



# MONTANA HOUSING

Via Webinar and 301 S. Park Avenue, Suite 240 – Helena, Montana 59601  
August 8, 2018

## **ROLL CALL OF BOARD**

### **MEMBERS:**

Pat Melby, Chairman (Present)

Bob Gauthier (Present)

Johnnie McClusky (Present)

Jeanette McKee (Present)

Sheila Rice (Present)

Eric Schindler (Excused)

Amber Sundsted (Present)

### **STAFF:**

Bruce Brensdaal, Executive Director

Vicki Bauer, Homeownership Program

Mary Palkovich, Mortgage Servicing Program

Penny Cope, Research & Outreach Specialist

Paula Loving, Executive Assistant

Todd Jackson, Marketing

Kellie Guariglia, Multifamily Program

Charlie Brown, Homeownership Program

### **COUNSEL:**

Nick Mazanec, Luxan and Murfitt

John Wagner, Kutak Rock

### **UNDERWRITERS:**

Mina Choo, RBC Capital

### **OTHERS:**

Kirk Bruce, Affiliated Developers

Gene Leuwer, GL Development

Andrew Schank, Thomas Development

Revonda Stordahl, Butte Housing Authority

Tom Mannschreck, Thomas Development

John Fritz, Premier Home Mortgage

Robby Novack, Premier Home Mortgage

*These written minutes, together with the audio recordings of this meeting and the Board Packet, constitute the official minutes of the referenced meeting of the Montana Board of Housing (MBOH). References in these written minutes to tapes (e.g., FILE 1 – 4:34) refer to the location in the audio recordings of the meeting where the discussion occurred and the page numbers refer to the page in the Board Packet. The audio recordings and Board Packet of the MBOH meeting of this date are hereby incorporated by reference and made a part of these minutes. The referenced audio recordings and Board Packet are available on the MBOH website at [Meetings and Minutes](#).*

## **CALL MEETING TO ORDER**

0:00 Chairman Pat Melby called the Montana Board of Housing (MBOH) meeting to order at 8:30 a.m.

0:04 Introductions of Board members were made.

- 2:00 Bruce Brensdaal reviewed the Webinar details for the meeting.  
3:40 Chairman Melby asked for public comment on items not listed on the agenda.

### **APPROVAL OF MINUTES**

#### **June 4, 2018 MBOH Board Meeting Minutes – page 3 of the packet**

- 4:05 Motion: Sheila Rice  
Second: Jeanette McKee  
The June 4, 2018 MBOH Board meeting minutes were approved unanimously.

### **HOMEOWNERSHIP PROGRAM**

#### **Lender Approval**

- 5:10 Presenters: Vick Bauer  
Motion: Sheila Rice  
Second: Jeanette McKee  
The Premier Home Mortgage was approved unanimously.

#### **Homeownership Program Update**

- 9:30 Vicki Bauer provided the Board with the Homeownership program update.

### **MULTIFAMILY PROGRAM**

#### **Roosevelt Villas, Wolf Point & Culbertson Additional Housing Credits – page 11 of packet**

- 12:25 Presenters: Mary Bair, Gene Leuwer, GL Development  
Motion: Bob Gauthier  
Second: Johnnie McClusky  
The Additional Housing Credit request of \$33,000 (\$330,000 10-year total) for Roosevelt Villas was approved unanimously.

#### **Copper Ridge, Butte Additional Housing Credits – page 13 of packet**

- 15:30 Presenters: Mary Bair, Tom Mannschreck and Andrew Schank - Thomas Development  
Motion: Johnnie McClusky  
Second: Bob Gauthier  
The Additional Housing Credit request of \$47, 282 (\$472,820 10-year total) for Copper Ridge was approved unanimously.

#### **Nemont Manor, Glasgow Bond Resolution – page 16 of packet**

- 22:20 Presenters: Mary Bair, Kirk Bruce – Affiliated Developers  
Motion: Sheila Rice

Second: Jeanette McKee

Resolution No. 18-0808-MF03 for Nemont Manor was approved unanimously.

