



APPLICATION FOR MULTIFAMILY RENTAL PROJECTS

INSTRUCTIONS AND FORM

EFFECTIVE MAY 20, 2022

8108 N. FM 973
Austin, Texas 78724

INTRODUCTION

The following Instructions (the “*Instructions*”) set forth the procedure for submitting an application to the Texas Essential Housing Public Facility Corporation (the “*Corporation*”) for multifamily residential rental projects. The Instructions also summarize the requirements an applicant (the “*Applicant*”) must satisfy to qualify for financing or a joint venture partnership, the Internal Revenue Code (the “*Code*”) and Treasury Regulations, rulings and procedures implementing the Code. No attempt is made by the Corporation to describe these requirements in a full or comprehensive manner in the Instructions. Applicants must consult their own legal counsel regarding such requirements, and not rely solely on the information described herein.

The Corporation is a Public Facility Corporation created under Chapter 303 of the Local Government Code, as amended. One of the Corporation’s primary purposes is to assist in the provision of much needed, mixed income, high quality workforce and affordable housing, that provides a higher standard of living. The Corporation is authorized to solely acquire, or serve as issuer of special revenue bonds, both taxable and tax-exempt, to finance qualified residential rental projects for this purpose and to partner with for-profit entities through a qualified purchase-leaseback structure using a limited partnership or limited liability company joint venture.

ARTICLE I. PURPOSE AND SCOPE.

These Instructions apply to specific developments, that serve the public purpose of the Corporation, for which an Applicant either requests the Corporation to issue bonds or loans to provide financing, or to partner with the Applicant for the purposes of acquiring tax exemptions.

Specific provisions of the Instructions may be waived by a majority vote of the Board of Directors of the Corporation (the “*Board*”). The Instructions may be amended, revised, repealed or otherwise altered by a majority vote of the Board at any time and from time to time.

ARTICLE II. GENERAL REQUIREMENTS.

The Corporation will not enter into a partnership agreement or issue bonds to provide financing for any residential development that has not satisfied, as determined by the Corporation, the general requirements set forth in this Article II and all requirements of the Act and the Code as determined by Bond Counsel. The Corporation reserves the right to impose additional specific requirements with respect to any particular development. Compliance with the Instructions does not and shall not be deemed to constitute a commitment, or assurance that financing will be provided by the Corporation.

Public Purpose. Prior to the issuance of bonds or loans, the Board must have made a finding that financing of such development will promote the public purposes set forth in Chapter 303 of the Code.

Residential Rental Property. The partner of the residential development, unless the owner is a 501(c)(3) corporation, shall have entered into contractual arrangements that demonstrate, to the satisfaction of the Corporation, that such development is to be owned and operated as a qualified residential rental project within the meaning of Section 142(d) of the Code and applicable regulations

thereunder, for the longer of the Qualified Project Period (as hereinafter defined) or the period during which such bonds remain outstanding.

For purposes of the Instructions, the term “*Qualified Project Period*” means the period beginning on the first day on which 10% of the units in such residential development are occupied and ending on the later of (i) the date that is fifteen (15) years after the date on which at least 50% of the units in such residential development are first occupied, (ii) the first day on which no bonds issued to finance or refinance such residential development are outstanding or (iii) other land use restriction deed requirements which exceed (i) or (ii).

Tenant Income. Under the Code, at least 50% of the rental units must be occupied by tenants earning no more than eighty (80%) of the Area Median Income. The Board is required by the Act to determine this income standard. The Board’s policy is that at least seven (7%) percent of the workforce/affordable units be occupied by tenants earning no more than sixty (60%) of the Area Median Income; and at least three (3%) percent of the workforce/affordable units be occupied by tenants earning no more than thirty (30%) of the Area Median Income.

The project must meet, at a minimum, this set-aside requirement. The Corporation may also place additional restrictions on the project to ensure that it satisfies a public purpose, particularly for Acquisition and Rehabilitation projects as described below.

Tax-Exemption of Bond Interest. Section 103 of the Code provides that interest on fully registered, qualified bonds issued by the Corporation to finance residential rental projects is excludable from the gross income of the bondholders if (i) at least **95%** of the net proceeds of the issue are used to provide qualified residential rental projects, (ii) the required percentage of units in the project will be occupied by individuals of low income within the meaning and for the period specified in Section 142(d) of the Code and (iii) if other applicable requirements of Sections 141 through 150 of the Code are met.

