

Texas State Affordable Housing Corporation

Joint Venture Development Guidelines

The Texas State Affordable Housing Corporation (~~Corporation~~TSAHC) has adopted these guidelines to direct staff in the creation of joint ventures, limited liability companies or partnerships (hereinafter Joint Ventures) for the purpose of acquiring, constructing, rehabilitating or equipping affordable multifamily properties (Development). These guidelines set forth the circumstances under which ~~the Corporation~~TSAHC will consider undertaking a Joint Venture, the process for reviewing such requests, organizing the Joint Venture and expectations for the operation and management of the Development.

1. Eligible Developments:

In order to ensure that ~~the Corporation~~TSAHC adheres to its legislative mandate, only Developments that meet at least one of the following ~~criteria~~housing needs may be considered:

~~Developments that meet at least one of the Corporation's Multifamily Tax-Exempt Bond Programs Targeted Housing Needs as defined by the Policies in effect at the time of the Corporation's approval of the Development, including Developments that are not financed with tax exempt bonds; or~~

- ~~a.~~ Small scale developments (less than 50 units or less) located in urban areas that will reserve at least 50 percent of the units for individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size;
- ~~b.~~ Developments serving extremely low-income households, with at 10% or more of total units reserved for households earning 30% or less than median income and that provides onsite, or free access to off sight, supportive services;
- ~~c.~~ Developments located in rural or smaller urban areas. Rural rental housing Developments must be located within an area that is: (a) outside the boundaries of a primary metropolitan statistical area (PMSA) or metropolitan statistical area (MSA); or (b) within the boundaries of a PMSA or MSA, if the area has a population of 20,000 or less and does not share a boundary with an urban area. Smaller Urban Markets rental housing Developments must be located within a city of less than 150,000 persons; but not within or adjacent to a PMSA or MSA of more than 500,000 persons; and
- ~~a.d.~~ Developments that are intended for individuals 62 years of age or older or intended and operated for occupancy by at least one individual 55 years of age or older; and at least 20% of total units are affordable and reserved for households earning 50% or less than the area median income.
- ~~b.~~ Developments that reserve the greater of 10% or five housing units for persons with disabilities, Permanent Supportive Housing or persons earning up to 30% of the Area Median Income; or

2. Application and Approval Process:

~~The Corporation~~TSAHC will post to its website will make available an application for potential Joint Venture partners to complete ~~for the Corporation to determine assess~~ if the Development will meet ~~its~~TSAHC's underwriting and program requirements. ~~The Corporation's~~TSAHC's application will include, but is not limited to:

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- Financial proformas and summary of sources and uses to assess the financial feasibility of the project, including projected gaps in financing sources and proposed solutions and proposed fee splitting;
- Summary of the Applicant's previous experience with affordable housing development;
- Summary of property tax implications (i.e. the anticipated savings ~~the Corporation's~~ TSAHC's involvement creates and implications to the local property tax base);
- Summary of proposed ownership structure in the form of an organization chart (with owner entity preferably to be organized as a limited liability company) identifying owner entities, developer entities and guarantors;
- List of all parties involved as financial sources (i.e. lenders, foundation, etc.) and development team members (i.e. architects, property managers, etc.), disclosing any affiliations with applicant;-;
- Term sheets for all development sources of funds and/or descriptions and applications for any pending sources;
- Whether a sales tax exemption will be sought through TSAHC serving as general contractor and, if so, the identity of the master contractor (if known) and bonding capacity;
- Summary of developer's proposed long-term, a timeline for development, including securing of financial resource, closing date of acquisitions and occupancy by qualified low-income households.

Once ~~the Corporation~~ TSAHC has ~~in its own determination,~~ based on its own assessment, that the proposed Joint Venture meets these Guidelines, a project summary, along with initial underwriting will be presented to ~~the Corporation's~~ TSAHC's board of Directors for Approval. If approved, ~~the Corporation~~ TSAHC will then negotiate and enter into a Memorandum of Understanding ("MOU") with the Applicant, or Applicant's affiliates.

Prior to the closing any Development, TSAHC will be required to obtain approval, in the form of a resolution, of the final financing structure and ratifying the creation of subordinate entities from its Board of Directors.

