to completion of construction.
- E.** RHDA assisted developments require long-term commitments by the owner/developer. Reporting to demonstrate compliance with the terms of the loan agreement will include:
 1. Income determinations for applicable tenants;
 2. Appropriate/applicable rents charged under existing lease agreements; and
 3. Total number of designated affordable units is being properly operated/managed.

- F. The Loan Documents will identify the specific annual submission requirements and the timeframe for submission. It is the responsibility of the borrower to ensure that all long-term compliance submissions are complete and submitted in a timely manner. AHFC/HPD may provide notice in advance of the required submission date as a reminder. However, failure of AHFC/HPD to notify the Borrower in advance of a submission date does not relieve the Borrower in any way of the long-term compliance responsibilities. Should the borrower fail to produce the required long-term compliance documentation in a timely manner or as prescribed in the Loan Agreement, AHFC/HPD may consider this an Event of Default as described in the Loan Agreement and may avail itself of the remedies as described in the Loan Agreement.
- G. All RHDA funded developments will be monitored by AHFC/HPD or any external agency contracted by AHFC/HPD for compliance with loan agreement requirements, including conducting physical inspection of the units.
- H. Monitoring of the affordability requirements will be conducted by HPD or its agent within one year of the project receiving its Certificate of Occupancy. Thereafter, monitoring plans are created for each development based on a risk assessment. If there are no identified concerns, audits continue on a rolling basis of at least every three years until the end of the affordability period. If there are issues of non-compliance, NHCD will work with the development to design corrective actions, the development will be subject to an increased frequency of monitoring, and it may incur additional years of affordability.

XI. RESIDENT PROTECTIONS

A. Resident Leases.

1. The Property Owner shall follow the provisions laid out in the RHDA Lease Addendum (Appendix A).
2. The RHDA Lease Addendum shall be incorporated into all tenant leases at the property and shall be executed by the Property Owners, or their designee, and the Tenant.
3. Property Owners shall provide a copy of the Lease and RHDA Lease Addendum to the tenant in the language in which the Lease was negotiated.
4. Protected Tenants are third-party beneficiaries of this agreement and may enforce all provisions of this Section and Section IX Occupancy Requirements.
5. Property owners shall offer a lease term of at least 1 year, unless tenant and owner mutually agree to a shorter lease term.

B. Resident Selection Policies and Procedures.

1. Tenants shall be selected from a written waiting list in chronological order. In the case of units set aside for Continuum of Care, Property Owners shall accept referrals exclusively from the Coordinated Assessment system maintained by the Ending Community Homeless Coalition. If a referral is not made within 30 days of notifying ECHO of the vacancy, units may be filled via a development waiting list for other low-

income tenants; however, new vacancies shall be reported to ECHO for referral until the commitment to provide Continuum of Care units has been met.

2. Property owners shall have written tenant selection procedures and policies that:
 - a. Shall be consistent with the purpose of providing housing for very low- and low-income families;
 - b. Shall be reasonable, and comply with applicable eligibility and acceptance requirements;
 - c. Meet the housing needs of families and recipients of Housing Choice Voucher Program assistance (formerly “Section 8”);
 - d. Shall be available and posted to the property website;
 - e. Follow the *Texas Criminal Background Screening Guide for Rental Housing Providers*, published by the Austin/Travis County Reentry Roundtable to screen potential tenants:
 - i. Only criminal convictions shall be taken into consideration in the criminal background screening process.
 - ii. Criminal convictions shall be screened from the date of conviction with lookback periods according to the Criminal Background Screening Template attached to the Loan.
 - iii. Only those criminal convictions listed on the Criminal Background Screening Template (Appendix B) shall be considered for the criminal background screening process.
 - iv. Where a development receives funding from the State of Texas or HUD and an offense has been identified for heightened scrutiny, including a lifetime ban, the higher level of scrutiny will apply.
 - v. The Criminal Background Screening Template shall be attached to each lease and signed by each prospective tenant upon application for housing.
 - vi. Applicants shall be provided an opportunity for individualized review if the date of conviction is within the designated lookback period.
 - vii. During the Individualized Further Review, Property Owner shall consider:
 - Applicant’s age at time of offense,
 - Length of time since the offense was committed,
 - Community ties and support,

- References and other supporting recommendations,
 - Rehabilitation efforts,
 - Further explanation of the offense,
 - Whether multiple convictions stemmed from a single incident or multiple incidents, and
 - Requests for reasonable accommodations.
3. Applicants shall not be denied on the basis of eviction history if:
 - a. Eviction proceedings resulted in a dismissal or judgement for the applicant,
 - b. Eviction was settled with no judgement more than 1 year before application, or
 - c. Judgement against tenant was more than 3 years before application, except if the applicant was evicted from a community owned by same management company.
 4. Applicant shall not be denied solely on the basis of credit history, such as:
 - a. Insufficient rental history,
 - b. Insufficient credit history or credit score, or
 - c. Household income is less than three times the rent without providing an opportunity for applicant to demonstrate a history of successful rent payment at the assigned amount.
 5. In the event of a rejected application for rental housing, Property Owner shall give prompt written notification of the rejection and the basis for the decision.