Acquisition and Rehabilitation Projects. The Corporation will not finance a residential rental acquisition and rehabilitation project unless the Applicant demonstrates that the project to be acquired and rehabilitated will be capitalized with adequate reserves; and will receive local support, if deemed necessary by the Corporation, via an interlocal agreement. Further, any Acquisition or Rehabilitation project must exceed the minimum affordability threshold requirement legally applicable at the time of closing. For Acquisition or Rehabilitation projects, the Corporation may require that at least seven (7%) of the units must be reserved for tenants earning no more than 60% of the Area Median Income; and at least three (3%) of the units must be reserved for tenants earning no more than 30% of the Area Median Income.

Ad Valorem and Sales Tax Exemption. If an exemption from ad valorem taxes is requested, the Corporation shall be owed an annual payment equal to ten (10%) of the property tax savings for a new construction project, which shall increase to fifteen (15%) of the property tax savings starting in year four (4); or fifteen (15%) of the property tax savings for an Acquisition of Rehabilitation project. In all scenarios the Corporation shall be owed **25%** of sales and use tax savings paid quarterly to Corporation.

Capital Event Participation. The Corporation may require participation in capital events of: (i) ten percent (10%) of the net proceeds after payment of the development costs upon the initial sale of new construction projects to a third party; (ii) fifteen percent (15%) of the net proceeds of the

acquisition basis of an Acquisition or Rehabilitation when the project is initially sold to a third party, and (iii) five (5%) of net proceeds resulting from any refinance of either project type (a “Capital Event”).

Third Party Reports. The Corporation may obtain underwriting, marketing, appraisal and physical needs assessment reports (the “*Third Party Reports*”) from independent third parties at the expense of the Applicant.

Regulatory Approvals. The Applicant is responsible for obtaining all regulatory approvals (zoning, special permits, utility connections, etc.) necessary for development of the project.

Rating or Private Placement. The Corporation generally will not issue bonds to finance a qualified residential rental project unless the bonds receive a rating in at least the “A” category from Standard and Poor’s Ratings Services or Moody’s Investors Service unless the bonds are sold by private placement.

If the Applicant plans a private placement of the bonds, the Applicant must furnish the Corporation with an investment letter from the prospective purchaser of the bonds that is satisfactory to the Corporation and its General Counsel. In addition, the bonds must be in denominations of **\$100,000.00** or more and the bonds must be transferable only by physical delivery.

Bond Counsel and General Counsel. The Corporation has retained Cantu Harden LLP as Bond Counsel for its bond issues. The Corporation will be represented by its General Counsel in connection with each bond issue. The fees and expenses of Bond Counsel and the Corporation’s General Counsel are to be paid by the Applicant.

Partnership and Structuring Counsel. The Corporation has retained Cantu Harden LLP to act as Partnership and Structuring Counsel in bond transactions where the Corporation has an ownership interest in the project. The fees and expenses of Partnership and Structuring Counsel are the responsibility of the Applicant.

Financial Advisor. The Corporation has retained Frost Bank as Financial Advisor for its bond issues and joint ventures. The fees and expenses of the Financial Advisor are the responsibility of the Applicant and are outlined below.

Underwriter/Placement Agent and Trustee. The Corporation will select a qualified trustee for the bond issue. The Applicant may engage an underwriter or placement agent mutually acceptable to the Applicant and the Corporation. The fees and expenses of the foregoing parties are the responsibility of the Applicant.

Official Intent. U.S. Treasury Regulations permit the Corporation to declare its official intent to issue its bonds so that project costs may be paid from a portion of the issue proceeds. If the Applicant satisfies all of the requirements for issuance of the Corporation’s bonds as set forth in this Article II and the application procedures set forth in Article III below, the Executive Officer of the Corporation will schedule a meeting of the Board to consider adopting a resolution evidencing the intent of the Corporation to issue its bonds to finance the Applicant’s qualified residential rental project. The Applicant will be notified of the date, time and place of such meeting and should appear at the Board meeting to answer questions about the project.

