Affordable Communities of Texas



Local Partner Application and Memorandum of Understanding

## Introduction

The Affordable Communities of Texas program (the “ACT”) supports the Corporation’s mission to promote equal access to safe, decent, and affordable housing with an emphasis on serving rural and underserved markets. The ACT’s purpose is to create partnerships with local governments and/or locally based nonprofits to acquire foreclosed housing assets, government properties and other for-sale properties to create affordable housing for low income households.

In order to become a local partner and access all the benefits of the ACT program, applicants are required to provide some brief information about their organizations and a few pieces of due diligence. Once you have filled out the necessary fields and collected your due diligence, please submit the entire application and signed Memorandum of Understanding (the “MOU”) along with the requested due diligence items.

Before starting the application, please read through the following guidelines for the ACT program. If you have any questions about the ACT program, the information requested in this application, or any sections of the MOU, please call us at 512-334-2155 or email your questions to ACTinfo@tsahc.org

## Eligible Applicants

The Corporation accepts applications from qualified nonprofit and local government entities (“Local Partners”) that have a history of providing housing services within the communities where properties are acquired. Local Partners must meet the following minimum qualifications:

1. Nonprofit entities must be an active nonprofit 501(c)(3) or (c)(4) corporation as recognized by the U.S. Internal Revenue Service, and registered as a domestic nonprofit corporation within the State of Texas;
2. Provide financial audits or statements for a two year period that reflect the entity’s ability to manage funds appropriately;
3. Have at least two years of experience in the planning, marketing, development or management of housing programs for moderate and low-income households; and
4. Demonstrate the ability to provide evidence of support from local government officials for their activities within the target community.

## Eligible Activities

The ACT program focuses primarily on the acquisition of vacant or foreclosed housing units, land and other properties that may be used to provide safe, decent and affordable housing. Properties may be developed to preserve, rehabilitate, or construct housing for homeownership, rental, cooperative or any other form of affordable housing that advances the Corporation’s mission. The ACT program may also be used to clear vacant or blighted structures, maintain vacant lots, and manage land-banked properties owned by the Corporation or Local Partners. The use of ACT funds may be limited by local, state, federal or other contractual agreements from the providers of such funding and pursuant to any funding agreements executed by the Corporation.

## Application Process

The Corporation accepts applications on an ongoing basis. Applications need to be complete and submitted with all requested due diligence or support documents. Applications must be signed and dated as required in this application package. All scanned documents must be readable using Adobe PDF Reader software. Finally, applications must be typewritten on the application materials provided by the Corporation, as handwritten applications will not be accepted.

# Applicant Information

Applicants must complete each of the following questions as directed and submit all requested documentation, if any, behind this tab of the application.

|  |  |
| --- | --- |
| Applicant/Local Partner Name: NAME OF LOCAL PARTNER | |
| Mailing Address: INCLUDE STREET, CITY, STATE AND ZIP | |
| Primary Phone: PRIMARY PHONE | Fax: FAXCIMILE # |
| Contact Name: CONTACT NAME | Email: MAIL OF CONTACT PERSON |

## Community Information

Please list the primary city(ies) or county(ies) that Local Partner intends to work.

|  |  |
| --- | --- |
| City(ies): LIST OF CITIES | County(ies): LIST OF COUNTIES |

Applicants must be able to affirmatively answer each of the following questions and submit the requested documents with the completed application and MOU.

The applicant is a:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Local government** | **Local HFC** | **PHA** | **Nonprofit Entity** | **For Profit** |

Nonprofit entities must submit:

* A copy of the applicant’s filing status with the Texas Secretary of State stating the entity is a nonprofit entity legally active within the State of Texas, with a list of all current board member; and
* A copy of the applicant’s 501(c)(3) or 501(c)(4) determination letter from the Internal Revenue Service. The determination letter must have been granted at least 2 years prior to the submission of this application.

For Profit entities must submit:

* A copy of the applicant’s filings status with the Texas Secretary of State, a “Certificate of Account Status,” from the Texas Comptroller’s office, and a list of all members of the corporation.

## Financial Statements

sy00871_ Applicants must submit copies of their most recent 2 years of audited financial statements. If an applicant does not have audited financial statements please contact the program manager to discuss alternatives.

## Experience of Applicant

sy00871_ Applicants must provide a narrative (250 words or less) describing their experience in residential construction, property management and affordable housing development. Include specifics about previously completed projects, financing used, affordability requirements and a list of at least three references from financial supporters or compliance agencies that have worked with you in the past. Attach a copy of the narrative behind this page.