**Rockcross, Great Falls Bond Resolution – page 23 of packet**

28:40 Presenters: Mary Bair

Motion: Jeanette McKee

Second: Bob Gauthier

Resolution No. 18-0808-MF04 for Rockcross Apartments was approved, with Sheila Rice abstaining.

**Reverse Annuity Mortgage Exceptions – page 26 of packet**

30:50 Presenters: Mary Bair

Motion: Jeanette McKee

Second: Bob Gauthier

The Reverse Annuity Mortgage exception for a couple in Missoula in the amount of \$55,000 was approved unanimously.

**2020 Qualified Allocation Plan Review – page 28 of packet**

33:30 Presenters: Mary Bair, Bruce Brensdaal, Nick Manazec – Luxan & Murfitt

The 2020 Qualified Allocation Plan will be posted for public comment.

**MEETING ADJOURNMENT**

1:14:10 Motion: Bob Gauthier

Second: Sheila Rice

Meeting was adjourned at 9:45 a.m.



Sheila Rice, Secretary



Date



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**Meeting Location:** Via WEBINAR  
**Physical Location:** 301 S. Park Avenue, Suite 240  
Helena MT

**Date:** Wednesday, August 8, 2018

**Time:** 8:30 a.m.

**Chairperson:** Pat Melby

**Remote Attendance Information:** Join our meetings remotely via webinar and phone.

**Dial** (877) 273-4202, Access Code: 7233056#

**Webinar:** [Click here to register](#)

**Board Offices:** Montana Housing  
301 S Park Ave., Room 240, Helena MT 59601  
Phone: 406.841.2840

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## AGENDA ITEMS

- ❖ Meeting Announcements
- ❖ Introductions - Sign in on our attendance sheet.
- ❖ Public Comments - Public comment is welcome on any public matter that is not on the agenda and that is within the jurisdiction of the agency.

### Minutes

- ❖ Approve Prior Board Meeting Minutes

### Homeownership Program (Manager: Vicki Bauer)

- ❖ Lender Approval
- ❖ Set-aside Allocations
  - Other Allocations (if needed)

### Multifamily Program (Manager: Mary Bair)

- ❖ Roosevelt Villas, Wolf Point and Culbertson Additional Housing Credits
- ❖ Copper Ridge, Butte Additional Housing Credits

*The Board of Housing's mission is to create affordable housing opportunities for Montanans whose needs are not met by the market. We value people, families, communities, fairness, teamwork, mutual respect, integrity. We are committed and passionate about collaborating with our partners to make sure Montana's families and communities have attainable, affordable, accessible and sustainable homes.*



- ❖ Nemont Manor, Glasgow Bond Resolution
- ❖ Rockcross, Great Falls Bond Resolution
- ❖ Reverse Annuity Mortgage Exceptions (if needed)
- ❖ 2020 Qualified Allocation Plan Review

## Miscellaneous

### Meeting Adjourns

\*All agenda items are subject to Board action after public comment requirements are fulfilled.

\*We make every effort to hold our meetings at fully accessible facilities. Any person needing reasonable accommodation must notify the Housing Division at 406.841.2840 or TDD 406.841.2702 before the scheduled meeting to allow for arrangements.