C. Property Standards.

The owner must maintain the total development in compliance with federal Uniform Physical Condition Standards (UPCS) and the City of Austin Building and Property Maintenance Codes for the duration of the Affordability Period. AHFC/HPD will periodically inspect the property to ensure compliance with this requirement.

D. Smoke Free Housing.

The City of Austin encourages the development of smoke-free rental housing. Smoke-free housing protects the health of residents by decreasing exposure to harmful secondhand smoke. Also, apartment owners and managers reap the benefits of more efficient and less expensive unit turnovers, potentially lower insurance premiums, and reduced risk of fires. Smoke-free policies are legally permissible and can be a marketing advantage for attracting and retaining residents. More information is available at <http://www.livetobaccofreeaustin.org/owners.php>.

XII. DEFAULT ACTIONS AND SANCTIONS

- A.** AHFC/HPD retains the right to determine, in its/their sole discretion, whether a default has taken place in a RHDA funded development. AHFC/HPD may exercise default actions if it is determined that the default or violation(s) of the terms and conditions of the executed agreement has or may take place by the developer of the developer development. A default or violation may be facilitated as a result of action or inaction taken by the development developer, organization, and agency, contractor, individual or duly appointed representative of the developer or developer development. A default or violation may include, but not be limited to the following:
1. Developer or developer's development fails to address adequately or violates the applicable local, state or federal rules and/or regulations governing the acquisition, construction and/or initial occupancy requirements of the development, or
 2. Any breach of any provision contained in the loan document, or
 3. If RHDA Program funds are used for any purpose other than authorized in the RHDA Program contract, or any breach of any provision of RHDA guidelines as attached to the executed loan document except where the loan documents contradicts the guidelines, then the loan document will control or
 4. The development realizes Development Proceeds but does not report those Development Proceeds to AHFC; or
 5. The appropriate proportion of assisted units are not maintained for the term of the loan, or
 6. There is a change in use of property prior to repayment of AHFC/HPD funds without AHFC/HPD review and written approval, or
 7. Developer fails to respond to AHFC's, HPD's, HUD's, or IRS' requests for occupant and rental information during the life of the loan, or
 8. Property is not maintained in compliance with City of Austin Code of Ordinances and/or to federal Uniform Physical Conditions Standards, or
 9. Developer fails to comply with information submitted by the developer to AHFC/HPD through the development selection process, or
 10. Developer or developer's development fails to maintain adequate documentation in support of development requirements.
- B.** Default sanctions available to AHFC/HPD may include, but not be limited any one or any combination of the following:
1. Call the development 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 AHFC/HPD funds provided to the development;
 3. Temporarily suspend the development until corrective action is taken;
 4. Terminate the agreement and associated documents with the development;
 5. Request a review or investigation by local or federal authorities if applicable;
 6. Debar the development organization or individual from consideration of any future funding opportunities from AHFC/HPD.
- C. According to the terms of the Loan Documents, should AHFC/HPD exercise any of the above referenced sanctions, AHFC/HPD will provide written notice at the Borrower's address as stated in the Loan Agreement. AHFC/HPD 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.

XIII. APPEALS/GRIEVANCE PROCESS

Persons aggrieved by any action or inactions of the 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 Community Development Manager within 30 days of the action or inaction deemed aggrieving by said person(s). Complaints received over the phone or email must be documented by staff. The Community Development Manager is charged with reviewing an appeal or grievance. He/ she shall submit to the Department Director/ Treasurer of AHFC a written summary of each grievance received along with explanations of the administrative action taken or recommended, within 30 calendar days of his/her receipt of a written grievance. The Director has 15 days from receipt of the written appeal to respond to the aggrieved person with a final decision.

When a program beneficiary complains to the HUD Field Office, it is referred to HPD. HPD has to respond to the complainant within fifteen (15) calendar days of receipt of the referral and to send a copy of its response to the Field Office. The Field Office, at its discretion, may extend the HPD's response period to thirty (30) days where appropriate.

Approved by:



Rosie Truelove

Treasurer, AHFC



Date

Appendix A: Tenant Protection Lease Addendum

**TENANT PROTECTION LEASE ADDENDUM
FOR CITY OF AUSTIN-ASSISTED PROPERTIES**

1. This Lease Agreement Addendum (“Addendum”) is an addendum to the Lease Agreement (herein referred to as the “Lease Agreement”), entered into on **[Date]** between **[Landlord Name]** (herein referred to as “Owner”) and **[Tenant Name]** (herein referred to as “Tenant”) for the leasing of the premises at **[Address]**, Austin, Texas **[Zip Code]** (herein referred to as “the Property”). The term “Owner” includes Owner’s agent(s).
2. Except when conflicting with a HUD model lease, the provisions of this Addendum replace any conflicting provisions contained in the Lease Agreement. To the extent any conflict exists between the Lease Agreement and this Addendum, the provisions of this Addendum shall govern.
3. The provisions of this Addendum shall apply during the entirety of a tenancy, including month-to-month tenancies and any holdover tenancy.
4. **Prohibited Lease Terms.** The Owner and Tenant agree that the following provisions, if included in the Lease Agreement, shall be null and void and unenforceable:
 - 4.1. Any and all provisions in the Lease Agreement that require the Tenant to agree to waive any judicial or administrative proceeding, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease or the Property.
 - 4.2. Any and all provisions in the Lease Agreement that allow the Owner to take, hold, or sell personal property of the Tenant or household members without written notice to the Tenant and a court decision on the rights of the parties except when the property remains in the unit after the Tenant has moved out of the unit and the property is disposed of in accordance with State law.
 - 4.3. Any and all provisions in the Lease Agreement that excuse the Owner from legal responsibility or liability for any action or failure to act, whether intentional or negligent.
 - 4.4. Any and all provisions in the Lease Agreement that allow the Owner to institute an eviction lawsuit against the Tenant without notice to the Tenant.
 - 4.5. Any and all provisions in the Lease Agreement that allow the Owner to evict the Tenant or household members without instituting a civil court proceeding in which the Tenant is provided the opportunity to present a defense or before a court decision on the rights of the parties.
 - 4.6. Any and all provisions in the Lease Agreement that require the Tenant to waive a trial by jury.
 - 4.7. Any and all provisions in the Lease Agreement that require the Tenant to waive any right to appeal or to otherwise challenge, in court, a court decision connected to the Lease Agreement, this Addendum, or the Property.
 - 4.8. Any and all provisions in the lease agreement that require the Tenant to pay the costs of legal actions, regardless of outcome. This includes any agreement by the Tenant to pay attorney’s fees or other legal costs even if the Tenant wins in a court proceeding instituted by the Owner against Tenant. This does not include a provision of the Lease Agreement that obligates the Tenant to pay such costs if the Tenant loses in court.

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- 4.9. Any and all provisions in the Lease Agreement that require the Tenant to waive the right to participate in a class action or collective action against the Owner.
- 4.10. Any and all provisions in the Lease Agreement that require the Tenant (other than a tenant in transitional housing) to accept supportive services.
- 4.11. Any and all provisions in the Lease Agreement that require the Tenant to allow the Owner to enter the Tenant's unit with less than twenty-four (24) hours' notice, except as provided in Sections 6.3 and 6.4.
- 4.12. Any and all provisions in the Lease Agreement that require the Tenant to pay initial charges and/or fees for late payments that total more than five (5) percent of the amount of rent paid by the Tenant for the rental period or cumulative charges and/or fees for late payments that total more than ten (10) percent of the amount paid by the Tenant for the rental period.
- 4.13. Any and all provisions in the Lease Agreement that allow the Owner to terminate a tenancy for failure to pay fees and fines other than rent. This section also prohibits provisions that allow the Owner to allege that the Tenant owes rent because the Tenant allegedly owes other fees or fines to the Owner.
- 4.14. Any and all provisions in the Lease Agreement that presume the Tenant is responsible for causing any conditions that necessitate repairs or pest treatments. This prohibition does not preclude property managers from investigating conditions that necessitate repairs or pest treatments and, based upon factual evidence of gross negligence, assigning responsibility.
- 4.15. Any and all provisions in the Lease Agreement that prohibit overnight guests who stay on the Property for seven or fewer consecutive nights. This limitation does not apply to a guest who is legally prohibited from entering the Property.
- 4.16. Any and all provisions in the Lease Agreement that prohibit rental payments by money order, cashier's check, or check; and any and all provisions in the Lease Agreement that require the Tenant to pay an additional fee (or fees) because the Tenant uses a money order, cashier's check, or check to pay rent. An Owner may refuse to accept a rental payment by check only after one or more of the Tenant's checks are returned because of insufficient funds.

5. Termination of Tenancy:

- 5.1. Grounds for termination or nonrenewal. Owner may terminate the tenancy or refuse to renew the lease of a Tenant only in the event of:
 - 5.1.1. serious or repeated violations of the terms and conditions of the Lease Agreement (*e.g.*, failure to pay rent; criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; willful and repeated destruction of rental property or property of other residents);
or
 - 5.1.2. violations of applicable Federal, State, or local laws; or
 - 5.1.3. completion of tenancy period for transitional housing; or
 - 5.1.4. the temporary or permanent uninhabitability of the Property justifying relocation of all or some of the Property's tenants (except where such uninhabitability is caused by the actions or inactions of the Owner). Relocation on this ground shall trigger the Relocation provisions in Section 11, except in cases where the property becomes uninhabitable due solely to the Tenant's gross negligence.

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5.2. Notices.

5.2.1. 30-day Notice.

5.2.1.1. Notice of Termination. To terminate or nonrenew the lease, Owner shall serve written notice upon the Tenant specifying the grounds for the termination or nonrenewal at least 30 days before the effective date of the termination or nonrenewal, unless the termination is based on serious violent criminal activity that poses an immediate threat to the safety of staff or other residents. The notice to terminate or nonrenewal shall be served on the Tenant by either: (1) both first class mail and either certified or registered mail; and (2) by personal delivery to the Tenant or a household member eighteen years or older.