### **Community Support**

sy00871_ Applicants must submit at least one letter of support from a political officer or government body from the following list: School Board; City Council; County Commission; Neighborhood Association; State Representative; State Senator; or U.S. representative. This letter may reference any program or service that the Applicant has undertaken in the target community in the past three years.

### References

* Applicants must submit at least three references of persons that have direct knowledge of their abilities to carryout housing development projects. References may include, past or present funders, banking relationships, development partners, government officials, etc.

### House Plans and Pictures

* Applicants must submit pictures of completed projects, as well as a house plans from any new construction projects.

# Certifications

* Applicant and Applicant’s principal(s) shall be held to all representations made in this application.
* Applicant and Applicant’s principal(s) certify to the best of their knowledge that all previously owned and/or developed affordable housing properties are compliant with all applicable bond, tax credit, HOME, or other federal, state, or local affordable housing program(s) from which the properties received funding.
* Applicant and Applicant’s principal(s) certify that they have read and understand the Corporation’s policies for the Affordable Communities of Texas program and shall adhere to all thresholds, standards and requirements of the Corporation’s Policies.
* Applicant and Applicant’s principal(s) understands that this application and memorandum of understanding does not represent a commitment on behalf of the Corporation to participate, fund or loan financial resources to the Applicant or Applicant’s principal(s). Rather, this application and memorandum of understanding is an indication that the Corporation will review and consider the proposed activities in accordance with the Corporation’s Policy and subject to the Applicant’s (1) readiness to proceed, (2) compliance with the Corporation’s policies, and (3) cooperation in providing any and all requested information to the Corporation.
* Applicant and Applicant’s principal(s) certify that they understand that any preliminary official action of the Corporation, commitment, or award by the Corporation may be terminated by the Corporation or the Applicant by written notice at any time.
* Applicant and Applicant’s principal(s) certify that they have adopted an Affirmative Marketing Plan to ensure that all housing developed as a result of their participation in the ACT Program will meet all Fair Housing Act requirements and be made available to any and all qualified households seeking housing from the Applicant.
* Applicant and Applicant’s principal(s) certify that they will be responsible for retaining all records associated with the redevelopment of properties acquired on their behalf by the Corporation in relation to, or as a result of this application or in relation to the Affordable Communities of Texas program, and that all such records shall be available to the Corporation, its Auditors and any Federal or State entity requesting to review all retained documents.
* Applicant and Applicant’s principal(s) certify that that development, construction, operation and provision of affordable housing is part of the Applicant’s mission and purpose, and that signature below was provided by a person authorized by the Applicant and Applicant’s principal(s) to sign and submit this application.

|  |  |  |
| --- | --- | --- |
| By: (print name of authorized representative) | Signature: | Date: |

MEMORANDUM OF UNDERSTANDING BETWEEN THE

TEXAS STATE AFFORDABLE HOUSING CORPORATION

AND

NAME OF LOCAL PARTNER

CONCERNING THE AFFORDABLE COMMUNITIES OF TEXAS PROGRAM

Dated: Date Effective

WHEREAS, the Texas State Affordable Housing Corporation is a public non-profit corporation organized and created under the laws of the State of Texas (hereinafter referred to as the “**Corporation**”) organized for purposes that have been determined by the Internal Revenue Service to be exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, The Corporation’s purpose in awarding all goods, resources and/or services governed by this agreement is generally to promote the public health, safety and welfare through the provision of adequate, safe and sanitary housing primarily for individuals and families of low, very low and extremely low income in the State of Texas, and to perform activities and services related to this purpose and for other purposes as set forth in §2306 subchapter Y of the Texas Government Code (the “**Act**”); and

WHEREAS, BUILDER OF HOPE is a non-profit corporation established pursuant to the laws of the State of Texas (hereinafter referred to as the “**Local Partner**”); and

WHEREAS, the parties wish to enter into this Memorandum of Understanding (the “**Agreement**”) whereby they will cooperate in achieving common charitable and humanitarian objectives in accordance with the policies of the Corporation and pursuant to the Corporation’s agreement with the National Community Stabilization Trust (the “**Stabilization Trust**”); and

WHEREAS, the Stabilization Trust provides access to foreclosed property listings for sale or donation from multiple mortgage servicers, banks and other public or private financial institutions (the “**Sellers**”) and offers properties to the Corporation that BUILDER OF HOPE may have an interest in purchasing; and