### Future Meeting Dates and Locations (subject to change)

September (10) 11, 2018: Polson  
October 15, 2018: No meeting

November 19, 2018: Helena  
December 11, 2018: No meeting

January 7, 2019: Webinar



# MONTANA HOUSING

Radisson Colonial Hotel - 2301 Colonial Drive – Helena, Montana 59601  
June 4, 2018

## **ROLL CALL OF BOARD**

### **MEMBERS:**

Pat Melby, Chairman (Present)

Bob Gauthier (Present)

Johnnie McClusky (Present)

Jeanette McKee (Present)

Sheila Rice (Present)

Eric Schindler (Present)

Amber Sundsted (Present)

### **STAFF:**

Bruce Brensdal, Executive Director

Ginger Pfankuch, Finance Program

Vicki Bauer, Homeownership Program

Mary Palkovich, Mortgage Servicing Program

Stacy Collette, Executive Operations Manager

Annette Blackman, Finance Program

June Pack, Multifamily Program

Debbie Morrison, Quality Control

John Schroeck, Section 8 Program

Penny Cope, Research & Outreach Specialist

Paula Loving, Executive Assistant

Todd Jackson, Marketing

Kellie Guariglia, Multifamily Program

Charlie Brown, Homeownership Program

Leslie Torgerson, Section 8 Program

Laura Morrison, Section 8 Program

Kelly Shields, Section 8 Program

Connie Mullikin, Section 8 Program

### **COUNSEL:**

Greg Gould, Luxan and Murfitt

Nick Mazanec, Luxan and Murfitt

John Wagner, Kutak Rock

### **UNDERWRITERS:**

Mina Choo, RBC Capital

### **OTHERS:**

Matt Driessen, DeSmet Public School Dist #20

Alex Burkhalter, Housing Solutions, Inc.

Sam Oliver, Missoula Housing Authority

Kirk Bruce, Affiliated Developers

Andrea Davis, Homeward, Inc.

Chancy Kittson, Blackfeet Housing

Adam Hammet, City of Whitefish

Sherry Stevens, United Way Kalispell

Mike Bouchee, Bouchee Development

Don Sterhan, Mountain Plains Equity Group

Heather McMilin, Homeward, Inc.

Kevin Gartlavel, Whitefish Chamber

Lori Collins, Whitefish Housing Authority

John Middleton, Whitefish Housing Authority

Ben Davis, Whitefish Housing Authority	Kennan Whitt, Summit Housing Group
Tracy Menuez, HRDC Distric IX	Jacob Kuntz, Helena Habitat for Humanity
Stephanie Beckert, Great West Engineering	Martin Matsen, City of Bozeman
Andrew Chanania, AC Solutions, LLC	Nate Richmond, BlueLine Development
Liz Mogstad, Rocky Mountain Development Council	Lori Ladas, Rocky Mountain Development Council
Julie Flynn, Montana Department of Commerce, Community Development	Blake Jumper, The Housing Company
Michael O'Neil, Helena Housing Authority	Jeannene Maas
Alison Munson, United Way of Lewis & Clark Co	Gene Leuwer, GL Development
Daniel Pocha, RMDC	Sharon Haugen, City of Helena
Tyler Currence, Housing Solutions	Dana Grant, SAFE Harbor/Lake County Housing
Taylor Hunt, Syringa Housing	Dianne Hunt, Syringa Housing
Jim Morton, HRC XI	Bob Robinson
Tim Peterson	David Trost, St John's Lutheran Ministries
Kathy Kelker, Representative Dist. 44	Dick Brown, Montana Hospital Association
Katie Williams, City Council Whitefish	Lori Davidson, Missoula Housing Authority
Andres Halaway, City Commissioner Helena	

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**CALL MEETING TO ORDER**

0:00 Chairman Pat Melby called the Montana Board of Housing (MBOH) meeting to order at 8:30 a.m.

0:04 Bruce Brensdal reviewed the Webinar details for the meeting.

1:45 Introductions of Board members were made.

7:25 Chairman Melby asked for public comment on items not listed on the agenda.

7:40 Beki Brandborg, Echo Enterprises, provided an update on Bitterroot Valley Villas

9:56 Staff presented Lifetime Achievement Awards to Montana Housing Staff, Jeannene Maas, Annette Blackman, and Debbie Morrison.