5.2.1.2. Opportunity to Discuss. The written notice required by 5.2.1.1. shall also inform Tenant of the right to discuss with the Owner the proposed termination or non-renewal of tenancy. The notice must give Tenant at least ten days from the date of the notice to request a meeting with the Owner. If the Tenant makes a timely request, the Owner agrees to meet with the Tenant and to discuss the proposed termination or nonrenewal.

5.2.1.3. Opportunity to Cure Lease Violations. For termination or nonrenewal of tenancy due exclusively to serious or repeated lease violations (5.1.1), excluding drug activity or other serious criminal activity, the written notice required by 5.2.1.1. shall also inform Tenant of the opportunity to cure any alleged violation of the Lease Agreement. Tenant shall be provided no less than ten days from the date of the requested meeting with the Owner to cure any alleged violation of the Lease Agreement. Should the Tenant fail to make a timely request for a meeting, the opportunity to cure period begins on the date the notice to terminate or nonrenewal was received by the Tenant.

5.2.2. Three-day Notice. If the dispute is not resolved and the Tenant does not vacate the premises by the effective date of the termination as set forth in the notice of lease termination required by 5.2.1.1., Owner shall give the Tenant at least three days written notice to vacate the premises. If the Tenant does not vacate the premises by the end of the third day, Owner may then proceed to obtain possession by a forcible entry and detainer lawsuit in the appropriate Justice of the Peace court.

5.2.3. Failure to Follow Notice Procedure.

5.2.3.1. Except for a termination based on serious violent criminal activity that poses an immediate threat to the safety of staff or other residents, for which neither a 30-day notice nor a three-day notice is required, the Owner agrees that providing the 30-day and three-day notices are conditions precedent to filing a forcible entry and detainer lawsuit.

5.2.3.2. The Owner agrees that it is the burden of the Owner to show, as an element of its eviction case, that all applicable notice procedures were followed, and that termination of tenancy is not effective unless notice procedure is followed correctly.

5.2.3.3. The Owner waives the right to challenge a Tenant's request to dismiss the forcible entry and detainer lawsuit for failure to comply with the notice procedures.

5.2.3.4. The Owner waives the right to appeal to a dismissal of the forcible entry and detainer lawsuit for a failure to comply with the notice procedures.

6. Entry into Unit. Owner, Owner's representative, or maintenance staff may enter the unit during reasonable times for any reasonable business purposes after providing to the Tenant at least twenty-four- (24) hours' notice and a reasonable window of time for entry, except in case of emergency as provided in 6.3 and 6.4.

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- 6.1. Whenever the Tenant or a member of the Tenant's household who is 18 years of age or older is not present in the unit at the time of entry, the Owner must provide written documentation in the unit that states the purpose of entry, the time of entry, and who entered.
- 6.2. The Owner agrees to avoid entering the unit so frequently as to seriously disturb the Tenant's peaceful enjoyment of the unit.
- 6.3. In this provision, the term "emergency" does not include every repair the Tenant requests from the Owner. The Tenant agrees that the Owner may enter the unit without 24-hours' notice if:
 - 6.3.1. the Tenant affirmatively waives the notice requirement; or
 - 6.3.2. the Owner believes, in good faith, that an emergency exists that creates either an imminent danger to the Tenant or other resident of the community, or an immediate threat of irreparable damage to the unit or other unit on the property.
- 6.4. This section does not require the Owner to provide specific notice before entering the Tenant's unit to post a Notice to Vacate, as authorized by the Texas Property Code or to deliver a lease violation / an opportunity to cure or a notice of termination as required by this addendum.
- 7. Remediation of Hazardous Health Conditions.** The Owner shall address and remediate hazardous health conditions, including but not limited to mold in indoor areas, in a timely manner, which is presumed to be seven (7) days from the receipt of notice about the condition. The Owner may rebut this presumption by establishing that the condition was remediated in a timely manner, is in the process of being remediated in a timely manner, or that the Owner has implemented a timely plan for remediation, based on the specific facts of the condition and the remediation.
- 8. Cost of Repairs.**
 - 8.1. The Owner may charge Tenant for repairs made to the unit if the damage is caused by the gross negligence of the Tenant or guests of the Tenant and the damage does not constitute normal wear and tear. If the Owner intends to charge the Tenant for the repair, prior to making the repair, the Owner must give the Tenant written notice that includes the estimated costs.
 - 8.2. Upon the Tenant's request, the Owner must provide Tenant with an invoice for the cost of the repairs that are made to the Tenant's unit or otherwise charged to the Tenant.
 - 8.3. The Owner agrees that the Tenant may dispute the necessity and extent of the repairs. If the Tenant disputes the repair, the Owner agrees to provide reasonable evidence of the need.
 - 8.4. Tenant and Owner may agree to a payment plan for any necessary repairs to be charged to the Tenant. Payment of repairs shall not be connected to nor supersede rent payment. Failure to comply with any agreed upon payment plan shall not constitute grounds for termination or nonrenewal under Section 5.1.
 - 8.5. Remedy for Damages for Repair Costs ("Repair Damages"). In the event Tenant fails to pay the cost of repairs as agreed, the Owner may either withhold a portion or all of the Tenant's security deposit upon move-out or file suit for damages in a court of competent jurisdiction.
 - 8.5.1. The Owner agrees that its repair damages are limited to actual damages.
 - 8.5.2. If the Owner files a lawsuit to recover repair damage, the parties agree that the:
 - 8.5.2.1. Owner may seek reasonable attorney's fees and courts costs; and