Adoption of an official intent resolution is solely at the Corporation's discretion and adoption does not obligate the Corporation to issue the bonds. No person may represent, directly or indirectly, to a potential purchaser of the bonds, or to anyone else, that the Corporation has agreed to finance the Applicant's project until the Corporation adopts a final bond resolution authorizing the issuance of its bonds. An official intent resolution expires when the application expires.

ARTICLE III. APPLICATION PROCEDURE.

Application Submission. The Applicant must upload the Underwriting Data, defined below to a shared folder, and complete the application form, which is available by contacting the Corporation or at www.tehpcf.org. **The application form must be completed and emailed to adukes@tehpcf.org, with a hard copy delivered by mail, and accompanied with payment of the application fee of \$5,000, by cashiers check or paid electronically, prior to setting the project on the agenda for consideration.** The Applicant must answer all questions completely and accurately. If the Applicant requires additional space for an answer, or if a question requires an attachment, the Applicant may attach letter-sized continuation sheets that may be inserted following the page of the application form that it supplements. The question number should be clearly marked on the continuation sheets and should be numbered sequentially. For example, continuation sheets pertaining to question 2.4 should be marked 2.4-1, 2.4-2, 2.4-3, etc.

Underwriting Data.

1. JV Ground Lease (New Build)

- a. Proof of Ownership or Site Control (LOI or Purchase Agreement)
- b. Timeline/Critical Dates Memo
- c. Development Budget
- d. Proposed Unit Mix (AMI adjusted)
- e. Operating Budget (in excel)
- f. Project Budget
- g. REO Template
- h. Misc.

2. JV Ground Lease (Acquisitions/Rehab)

- a. Proof of Ownership or Site Control (LOI or Purchase Agreement)
- b. Timeline/Critical Dates Memo
- c. Business Plan
- d. Sources and Uses
- e. Rent Roll/Unit Mix (in excel)
- f. Operating Budget/T12 (in excel)
- g. Project Budget
- h. Misc.

3. Governmental Tax-Exempt Bonds or Loans

- a. Proof of Ownership or Site Control (LOI or Purchase Agreement)
- b. Timeline/Critical Dates Memo
- c. Business plan
- d. Sources and Uses
- e. Rent Roll/Unit Mix (in excel)

- f. Operating Budget/T12 (in excel)
- g. Project Budget
- h. Misc.

The Corporation may request additional information not required by the application form. The Applicant agrees to furnish such additional information in writing within a reasonable time after receipt of the Corporation's request. The Corporation may also modify the requirements of the application form if necessary to accommodate changes in law or to obtain a complete and accurate understanding of the Applicant's project.

The Corporation is subject to the Texas Public Information Act and all information in its files, including the completed application, are subject to disclosure unless deemed confidential or proprietary by the Texas Public Information Act.

The individual signing the application represents that he or she read and understands the Instructions and the application form, that the information contained in the application form is correct and complete, that the Applicant agrees to the terms and conditions set forth in the Instructions and the application form and that he or she is legally authorized to sign on behalf of the Applicant.

When the application is completed; sign, date and scan the application, the required attachments and any supplemental sheets as a single packet; then email or upload the file to a shared folder. Deliver a signed original of the complete executed application, together with checks for the Application Fee (as hereinafter defined), and the General Counsel Review Fee (as hereinafter defined) to:

Texas Essential Housing Public Facility Corporation
Attention: Aundre Dukes,
President and Chairman
8108 N. FM 973
Austin, TX 78724
C: 512-554-6483
adukes@tehpfc.org

Cc: Adam Harden, Counsel to TEHPFC
CANTU HARDEN LLP
1020 NE Loop 410, Suite 401
San Antonio, TX 78209
O: 210-890-2822
C: 469-688-4336
Adam.Harden@cantuharden.com

Rejection of Application. The Corporation may reject an application if it is: (i) not received by the Corporation on or before the application deadline, which is **fourteen (14) calendar days** prior to a scheduled meeting of the Corporation on the first Thursday of each month, (ii) not accompanied by the application fee, or (iii) incomplete and the Applicant fails to complete the application within a (30) calendar days after the Corporation's request for completion.