## **APPROVAL OF MINUTES**

### **April 30, 2018 MBOH Board Meeting Minutes – page 3 of the packet**

18:56 Motion: Sheila Rice

Second: Amber Sunsted

The April 30, 2018 MBOH Board meeting minutes were approved unanimously, with the notation of Bob Gauthier present instead of excused.

## **FINANCE PROGRAM**

### **Finance Update – page 8 of packet**

20:30 Ginger Pfankuch provided the Finance Program update.

### **FHLB of Des Moines Master Transaction Agreement Authorization – page 9 of packet**

22:04 Presenter: Bruce Brensdal

Motion: Bob Gauthier

Second: Johnnie McClusky

The authorization of Staff to execute the Federal Home Loan Bank of Des Moines Master Transaction Agreement renewal was approved unanimously.

## **HOMEOWNERSHIP PROGRAM**

### **2018 B Single Family Bond Resolution – page 10 of packet**

24:48 Presenters: Vick Bauer

Motion: Eric Schindler

Second: Sheila Rice

The 2018 B Single Family Bond Resolution No. 18-0604-SF02 was approved unanimously.

### **Habitat for Humanity Allocation – page 16 of packet**

27:35 Presenters: Vick Bauer, Jacob Kuntz – Habitat for Humanity Helena

Motion: Sheila Rice

Second: Johnnie McClusky

The Habitat for Humanity set-aside allocation for FY2019 in the amount of \$2,338,350 with expiration of June 30, 2019 was approved unanimously.

### **Lender Pool Set-aside Allocation – page 19 of packet**

31:54 Presenters: Vick Bauer

Motion: Sheila Rice

Second: Bob Gauthier

The Lender Pool set-aside request for an additional \$10 million was approved unanimously.

**Homeownership Program Update – page 18 of packet**

33:55 Vicki Bauer provided the Board with the Homeownership program update.

**MORTGAGE SERVICING PROGRAM**

**Mortgage Servicing Program Update – page 20 of packet**

37:07 Mary Palkovich provided the Board with the Mortgage Servicing program update.

**MULTIFAMILY PROGRAM**

**Copper Ridge Bond Resolution Amendment – page 21 of packet**

43:20 Presenters: Mary Bair

Motion: Bob Gauthier

Second: Eric Schindler

The Bond Resolution No. 17-1120-MF06 Amendment to increase the aggregate principal amount of the Obligation authorized thereby to an amount not to exceed \$5,000,000 and to authorize the issuance of such Obligation to Glacier Bank or such other financial institution as may be approved by the Chairman, Vice Chairman or Executive Director and Treasurer was approved unanimously.

**Multifamily Program Update – page 97 of packet**

1:00:41 Mary Bair provided the Board with the Multifamily program update.

**2018 Housing Credits – Letter of Intent – page 27 of packet**

01:00:00 Sheila Rice abstained from the Letter of Intent process due to conflict of interest.

01:08:20 Bruce Brensdaal reviewed the process for the 2019 Housing Credits Letter of Intent presentations.

01:12:40 Chairman Melby asked for public comment on any project that submitted a Letter of Intent for the 2019 Housing Credits.

01:13:17 Mary Bair reviewed the statistical data for the 2019 Housing Credits projects.

***Cut Bank Villas – page 63 of packet***

01:21:00 Cut Bank Villas is an Acquisition/Rehabilitation project of 19 Senior units in Cut Bank, requesting \$3,207,454 in Housing Credits. Developer is Echo Enterprises.

Presenters: Beki Brandborg, Gene Leuwer

Public Comment:

***Homestead Lodge – page 65 of packet***

01:29:45 Homestead Lodge is an Acquisition/Rehabilitation project of 32 Senior units in Absarokee, requesting \$3,860,791 in Housing Credits. Developer is Syringa Housing Corporation.