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8.5.2.2. Tenant may take up to 30 days from the date the judgment is entered to pay the damages awarded by the court.

8.5.3. Except as provided in Subsection 5.1., the Owner agrees not to seek to evict solely because the Tenant failed to pay for alleged repair damages.

9. Relocation.

9.1. Relocation Assistance.

9.1.1. Owner agrees to provide relocation assistance to Tenant if Tenant is required to vacate the unit, permanently or temporarily, due to repair, transfer, sale, or renovation of the unit or Property. If uninhabitability is caused solely by the willful or negligent act of the Tenant, Owner is not required to provide relocation assistance or a Right of Return as provided in Section 9.2.

9.1.2. Relocation assistance includes moving expenses (actual and anticipated expenses related to moving Tenant, Tenant's household members, and their personal property), utility connection fees, non-refundable deposits, and rent increases at a temporary unit during the relocation period. Relocation assistance shall be scaled to the applicable timeframe for the relocation. Where the relocation extends less than 30 days, assistance may only be required for temporary accommodations.

9.1.3. The Owner agrees that the payment for a permanently displaced Tenant is the amount necessary to enable the Tenant to lease or rent a comparable dwelling for up to 42 months, as set forth in the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970 ("URA").

9.2. Right to Return. If the Tenant is relocated because of renovations or repairs at the Property, Owner agrees to provide the Tenant the opportunity to return to their original unit or a comparable unit at the same property. A comparable unit has the same number of bedrooms or equivalent square footage. The Tenant's right to return lasts for one year from the date of completion of the renovations or repairs to the Tenant's unit or the completion of the Tenant's lease at another property, whichever is earlier.

10. Tenant's Right to Conduct Activities related to a Tenant Organization.

10.1. The Owner agrees each tenant may conduct activities on the Property related to establishing or operating a tenant organization, including hosting a tenant organizer at the property.

10.2. If requested, the Owner agrees to meet with Tenant and a member of a tenant organization during regular business hours to discuss matters related to the Tenant's unit or the Property as a whole.

10.3. The Owner may not retaliate against a Tenant or Tenant's guests because the Tenant or the Tenant's guest established, attempted to establish, or participated in a tenant organization.

10.4. The Owner agrees that the Tenant may have access to all common areas, including any community room, for tenant organization activities, the Owner may not impose fees or rules that are not applicable to a tenant who accesses a common area for activities that do not include tenant organization activities.

11. Tenant's Right to Access Tenant File

11.1. The Owner agrees the Tenant is entitled to review and copy any documents that the Tenant signed, including a rental application, the Lease Agreement, or this Addendum; and to review and copy any documents that relate to the Owner's reason for terminating or non-renewal of tenancy, including the payment ledger.

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- 11.2. The Owner may redact documents if the Owner reasonably believes that redaction is necessary to protect the health and safety of staff or other residents and may redact if redactions are required by law. The Owner may not redact any document signed by the Tenant.
12. **Tenant Agreement to Provide Requested Information.** The Tenant understands that the unit leased under the Lease Agreement has received governmental subsidies and that, as a condition of the governmental subsidy, the Tenant is required and hereby agrees to provide Owner with any information and sign such releases which are necessary to allow Owner to verify the Tenant's income and otherwise comply with government rules and regulations. The Tenant agrees to provide Owner accurate and complete information regarding the Tenant's income and to do so by the date specified in Owner's request. The Tenant understands that the intentional failure to supply accurate and complete information regarding Tenant's income shall constitute a serious lease violation. All Tenant files will be available for inspection by all applicable federal, state, and local agencies. The Tenant hereby consents to release of all such information by Owner to governmental agencies.
13. **Copies of Lease Agreement.** Owner agrees to provide Tenant a copy of the Lease Agreement and this Addendum in the language in which the lease was negotiated. Owner also agrees to provide Tenant a copy of any other rules or policies issued by Owner that govern the Tenant's conduct at the Property. Owner agrees to attach a copy of this Addendum to any petition filed in an eviction proceeding against the Tenant. Owner agrees that Owner's failure to provide a copy of this Addendum to the Tenant or to the Court shall be cause for dismissal without prejudice of any eviction lawsuit filed by the Owner.
14. This Addendum is deemed to have been made in compliance with all applicable State and local laws, and if any section or part is not lawful, only that section or part shall be void, and the balance of the Addendum shall remain in full force and effect.