NOW THEREFORE, in consideration of the covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereby agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide an avenue through which the Corporation and the Local Partner can assist one another with the redevelopment and revitalization of neighborhoods served by the Local Partner, to acquire foreclosed homes and residential properties, and to stabilize local housing markets for the benefit of low and moderate income households to achieve their common charitable and humanitarian objectives.
2. **Agreement.** This Agreement provides the basic terms and conditions of the relationship between the Corporation and Local Partner for the purpose of acquiring properties through the Stabilization Trust. This Agreement shall be subject to any and all federal and state statutory limitations placed on the Corporation and the Local Partner. This Agreement is subject to termination and amendment according to the provisions listed herein, and does not represent a commitment of funds to the Local Partner on behalf of the Corporation.
3. **Term of Agreement.** The term of this Agreement shall be five (5) years and shall terminate upon the fifth anniversary of the execution of the Agreement, unless otherwise amended and agreed to by both parties.
4. **Responsibilities of the Corporation.** Under this Agreement, the Corporation shall provide the following scope of services and resources to the Local Partner to carry out the charitable purpose of this Agreement:
   1. Collect listings of properties within the Local Partner’s service area from the Stabilization Trust and manage all communications, documents and other tasks as required of the Corporation under its agreement with the Stabilization Trust;
   2. The Corporation will negotiate option agreements, sale or donation contracts or other forms of real property contracts, with the Stabilization Trust and Sellers as instructed by Local Partner;
   3. Assist the Local Partner with the collection of due diligence materials necessary to complete acquisition requirements of the Local Partner’s funding sources;
   4. The Corporation will manage the process of property closing with the Stabilization Trust and Seller; and
   5. The Corporation will preserve and provide access to its copies of closing documents for each property or acquisition to the Local Partner for the purpose of auditing and reporting of performance measures.
   6. The Corporation, will allow the Local Partner to redevelop eligible properties the corporation receives as a donation if it is an eligible acquisition for the Local Partner.
   7. The corporation will transfer or ground lease the improvements in a timely manner.
5. **Responsibilities of Local Partner.** Under this Agreement, the Local Partner shall provide the following scope of services, resources and funds to the Corporation to carry out the charitable purpose of this Agreement:
   1. Local Partner will review property lists provided by the Corporation and Stabilization Trust, and notify the Corporation of Local Partner’s interest in acquiring specific properties;
   2. Local Partner will inspect, or hire a third party inspector to inspect, each property to determine the feasibility of acquisitions, the physical condition of the property and to estimate the cost of rehabilitation or redevelopment;
   3. Local Partner will provide the Corporation a copy of any evaluations of price, including broker’s price opinions (the “BPO”), agent’s estimate of value or other form of acquisition estimate available from a qualified real estate broker, rehabilitation specialist or licensed appraiser;
   4. Local Partner will cause to be paid directly or reimburse the Corporation for purchase options, earnest money deposit, closing fees and any other amounts required under a purchase agreement, unless the Corporation has agreed in writing to carry such costs during a leasehold period;
   5. Local Partner is responsible for the cost of all due diligence costs, including but not limited to inspections, appraisals, surveys or other documentation that is required by the Local Partner in order to purchase a property, unless the Corporation has agreed in writing to carry such costs during a leasehold period;
   6. Local Partner must submit in writing any requests to extend a closing date at least five (5) days prior to said closing date, and pay any and all extension fees or additional costs incurred by the Corporation to extend a purchase agreement, unless the Corporation has agreed in writing to carry such costs during a leasehold period;
   7. If Local Partner will take full title and possession of a property simultaneously with a scheduled closing, Local Partner will fund the amount, if any, of closing costs, property sales prices or other costs agreed to under the purchase agreement directly to the Title Company or closing agent.;
   8. If Local Partner is to accept control of a property under a ground lease or leasehold agreement, Local Partner will be required to execute the Corporation’s form of ground lease or leasehold agreement within five (5) days of a scheduled closing. Failure to execute a ground lease or leasehold agreement in a timely manner will be sufficient cause for the Corporation to withdraw properties committed to the Local Partner under this agreement;
   9. Local Partner agrees that if they determine either before or after the execution of a ground lease or leasehold agreement that a property is not suitable for sale to a Qualified Household, that the Corporation may terminate such ground lease or leasehold agreements regardless of an prior inspection, due diligence or investment by the Local Partner and dispose of the property in a manner that is consistent with the ACT Program rules.
6. **Affordability Threshold.** The redevelopment and use of all properties acquired under this Agreement must be for the benefit of low income households. Low income households shall be defined as households earning 120% or less of the area median income for the county where a property is located. If at any time or for any reason, a property acquired under this Agreement is used for a purpose that does not benefit low income households, unless otherwise agreed on by the Corporation, this Agreement shall be terminated.