Presenters: Taylor Hunt, Diane Hunt

Public Comment:

***Oakwood Village Apartments – page 67 of packet***

01:36:35 Oakwood Village Apartments is an Acquisition/Rehabilitation project of 60 Family units in Havre, requesting \$3,299,063 in Housing Credits. Developer is Affiliated Developers, Inc.

Presenters: Kirk Bruce

Public Comment:

***Nemont Manor Retirement Residence – page 69 of packet***

01:43:10 Nemont Manor Retirement Residence is an Acquisition/Rehabilitation project of 100 Senior units in Glasgow, requesting \$3,299,063 in Housing Credits. Developer is Affiliated Developers, Inc.

Presenters: Kirk Bruce

Public Comment:

***Havre Eagles Manor – page 71 of packet***

01:54:45 Havre Eagles Manor is an Acquisition/Rehabilitation project of 91 Family units in Havre, requesting \$3,299,063 in Housing Credits. Developer is Affiliated Developers, Inc.

Presenters: Kirk Bruce

Public Comment:

***Nicole Court – page 73 of packet***

02:01:14 Nicole Court is a New Construction project of 16 Senior units in Stevensville, requesting \$3,450,000 in Housing Credits. Developer is HRC Development, Inc.

Presenters: Jim Morton, Bob Robinson

Public Comment: Tim Peterson, Alex Burkhalter

***Chapel Court Apartments – page 75 of packet***

02:14:20 Chapel Court Apartments is a New Construction project of 50 Senior units in Billings, requesting \$7,600,000 in Housing Credits. Developers are St. John's Lutheran Ministries and CR Builders, LLC.

Presenters: David Trost, Dick Brown, Kathy Kelker

Public Comment:

***Whitefish Project – page 77 of packet***

02:33:59 Whitefish Project is a New Construction of 38 Family units in Whitefish, requesting \$6,750,000 in Housing Credits. Developers are Homeward, Inc. and Whitefish Housing Authority.

Presenters: Lori Collins, Heather McMilin

Public Comment: Kate Ferry, Ben Davis, John Middleton, Adam Hammet, Kevin Gartlavel, Katie Williams

***Heron Flats – page 79 of packet***

03:45:45 Heron Flats is a New Construction project of 36 Family units in Missoula, requesting \$7,061,630 in Housing Credits. Developers are Missoula Housing Authority and Bouchee Development.

Presenters: Mike Bouchee

Public Comment: Matt Driessen

***Third Street Commons – page 81 of packet***

03:56:20 Third Street Commons is a New Construction project of 46 Family units in Great Falls, requesting \$6,775,000 in Housing Credits. Developer is NWGF Development, LLC.

Presenters: Sherrie Arey

Public Comment:

***Timber Ridge Apartments – page 82 of packet***

04:05:10 Timber Ridge Apartments is a New Construction project of 40 Senior units in Bozeman, requesting \$6,150,000 in Housing Credits. Developer is Summit Housing Group, Inc.

Presenters: Keenen Whitt, Tracy Munez, Martin Matsen

Public Comment:

***Creekside Commons – page 84 of packet***

04:13:05 Creekside Commons is a New Construction project of 42 Senior units in Kalispell, requesting \$6,150,000 in Housing Credits. Developer is Housing Solutions, LLC.

Presenters: Alex Burkhalter, Sherry Stevens

Public Comment:

***Meadowlark Vista – page 86 of packet***

04:24:24 Meadowlark Vista is a New Construction project of 24 Family units in Ronan, requesting \$5,673,842 in Housing Credits. Developer is Rural Community Assistance Corp.

Presenters: Jodie Paxon, Bonnie Kragy

Public Comment: Dana Grant

***Skyview – page 89 of packet***

04:39:24 Skyview is a New Construction project of 25 Senior units in Havre, requesting \$6,050,000 in Housing Credits. This project will also have 4% Tax Credits in the amount of \$4,880,000 for an additional 80 Senior units. Developer is Housing Solutions, LLC.