BY: _____
Owner's Representative Date

Tenant Date

LANDLORD: THIS DOCUMENT MUST BE ATTACHED TO EACH AND EVERY LEASE SIGNED DURING THE AFFORDABILITY PERIOD, INCLUDING LEASE RENEWALS.

Appendix B: Tenant Selection Policy and Criminal Background Screening

Tenant Selection Policy and Criminal Background Screening

January 1, 2021

The following Criminal Background Screening will be applied when screening applicants for residency:

1. Only criminal **convictions** (not arrests) shall be considered in the criminal background screening process.
2. Convictions shall be determined by the identified offense described in the table below and the corresponding classification. Look-back periods shall be determined by the residency of the property (Family /Senior or Single Room Occupancy)
3. Look-back periods run from the date of conviction. Screening for any category of offense extends, therefore, only for as long as the number of years from the date of conviction specified below:

TYPE	DESCRIPTION	CLASSIFICATION	Family	SRO
Crimes Against Persons and Family	Murder	Felony: Capital, First, Second	Lifetime	5 Years
	Manslaughter	Felony: Second	Lifetime	5 Years
	Criminal Negligent Homicide	Felony: State Jail	5 Years	None
	Kidnapping, Abduction, Trafficking, Smuggling	Felony: First, Second, Third	Lifetime	5 Years
	Assault, Aggravated Assault, Injury to a Child, Elderly Individual, or Disabled Individual	Felony: First, Second, Third	5 Years	3 Years
	Assault, Injury to a Child, Elderly Individual, or Disabled Individual	Felony: State Jail; Misdemeanor: A, B	3 Years	1 Year
	Forcible Sex Offenses	Felony: First, Second, Third	Lifetime	5 Years
	Non-Forcible Sex Offenses	Felony: State Jail; Misdemeanor: A, B	5 Years	1 Year
	Deadly Conduct (with a Firearm), Terroristic Threat	Felony: Third, State Jail	5 Years	3 Years
	Deadly Conduct, Terroristic Threat	Misdemeanor: A, B	3 Years	1 Year
Crimes Against Property	Arson Related Offense	Felony: First, Second, Third, State Jail	Lifetime	5 Years
	Destruction/Damage/Vandalism of Property	Felony: First, Second, Third, State Jail	5 Years	1 Year
	Armed Robbery Offenses	Felony: First	5 Years	3 Years
	Robbery Offenses (no weapon involved)	Felony: Second	3 Years	1 Year
	Burglary (of habitation)	Felony: First, Second	5 Years	3 Years
	Burglary	Felony: Third, State Jail	3 Years	1 Year
	Criminal Trespass (of habitation)	Misdemeanor: A	1 Year	None
	Theft, Stolen Property, Fraud Related Offense	Felony: First, Second, Third, State Jail	3 Years	1 Year

Tenant Selection Policy for RHDA Funded Properties

TYPE	DESCRIPTION	CLASSIFICATION	Family	SRO
Crimes Against Society	Prostitution Related Offenses	Felony: First, Second, Third, State Jail	3 Years	1 Year
	Stalking	Felony: Second, Third	3 Years	1 Year
	Drug Manufacture, Distribution, Possession, Possession with Intent to Distribute	Felony: First, Second, Third	5 Years	3 Years
	Drug Manufacture, Distribution, Possession, Possession with Intent to Distribute	Felony: State Jail; Misdemeanor: A, B	1 Year	None
	DUI and/or DWI Related Offenses	Felony: Third, State Jail	1 Year	None

4. Where an applicant has multiple offenses, the look-back periods shall run concurrently.
5. Offenses not listed shall not constitute justification for denial of housing. Where a conviction occurred outside of the State of Texas, property owners/managers shall use their best judgement to interpret the conviction according one of the descriptions above.
6. Where an offense can be understood to fall under more than one category, the higher lookback period shall be used. Where a development receives funding from the State of Texas or HUD and an offense has been identified for heightened scrutiny, including a lifetime ban, the higher level of scrutiny will apply.
7. Where an applicant has been denied based upon an offense that occurred within the specified lookback period, the applicant shall be automatically afforded an opportunity for individualized review. With the statement of denial, the property owner shall instruct the applicant of the opportunity for appeal and individualized review. This notice shall include:
 - a. a description of the appeal process,
 - b. contact information for scheduling the individualized review,
 - c. instructions for providing supporting documentation, and
 - d. an approximate timeline for the completion of the appeal.
8. After the completion of the individualized review, the property owner shall inform the applicant of the result of the appeal.

Signing this acknowledgement indicates that you have had the opportunity to review the above Criminal Background Screening. If you do not meet the criteria set forth, or if you provide inaccurate or incomplete information, your application will be rejected. Signing this acknowledgement authorizes the property manager to run a Criminal Background Screening check as part of your rental application.