If the Development includes the issuance of Private Activity Bonds, with ~~the Corporation~~ TSAHC, or any other entity, as Issuer, ~~the Corporation~~ TSAHC will not permit the submission of a reservation for bond allocation to the Texas Bond Review Board until such time as ~~the Corporation~~ TSAHC has agreed to and executed the MOU.

3. Ownership Structure:

The owner entity should in almost all cases be a limited liability company. ~~The Corporation~~ TSAHC may create one or more affiliated entities in connection with the undertaking of its duties in connection with the Development. In addition, ~~the Corporation~~ TSAHC will require the formation of a development member (or similar entity) to act in conjunction with the TSAHC-affiliated Managing Member (or General Partner) in connection with the development and management of the Development in such a manner so as to preserve eligibility for a property tax exemption as TSAHC's attorneys may determine.- ~~The~~

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~~Corporation~~TSAHC may create one or more of the following entities, in its sole discretion, to manage specific functions of the Development and ownership of the property.

- a. Managing Member (or General Partner) Entity. A separate entity, established and wholly controlled by ~~the Corporation~~TSAHC, may be established by ~~the Corporation~~TSAHC to serve as Managing Member (or General Partner). The Managing Member or General Partner Entity will be the de factor managing entity of the Development in cooperation with any development members (or limited partners or similar entities). The Managing Member (or General Partner) must have authority to review and approve all financing terms and commitment letters, as well as contracts with the owner including without limitation development team members and will have authority to approve engineering and architectural plans for the Development. The Managing Member (or General Partner) may also receive a percentage of any typical or customary developer fees due from development proceeds, an asset oversight fee from rental revenues of the Development and a percentage of ongoing net revenues or cash flow after the payment of all debts and obligations of the Development. The Managing Member (or General Partner) will also be entitled to sales proceeds and will have an option and/or right of first refusal to purchase ~~either~~ the development and/or the other members' (or partners') interests in the owner entity upon disposition on or before year 15 of operations and thereafter. TSAHC and its affiliates will not be required to provide any guaranties or indemnities and will be fully indemnified by the Owner and the developer and such other joint venture entities for their participation in the Development except to the extent of TSAHC's gross negligence or willful misconduct.
- b. General Contractor Entity. A separate entity, established and wholly controlled by ~~the Corporation~~TSAHC, may be used by ~~the Corporation~~TSAHC to serve as General Contractor. The General Contractor will be used to administer all construction contracts, oversee the approval of draws, and conduct other customary due diligence needed to complete the Development. ~~The Corporation~~TSAHC may utilize a pre-existing General Contractor entity that has been used in previous developments. TSAHC's affiliate will earn a fee equal to a percentage of the sales tax savings.
- c. Land Ownership Entity. ~~TSAHC or a~~ separate entity, established and wholly controlled by ~~the Corporation~~TSAHC, may be used by ~~the Corporation~~TSAHC to serve as owner of the land for the Development. In general, (1) the land will be leased to the limited partnership (or limited liability company) for a term not to exceed 99 years, and (2) the Development owner will own the Development structures, including existing structures, improvements, equipment and new construction. TSAHC, as ground lessor, will have a continuing option to buy the improvements and leasehold estate from the Owner entity so as to qualify for the property tax exemption. TSAHC will earn a fee in exchange for providing the property tax-exempt structure.
- d. Developer Entity. A separate entity, established and wholly controlled by ~~the Corporation~~TSAHC, may be used by ~~the Corporation~~TSAHC as a development-related entity, to manage development activities related to the Development and earn TSAHC's share of the developer fee.

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Note: Each of the foregoing affiliated entities, together with ~~the Corporation~~TSAHC, are required to be indemnified by the Developer (and/or other entity specified by ~~the Corporation~~TSAHC) for such affiliated entity's actions or omissions that do not constitute willful misconduct.