Presenters: Alex Burkhalter

Public Comment:

***Blackfeet Homes VII – page 91 of packet***

04:49:25 Blackfeet Homes VII is a New Construction project of 30 Family units in Browning, requesting \$6,775,000 in Housing Credits. Developer is Blackfeet Housing.

Presenters: Chancy Kittson

Public Comment:

***Red Alder Apartments – page 93 of packet***

04:54:10 Red Alder is a New Construction project of 30 Family units in Helena, requesting \$6,995,000 in Housing Credits. This project will also have 4% Tax Credits in the amount of \$2,636,810 for an additional 43 Family units. Developers are Rocky Mountain Development Council and GL Development

Presenters: Liz Mogstad

Public Comment: Daniel Pocha, Jacob Kuntz, Michael O'Neil, Andrus Halloway, Alison Munson, Sharon Haugen

***Pioneer Meadows – page 95 of packet***

05:14:14 Pioneer Meadows is a New Construction project of 28 Family units in Dillon, requesting \$6,976,862 in Housing Credits. Developer is The Housing Company

Presenters: Blake Jumper

Public Comment:

05:19:38 Chairman Melby asked if there were any comments on any of the projects presented for the 2019 Housing Credits.

Public Comment: Lori Collins, Mary Bair

Board Comment: Pat Melby, Amber Sunsted, Johnnie McClusky

05:34:00 Each Board member provided the top eight projects according to their priorities.

05:47:00 The Board discussed the projects by the Board interests.

05:55:10 Motion was made for Homestead Lodge, Chapel Court Apartments, Whitefish Project, Skyview, Blackfeet Homes VII, Red Alder Apartments, Oakwood Village and Meadowlark Vista to participate in the full application process for the 2019 Housing Credits.

Motion: Eric Schindler

Second: Bob Gauthier

Chairman Melby asked for public and Board comment.

Board Comment: Eric Schindler, Amber Sunsted

Public Comment: Beki Brandborg

The above-mentioned projects were approved unanimously to participate in the full application process for the 2019 Housing Credits.

**OPERATIONS**

**Operations Update – page 104 of packet**

05:59:40 Stacy Collette provided the Board with the Montana Housing Operations update.

**EXECUTIVE DIRECTOR**

**Executive Director Update – page 48 of packet**

06:02:30 Bruce Brensdaal provided an Executive Director update.

**MEETING ADJOURNMENT**

06:03:10 Motion: Bob Gauthier

Second: Eric Schindler

Meeting was adjourned at 2:33 p.m.

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Sheila Rice, Secretary

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Date

# BOARD AGENDA ITEM

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## PROGRAM

Multifamily Program

## AGENDA ITEM

Additional Housing Credit request of \$33,000 (\$330,000, 10 year total) for Roosevelt Villas.

## BACKGROUND

Roosevelt Villas was awarded 2017 Housing Credits. Applications for HOME and HTF were submitted and not funded (late 2017). A HOME application was re submitted (it is an open cycle). The HOME funds were awarded on July 11, 2018. The HTF application dates are yet to be announced. The request letter is attached.

## PROPOSAL

Staff has reviewed the additional credit request.

Staff requests the Board consider and approve the additional credit request.

July 20, 2018

To: Mary Bair, MBOH

From: Gene Leuwer

RE: Roosevelt Villas project

Mary,

Thanks for the phone visit about Roosevelt Villas earlier this week. As you know, the project received notification that GNDC has been awarded \$840,000 of HOME funds to support the project. With this financing we are within about \$285,000 of the original budget submitted with the Tax Credit proposal.

I am requesting an additional 33,000 per year of Housing Tax Credits for the project. If this request is approved by the Board, the project will be very close to its funding goal as originally submitted.

As you know, the originally anticipated funding has been adjusted given the delay in HOME funding and the lack of HTF funding given eligible application dates that are yet to be announced.

If you have additional questions, let me know.

Thank you for your consideration.