Signature _____

Date _____

Exhibit C
Insurance Requirements

1. Developer, and its contractors, as applicable, shall carry and maintain, or cause to be carried and maintained, throughout the Term the following insurance policies:
 - a. Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 401) and minimum policy limits for employers' liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
 - b. Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles, which Developer, or its agents or contractors on Developer's behalf, will utilize to carry out the Authorized Purposes in a minimum amount of \$1,000,000, combined single limit.
 - c. Commercial General Liability policy with a minimum limit of \$1,000,000 per occurrence for bodily injury and/or property damage. The policy shall provide provisions for blanket contractual coverage and independent contractors coverage.
 - d. Professional Liability Insurance at a minimum limit of \$500,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement. If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and coverage shall be continuous for 24 months following the completion of the contract. This requirement is only applicable if Developer (or its agent) or contractor is providing professional services under this Agreement.
2. Developer shall not cause any insurance to be canceled nor permit any insurance to lapse during the Term. Insurance coverage is to be written by companies duly authorized to do business in the State of Texas at the time the policies are issued and will be written by companies with an A. M. Best rating of B+VII or better or otherwise acceptable to the City. The policies will contain a provision in favor of the City waiving subrogation or other rights of recovery against the City. The City will be an additional insured as its interests may appear on the Commercial General and Automobile Liability policies.
3. All endorsements naming the City such as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance shall indicate: City of Austin, Economic Development Department, Attn: Director, P.O. Box 1088, Austin, Texas 78767.

4. Developer or its contractor, as applicable, shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance attached. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of Developer.
5. For contractors who are providing professional services hereunder that are required to maintain Professional Liability Coverage, but who are not providing professional services as defined by Section 2254 of the Texas Government Code, including engineering, real estate appraising, accounting, architectural, or professional surveying services, Developer may determine, based on its professional business judgment and in the exercise of commercially sound risk management practices, that the scope of a particular contractor's work involves a lower level of risk and, accordingly, require that contractor to maintain a lower amount of Professional Liability Coverage.

An aerial photograph of a city skyline. In the foreground, a tall, modern skyscraper with a white facade and many windows is prominent. To the left, a large, historic building with a dome, likely a state capitol, is visible. The city is surrounded by green spaces and other buildings. A semi-transparent dark blue rectangle is overlaid on the image, containing the text "Exhibit D – Project Team".

Exhibit D – Project Team



GREG HENRY

Founder and Chief Executive Officer

Under Greg's leadership, Aspen Heights has become one of the premier brands in student housing and has made impressive progress in the multifamily sector with innovative and inspiring projects such as The Independent, Rise on 8th, and Aspen Heights West Campus. He presided over the development, financing, and construction of over \$2 billion worth of multifamily and student housing real estate, including of over 6,800 units in projects nationwide. In 2016, he won the prestigious EY Entrepreneur Of The Year Central Texas Award.



RUSS MURPHY

Co-Founder and Chief Operations Officer

Since the company's founding, Mr. Murphy has been committed to driving innovation and corporate culture that has resulted in the successful development, financing, and construction of over \$2 billion worth of student housing and multifamily real estate in projects nationwide. Russ has started as well as invested in multiple nonprofits, startups, and small businesses. He has also held consulting positions with small to mid-size companies. His passion for our non-profit, Aspen Heights Awake, inspired him to take on the leadership of Chairman of the Board.



DAN FUCHS

Chief Financial Officer

Dan joined Aspen Heights Partners in 2008 as a Sr. Associate in Finance and rapidly rose to the rank of Chief Financial Officer by 2014. He is known for his sharp and strategic financial mind, calm leadership style, and rare command of both the big picture and the details. His primary responsibilities include financial strategy, underwriting, and providing leadership to the Finance and Accounting teams.



TODD GAINES
Division President

Todd leads his development team in sourcing and executing new student housing and multifamily development projects. Todd has developed over \$1.05B of luxury apartments, student housing, workforce housing, and senior housing throughout the County. He holds an MBA from The University of Texas at Austin's McCombs School of Business, a J.D. from South Texas College of Law; and a bachelor's degree from Washington and Lee University. He serves as a member of the Advisory Council of the Real Estate Finance and Investment Center at the University of Texas at Austin's McCombs School of Business.



JOHN GUTTMAN
Development Manager

John is born and raised in the Austin Area and a proud graduate of The University of Texas at Austin. Along with his BA in Urban Studies from UT, he holds a Master of Real Estate Development for Clemson University. John brings a unique perspective and knowledge of the Austin Market to the team. He has played an active role in the entitlement and development of apartment communities throughout the Austin Area.



Bradley Stahl
Development Associate

Bradley is an Austin Native and received his undergraduate degree from the McCombs School of Business at The University of Texas at Austin. Bradley is responsible for underwriting student and multifamily development projects and pitching projects to internal investment committee and capital partners.



JACK TISDALE, AIA, RID, LEED AP | Architecture
Principal in Charge

Jack is a Principal at STG Design and one of the firm's Founders. Since 1976, he has overseen project delivery operations and is responsible for navigating clients and multi-disciplinary project teams through the full range of architectural design and planning services for a wide variety of private development, corporate, and institutional projects. He has provided team leadership on numerous student housing and mixed-use projects involving national developers.