Expiration of Application. An application expires (i) if it is withdrawn by the Applicant; (ii) if the Corporation does not adopt a resolution of official intent to negotiate a partnership or acquisition within ninety (90) days from the date of the application; (iii) if the Applicant does not obtain site control within ninety (90) days, after the board approves a resolution authorizing the project for consideration via a purchase and sale agreement or other means, if applicable; or (iv) if the Corporation does not issue the requested bonds within one hundred eighty (180) days from the date of the adoption of the resolution of official intent. All action taken by the Corporation on an application becomes void when the application expires.

Approval and Expiration of Resolution. If the Corporation approves and adopts an official intent resolution approving a project in an open meeting (a “*Resolution*”), such Resolution shall be considered valid and in force for a period of twelve (12) months. Within seven (7) days after approval of a Resolution, the Corporation’s General Counsel will provide Applicant a copy of the Resolution, along with a Memorandum of Understanding at such time the MOU and entity formation fee of **\$20,000** is due and payable (the “*MOU and Formation Fee*”). If a project has not been closed within twelve (12) months of the effective date of the Resolution, a renewal application must be submitted to the Corporation for consideration.

ARTICLE IV. FEES AND COSTS

| | Application Fee & MOU/Entity Formation Fee | Mandatory General Contractor Fee | Developer or Issuance Fee | Compliance Fee | Lease Payment | Capital Events <i>*See Capital Event Participation</i> |
|---|---|---|---|-----------------------|---|--|
| <i>1) Joint Venture Ground Lease (New Build)</i> | \$5,000 \$20,000 | 25% of sales and use tax savings | The greater of \$500,000, or \$2,000 per unit. | \$100/unit/yr | 10% of ad valorem tax savings, and 15% starting in year 4 | 15% upon sale or refinance of net proceeds |
| <i>2) Joint Venture Ground Lease (Acquisition/Rehabilitation)</i> | \$5,000 \$20,000 | 25% of sales and use tax savings | The greater of \$750,000, or 100% of the prior year’s ad valorem tax. | \$100/unit/yr | 15% of ad valorem tax savings | 15% upon sale or refinance of net proceeds |
| <i>3) Governmental Tax-Exempt Bonds/Loans</i> | \$5,000 \$20,000 | N/A | 1.5% of the Aggregate Par Amount of the Bonds or Loans | \$100/unit/yr | N/A | N/A |

Application Fee. A nonrefundable fee of **\$5,000.00** for a bond issue, a joint venture, or for a 501(c)(3) Applicant (the “*Application Fee*”) is required for the Corporation’s staff review of the application (made payable via certified funds to the Corporation). In connection with bond issuances,

\$5,000.00 must be paid as compensation to General Counsel (the “*General Counsel Review Fee*”) and made payable via certified funds to Cantu Harden LLP. The Application Fee owed to the Corporation is not refundable whether or not the Corporation adopts an official intent resolution.

Issuance Fee, Bond Counsel and General Counsel Fee. For any transaction that involves bonds or loans, the Corporation shall be paid by the Applicant an issuance fee equal to **1.50%** of the total principal amount of the bonds or loans issued, payable at closing (the “*Issuance Fee*”), subject to the immediately succeeding sentence. In the event that the Application or the Resolution expires without a closing or bonds are not issued, the Corporation is entitled to (i) **25%** of the Issuance Fee, calculated based on the amount listed in the application and approved by the Board, or **25%** of the Developer Fee (as defined below), if no bonds or loans are contemplated, or (ii) **50%** of the Issuance Fee if the Corporation’s Board has passed its final bond resolution, calculated based on the aggregate principal amount of the bonds approved by the Board, which amounts are due and payable immediately upon the earlier of (A) the expiration of the Application or (B) the termination of the bond issuance or **50%** of the Developer Fee, if no bonds are contemplated but the Corporation has applied for and received a Pre-Determination Letter from the relevant appraisal district. If the bonds are issued, no portion of the Issuance Fee is refundable. In addition, the fee for Bond Counsel and General Counsel as described below shall be earned in the same manner described above and paid at the earlier of the Application or Resolution expiration, the receipt of a Pre-Determination Letter, or the closing of the bonds.

Developer Fee. A one-time payment in the amount equal to 1) The greater of **\$500,000**, or **\$2,000** per unit, for ground up development projects; 2) The greater of **\$750,000**, or **100%** of the prior year’s ad valorem tax savings, when the Applicant seeks approval of an Acquisition or Rehabilitation project; or 3) for bonds or loans **1.5%** of the Aggregate Par Amount. In each case, this one-time payment is payable to the Corporation at the time of closing.