Sincerely

Gene Leuwer

# BOARD AGENDA ITEM

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## PROGRAM

Multifamily Program

## AGENDA ITEM

Additional Housing Credit request of \$47,282 (\$472,820 10 year total) for Copper Ridge 9

## BACKGROUND

Copper Ridge 9 was awarded 2018 Housing Credits. Construction hard costs, loans costs and loan interest have increased. Operating Expenses have also been impacted. The request letter, which gives more detail is attached.

## PROPOSAL

Staff has reviewed the additional credit request.

Staff requests the Board consider and approve the additional credit request.



413. W. Idaho Street, Suite 200  
Boise, Idaho 83702  
(208) 343-8877  
FAX (208) 343-8900

E-Mail: [tdc@thomasdevelopment.com](mailto:tdc@thomasdevelopment.com)

July 11, 2018

*Via Email:* [mbair@mt.gov](mailto:mbair@mt.gov)

Ms. Mary Bair  
Montana Board of Housing  
Multifamily Program Manager  
P.O. Box 200550  
Helena, MT 59620-0550

Re: Copper Ridge Apartments 9 – Request for Additional Credits & Soft Cost Waiver

Dear Ms. Bair,

Copper Ridge Apartments 9 is moving forward in spite of some unforeseen market volatility. Since our original Tax Credit application in September 2017, the cost of construction and financing have both increased greatly. It seems current trade tariffs and other recent events, have generated increases across the board.

Below is a list of the development costs that have seen that largest increases:

1. Construction Hard Costs – have increased by more than 7%.
2. Construction Loan Costs – are higher based on the new need for a larger loan size and point cost.
3. Construction Interest Costs – are up considerably.
4. Perm Loan Interest Costs – best rate we could negotiate in this current climate is .56 basis points higher than our application and is now amortized at 30 years versus 35 years.
5. Operating Expenses – the market increases have caused Boston Financial, our Limited Partner, to increase our operating expense proformas by an additional \$725 per unit per year.

The above factors have created a cost increase gap. To assist in closing this gap, the development team has increased the deferred developer fee by over \$200,000.

At this time, we are also requesting MBOH consider the following:

1. Approval of an additional Tax Credit allocation to Copper Ridge 9, in the amount of \$47,282 (for a total combined award of \$571,236).
2. A waiver to the 30% soft cost ratio limit. The higher lending costs our original ratio of 28.2% to 31.3%.

Enclosed is an updated Uni-App for your review and consideration.

Please let me know if you have any questions or need clarification on any items. Again, we appreciate your consideration and are ready to bring more affordable housing to Butte.

Sincerely,

THOMAS DEVELOPMENT CO.

By



Andrew Schank, Development Coordinator

AMS:ams,asf  
Encl: 2018 Uni-App – Copper Ridge 9 updated 07/11/18

# BOARD AGENDA ITEM

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## PROGRAM

Multifamily Program

## AGENDA ITEM

Nemont Manor – Glasgow – Tax Exempt Bond resolution request.

## BACKGROUND

Nemont Manor located in Glasgow is a 100 unit family property. All of the units have PBS8 subsidy. This will be an estimated \$5,500,000 tax exempt bond transaction.

## PROPOSAL

Staff has reviewed the application.

Staff requests the Board consider the request for the Bond Resolution

If the Board decides to move forward staff recommends:

Approving the attached Bond Resolution

## **RESOLUTION NO. 18-0808-MF03**

A RESOLUTION OF THE MONTANA BOARD OF HOUSING MAKING FINDINGS WITH RESPECT TO HOUSING NEEDS WITHIN MONTANA; APPROVING EITHER A DIRECT BORROWING OR THE PUBLIC ISSUANCE OF ITS MULTIFAMILY HOUSING REVENUE BONDS (NEMONT MANOR) SERIES 2018, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$6,500,000; APPROVING THE FORMS OF DOCUMENTS TO CARRY OUT SUCH FINANCING AND OTHER RELATED DOCUMENTS ; AUTHORIZING THE EXECUTION OF SUCH DOCUMENTS; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, the Montana Board of Housing (the “Board”) is authorized pursuant to the Montana Housing Act of 1975, Montana Code Annotated, Sections 90-6-101 through 90-6-127, as amended (the “Act”), to issue its bonds or other obligations to purchase and make mortgage loans in order to finance housing which will provide decent, safe and sanitary housing for persons and families of lower income in the State of Montana; and