ROB COUSINS, NCARB |
Studio Director

Rob Cousins is a Principal at STG Design, where he focuses on day-to-day management of architecture projects, including project development, team lead coordination and quality control initiatives. Rob has over 30 years of experience in master planning, design and construction, both nationally and internationally. He has worked on a multitude of project types ranging from 40,000 sf to 20 million sf, including large-scale commercial, hospitality, and mixed-use.



MICHAEL GILBERT, RA |
Architect

Michael is an Associate at STG and brings more than ten years of experience to the team, supporting projects from design through the construction phase. Working out of the Austin office, he has a particular focus on different types of residential housing. These product types include student housing, multi-family, and senior living. Michael believes that a successful project is one where communities are currently eating, sleeping, and living daily life in environments that he helped to design.



JEFF ERVIN, LEED AP |
Project Designer

Jeff is an Associate Principal at STG Design with nearly 25 years of experience, 16 of which have been spent at STG Design. Specializing in planning and conceptual design in Central Texas, Jeff has served as the lead designer for several corporate office and mixed-use projects. His experience has given him a comprehensive understanding of the City of Austin and unique needs of the end-user. He is known for his ability to design to a client's expectations and budget.



ILSE FRANK, PLA, ASLA. ASSOC. AIA
Principle

As a founding principal of Studio Balcones, Ilse investigates projects through cross platform methodologies of architecture, landscape architecture, and city and regional planning. Ilse designs for the future, considering how forecasted planning issues shape a design and establish long term and far reaching impacts beyond the site boundary. At a finer scale, she approaches public space and parks in tandem with buildings— addressing scalar, material, and inside/outside relationships. As a born and raised Austinite, Ilse is deeply and personally invested in the growth of the city and the future of development in Texas.



JENNIFER ORR, PLA, ASLA
Principal

A founding principal of Studio Balcones, Jennifer brings her strong design background, extensive plant knowledge and deep understanding of ecological systems to each project. Jennifer's experience ranges from large scale green infrastructure projects to small scale residential gardens, both urban and rural, public and private. Throughout her work, she strives to connect humans to nature, creating landscapes that are integrated, functional, sustainable and beautiful. Jennifer has a great love of the Texas landscape with it's unique, and often challenging characteristics, and is thrilled to be working in her beloved hometown.



TRAVIS STREETER
Senior Associate

Travis brings an in-depth knowledge of construction practices and principles of design with past project experience ranging from high-end residential landscapes to multi-family courtyards and rooftop amenity spaces. Living in the Lone Star State for the past 9 years and working with Studio Balcones for the past three years, Travis has developed a great appreciation and understanding of Texas' complex, beautiful native landscape. He also spends a great deal of his time involved in community development projects such as back to school supply drives, Christmas toy drives and raising money for the Wounded Warrior and Boot Campaigns.



Faye S. Kazi, PE, LEED AP
President

As Founder and President of Civiltude, Faye is passionate about creating vibrant, complete communities. His expertise ranges from urban planning and zoning to civil infrastructure design and land development. In his 20 years of experience as a civil engineer, Faye's work has changed the Austin skyline. More importantly, it has created opportunities for his employees and students alike to make a difference in the Austin community. Faye's belief in bettering communities doesn't end with his professional work — he spends his time giving back as a teacher, as a mentor, and as a regular volunteer.



Nhat M. Ho, PE, LEED GA
Vice-President

Nhat Ho brings a passion for integrated design into land development through his background in Architectural Engineering. As Vice President, he manages multiple projects and clients, develops new business, and oversees Building Information Modeling and construction document production. He is the resident expert on all things related to athletic running tracks and artificial turf. With intimate knowledge of the permitting processes and personal relationships with City staff, Nhat is the go-to man to rescue projects in crisis.



James M. Schissler, PE
Vice-President

Using his 20+ years of site development experience in Central Texas, Jim has secured projects with private sector clients and has assisted them through the feasibility, design, permitting and construction phases of their projects. With his extensive knowledge of City of Austin regulations and requirements, he is able to minimize the time and cost of securing site plan permits. Past work experiences in several states and on hundreds of projects enable him to find solutions that are outside the box and cost effective.

Exhibit E

Existing Occupancies and Activities at the Property

As of the Effective Date, the City is aware of the following authorized temporary uses at the Property:

1. City of Austin Building Services Department oversees maintenance, operations and security at the building located at 1215 Red River Street;
2. Waterloo Greenway is in negotiations with the City for a twelve-month Temporary Use Agreement for storage space at the building located at 1215 Red River Street;
3. Austin Public Health operates the Violet KeepSafe Storage program in the parking garage located at 606 East 12th Street;
4. City of Austin Office of Real Estate Services (ORES) leases parking spaces to area construction companies in the parking garage located at 606 East 12th Street;
5. City of Austin Emergency Management Services Department utilizes parking spaces in the parking garage located at 606 East 12th Street.