Annual Oversight and Compliance Fee. An annual amount equal to **\$100/unit** (the “*Annual Oversight and Compliance Fee*”). For **New Construction Projects**, the first three (3) years of the Annual Oversight and Compliance Fee are payable to the Corporation at closing based on the number of proposed units, and the remaining Annual Oversight and Compliance Fees are payable to the Corporation based on the number of actual units constructed beginning on the fourth anniversary of the closing and on each subsequent anniversary. For **Acquisition or Rehabilitation Projects**, the Annual Oversight and Compliance Fee for the first calendar year shall be payable at closing and shall be payable for each subsequent year no later than January 31 of such year.

Engagement of Bond Counsel and Partnership Counsel. The Applicant (or a related entity) must sign the engagement letters of Cantu Harden LLP. The engagement letters must be executed by an existing entity with financial resources acceptable to Cantu Harden LLP.

Closing Fees and Costs. The Applicant is responsible for rating agency fees, bond printing costs, placement costs, insurance premiums, filing and recording fees, the Texas Department on Aging fee, if elected, the costs of transcript preparation and distribution, financial advisor fees, legal fees including defense, and any other fees and costs of closing.

Fee Schedule. The following fee schedule sets forth the Corporation’s approved fees for Bond Counsel, General Counsel, and Partnership Counsel for the Corporation’s multifamily bond issues. The following fees do *not* include expenses.

| | ISSUE AMOUNT | FEE |
|---|---|--|
| Bond Counsel | \$8,000,000 or less \$8,000,001 - \$11,999,999 \$12,000,000 - \$14,999,999 \$15,000,000 - \$19,999,999 \$20,000,000 or more | \$75,000 \$85,000 \$90,000 \$95,000 \$95,000 <i>plus</i> \$5.00 per \$1,000 of Bonds in excess of \$20,000,000 |
| General Counsel* | Any issue amount | \$1.00 per \$1,000 of Bonds issued |
| Partnership and Structuring | \$8,000,000 or less \$8,000,001 - \$11,999,999 \$12,000,000 - \$14,999,999 \$15,000,000 - \$19,999,999 \$20,000,000 - \$24,999,999 \$25,000,000 - \$29,999,999 \$30,000,000 or more | \$70,000 \$80,000 \$85,000 \$90,000 \$95,000 \$100,000 Negotiated |
| Financial Advisor* | Any issue amount | \$10,000 <i>plus</i> \$2.00 per \$1,000 of Bonds/Loans issued. |
| Issuer \ Underwriting and Due Diligence Fee | Any issue amount of Tax-Exempt Bonds/Loans | 1.5% of the aggregate par amount of the Bonds/Loans issued. |

*The fees set forth apply to bond issuances. For joint venture ground lease structures in which the Corporation undertakes an ownership interest in the project and no bonds are issued, legal fees will not exceed **\$300,000.00** and Financial Advisor fees will not exceed **\$25,000.00**.

ARTICLE V. INDEMNITY AGREEMENT.

For the purpose of inducing the Corporation to accept, review and act upon the Application and to issue the obligations therein contemplated, the Applicant hereby agrees to indemnify and hold harmless the Corporation, its officers, directors, employees, agents and representatives, from and against all costs, losses, damages, expenses and liabilities of any kind arising from or in connection with the Corporation's acceptance, review, approval or disapproval of such Application for financing, or the issuance, offering, sale or delivery of the bonds of the Corporation therein contemplated, or the design, acquisition, construction, rehabilitation, installation, operation, use, occupancy or maintenance of the residential development described in such Application. It is expressly agreed that the provisions of this Article V shall survive (i) any approval or disapproval of such Application and (ii) whether or not any such bonds are issued.

EXECUTION AND ACKNOWLEDGEMENT

The undersigned Applicant hereby acknowledges that it has read and understood the terms and conditions set forth in the Instructions and agrees to be bound by the same.

Dated: _____

Name of Applicant

By: _____

Name: _____

Title: _____

Accepted:

Texas Essential Housing Public Facility Corporation

By: _____

Aundre Dukes
President and Chairman