4. Fees:

- a. Application Fee: \$500 (this fee is in addition to ~~the Corporation's~~TSAHC's standard multifamily bond application fee, if applicable, or any other fees associated ~~with the issuance of tax exempt bonds~~ an application for financing to TSAHC).
- b. Start-Up Fee: Applicants will be required to fund ~~the Corporation's~~TSAHC's organization and legal costs of establishing ~~the Corporation's~~TSAHC's subordinate entities through the Start-Up Fee. A deposit of \$15,000 towards the Start-Up fee will be due and payable to ~~the Corporation~~TSAHC upon the approval of the Joint Venture by ~~the Corporation's~~TSAHC's Board of Directors.
- c. Asset Management Fee: As part of ~~the Corporation's~~TSAHC's Joint Venture responsibilities, the Development's annual operating budget must include an Asset Management Fee of \$10,000, with an annual increase during Development operations of 3%. fee of \$45 per door, with an annual minimum fee of \$2,250, to cover annual inspections, compliance reviews and other asset management responsibilities. The Corporation will be paid the fee out of rental revenues. If also acting as the bond issuer, the Corporation will not collect its customary Asset Oversight and Compliance fees associated with the bonds.
- ~~d. Annual Audit and Accounting Fee: The Corporation shall be paid from the operating fund of the Development an Annual Audit and Accounting Fee of \$10,000.~~
- d. Developer Fee and General Contractor Fee: For participating in a Joint Venture, the CorporationTSAHC will receive a portion (minimum of ~~20~~25% ~~to a maximum of 35%~~) of the Developer Fee paid from the Development's financing sources and revenues. ~~The Corporation~~TSAHC will be paid proportionally with the Developer for any deferred payments of the Developer Fee (regardless of source). TSAHC will consider lowering the minimum developer fee to 20% for projects considered to be Permanent Supportive Housing.
- e. General Contractor Fee: If the CorporationTSAHC or its affiliates serves as the general contractor of record, it will be entitled to a fee equal to 25% of the sales tax savings (that will be no less than \$20,000) and must be fully indemnified. The closing documents, including the master subcontract, must include specific indemnification language provided by the Corporation in the MOU.
- f. Cash Flow and Revenue Sharing: Following the repayment of all amounts owed to the Developer and ~~Corporation~~TSAHC for the Developer Fee, cash flow from the Development may be (1) used to fund supportive services in addition to any services required by the Development's compliance or regulatory agreements; (2) escrowed by ~~the Corporation~~TSAHC in a fund (the "Local Services Fund") to support local educational, health and welfare service providers or agencies that benefit residents of the Development; and/or (3) shared by the Developer member and Corporation affiliated managing member (or general partner). ~~TSAHC and developer split of cash flow and capital event proceeds? Suggest 30-70~~At a minimum, TSAHC's share of net cash flow and capital event proceeds shall be 30%.

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- g. Professional Fees: ~~The Corporation's~~ TSAHC's Joint Venture Counsel will provide services related to the creation of affiliated entities and ~~the Corporation's~~ TSAHC's duties in ~~the its~~ its related roles, the terms of the limited partnership or limited liability company documents, the terms of applicable indemnifications, and other ancillary matters. The Joint Venture Counsel shall charge a fixed fee (or an hourly based fee) to be established based on the facts of the financing structure to be used and approved by ~~the Corporation~~ TSAHC.

Issuer Fees Not Included. For the avoidance of doubt, TSAHC's fees as bond issuer (if applicable) will be provided under separate cover.

5. Community Outreach:

~~The Corporation~~ TSAHC is intent on ensuring that local support is in place prior to approving its participation in a Joint Venture. In order to identify such support, Applicants shall be required to submit the following documentation (part a and b) with their ~~inducement~~ application:

- a. AA letter of support for the proposed development that clearly states the project will be exempt from property taxes from either;
- i. The city or county housing department; or
 - ii. The city of county housing finance agency; or
 - iii. The office of the Mayor or County Judge
- b. A letter of support for the proposed development that clearly states the project will be exempt from property taxes from;
- i. A member of the City Council or County Commissioner's Court; or
 - ii. The Superintendent of Public Schools serving the project site; or
 - iii. The Director of the local housing finance corporation; or
 - iv. The Director of the City or County Housing department.
- a. A-Projects utilizing housing tax credits will also be required to obtain a resolution from the city or county government where the development is located, ~~stating support for the proposed development, including resolutions that meet~~meets the standards for low income housing tax credits program pursuant to section 2306.67021 of the Texas Government Code. The submission of this resolution may be done after application, but must be received prior to the reservation of private activity bonds, if included in the financing ~~structure;~~structure.
- b. ~~A letter of support from the local housing finance corporation stating support for the proposed development, unless no local housing finance corporation or other similar entity is available; and~~
- c. ~~At least two additional letters of support fulfilling the Corporation's Community Support Threshold as defined by the most recent Multifamily Tax Exempt Bond Program Policies and Request for Proposals.~~