7. **Discrimination.** Each party subject to this Agreement shall not permit discrimination against any person or group of persons on the basis of their gender, race, religion, color, familial status, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability.
8. **Transfer and Assignment.** This Agreement may not be transferred or assigned to any other entity by the Local Partner without the prior written consent of the Corporation, which consent may be withheld in the Corporation’s sole and absolute discretion.
9. **Waiver of Trial by Jury.** The Corporation and Local Partner each (a) agrees not to elect a trail by jury with respect to any issue arising out of this Agreement or the relationship between the parties, as Corporation and the Local Partner, that is triable of right by a jury and (b) waives any right to trial by jury with respect to such issue to the extent that any such right exists now or in the future. This waiver of right to trial by jury is separately given by each party, knowingly and voluntarily with the benefit of competent legal counsel.
10. **Termination.**  This Agreement may be terminated at the Corporation’s option upon thirty (30) days written notice to the Local Partner upon the occurrence of any of the following events:
    1. The Local Partner makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition of bankruptcy or is adjudicated as bankrupt or insolvent, or files a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation;
    2. If any material statement or representation made by or on behalf of the Local Partner to the Corporation shall prove to be untrue, or if the Local Partner shall have withheld any material information incident thereto;
    3. If there shall be a material adverse change, as determined by the Corporation, in the financial condition or business operations of Local Partner;
    4. If Local Partner fails to comply with any obligation hereunder or to satisfy all of the conditions of this Agreement in a timely manner;
    5. The Local Partner fails to maintain its existence as a non-profit corporation in the same or similar form it was when it executed this Agreement; or
    6. The Local Partner uses any funds provided by or through the Corporation in any manner inconsistent with the charitable mission of the Corporation or the purposes of this Agreement.
11. **Entire Agreement.**  This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written agreements.
12. **USA Patriot ACT Compliance.**  As a condition of this Agreement, Local Partner shall certify that (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person,” or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation.
13. **Amendments.** This Agreement may be changed or amended only by a written agreement, signed by both parties.
14. **Liability.** ALTHOUGH THE LOCAL PARTNER UNDERSTANDS AND HEREBY ACKNOWLEDGES THAT THE ACTS AND ACTIVITIES TO BE ENGAGED IN AND PERFORMED BY THE LOCAL PARTNER UNDER THIS AGREEMENT MAY POTENTIALLY SUBJECT RECIPIENT, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS TO THE RISK OF SERIOUS INJURY, ILLNESS OR EVEN LIFE-THREATENING CONDITIONS, THE LOCAL PARTNER HEREBY INDEMNIFIES THE CORPORATION FOR ANY DAMAGES OR INJURY THAT MAY BE SUSTAINED IN CONNECTION WITH OR AS A RESULT OF THE PERFORMANCE BY THE LOCAL PARTNER, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS OF THE LOCAL PARTNER’S DUTIES AND RESPONSIBILITIES UNDER THIS AGREEMENT AND AGREES AND UNDERSTANDS THAT THE CORPORATION SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY SUCH DAMAGE OR INJURY.
15. **Not a Partnership.** Nothing herein shall be construed as creating a partnership or joint venture between the Corporation and the Local Partner. No person performing any of the work or services described hereunder on behalf of the Local Partner shall be considered an officer, agent, servant or employee of the Corporation, nor shall any such person be entitled to any benefits available or granted to employees of the Corporation.
16. **Notices.**  Any notice given under this Agreement shall be in writing and shall for all purposes be deemed to be fully given by a party if sent, by first class mail with proper postage prepaid or by overnight courier, to the other party at its address indicated below. The date of the mailing or pick up by the overnight courier shall be deemed to be the date on which such notice was given. Either party may change its address for the purpose of this Agreement by giving the other party written notice of its new address. The parties’ current addresses appear below.

Texas State Affordable Housing Corporation

Attn: Manager of Development Finance

6701 Shirley Avenue

Austin, Texas 78752

Phone #: (512) 477-3555

Fax #: (512) 477-3557

NAME OF LOCAL PARTNER

Attn: Contact Name

Street Address

City, State ZIP

Fax #: FAX Number

1. **Governing Law.** The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Texas, and any dispute arising hereunder shall be subject to the jurisdiction of the courts of the United States of America or the State of Texas sitting in Travis County, Texas.
2. **Headings.**  The section and paragraph headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
3. **Severability.**  If any term or provision of this Agreement or the application thereof to any party hereto or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to any party hereto or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
4. **Counterparts.**  This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned parties have caused their duly authorized representatives to execute this Agreement effective as of the date first above written

**TEXAS STATE AFFORDABLE HOUSING CORPORATION**, a Texas non-profit corporation

|  |  |
| --- | --- |
| By: |  |
| Name: |  |
| Title: |  |

NAME OF LOCAL PARTNER, a Texas non-profit corporation

|  |  |
| --- | --- |
| By: |  |
| Name: |  |
| Title: |  |