WHEREAS, the Board intends to finance a mortgage loan for the acquisition, rehabilitation and equipping of the Nemont Manor Apartments, an affordable housing development consisting of 100 units located in Glasgow, Montana (the “Project”) by either (i) borrowing on a non-recourse limited obligation basis from Greystone Servicing Corporation, Inc. (or such other financial institution as is approved by the Chairman, Vice Chairman or Executive Director and Treasurer) (the “Lender”) an aggregate principal amount not to exceed \$6,500,000, (the “Borrowing”) or (ii) issuing its Multifamily Housing Revenue Bonds (Nemont Manor) Series 2018 in an aggregate principal amount not to exceed \$6,500,000 (the “Bonds”); and

WHEREAS, to the extent the Chairman, the Vice Chairman or the Executive Director and Treasurer of the Board (each an “Designated Official”) determines it is in the best interests of the Board to finance the Project through the Borrowing, such Borrowing by the Board will be pursuant to a Funding Loan Agreement, among the Board, the Lender and a fiscal agent to be determined by the Board (the “Fiscal Agent”) (the “Funding Loan Agreement”), and the agreement to repay such borrowing shall be reflected in a non-recourse revenue debt obligation (the “Obligation”) to be issued to the Lender pursuant thereto, which Funding Loan Agreement and Obligation will be in substantially the form approved by the Board with respect to the Larkspur Commons Apartments financing in 2015 (the “Larkspur Financing”), subject to the terms, conditions and limitations established herein and in the Funding Loan Agreement; and

WHEREAS, in lieu of a Borrowing a Designated Official may determine it is in the best interests of the Board to finance the Project through the issuance and sale of the Bonds, such Bonds will be issued pursuant to a Trust Indenture (the “Indenture”), between the Board and U.S. Bank, National Association (or such other financial institution that is acceptable to a Designated

Official, (the “Trustee”), as trustee, sold to Greystone & Co. Inc. (or such other financial institution that is acceptable to the Designated Official) pursuant to a bond purchase agreement and resold by it to the public through the use of an Official Statement, which Trust Indenture, bond purchase agreement and Official Statement will be in substantially the form as such documents approved by the Board with respect to its Multifamily Housing Revenue Bonds (Vista Villa Apartments Project), Series 2016 (the “Vista Villa Financing”), subject to the terms, conditions and limitations established herein and in the Indenture; and

WHEREAS, the proceeds of the Borrowing or the Bonds will be used to finance an FHA guaranteed construction loan (the “Mortgage Loan”) to Nemont Manor Retirement Residences, LLC, a Montana registered limited liability company, or another affiliate of Affiliated Developers, Inc. (the “Borrower”), pursuant to FHA approved forms of documents, by and among the Board, the Borrower and an FHA approved mortgagee selected by the Designated Officer ; and

WHEREAS, the interest on the Obligation or the Bonds , as the case may be, is intended to qualify for a federal tax exemption under Section 142 of the Internal Revenue Code of 1986 (the “Code”), and to ensure that the Obligation or Bonds maintain their tax exempt status, the Borrower will enter into a Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”), which will be in substantially the same form as such agreement approved by the Board with respect to the Larkspur Financing or the Vista Villa Financing, as the case may be;

NOW, THEREFORE, BE IT RESOLVED BY THE MONTANA BOARD OF HOUSING AS FOLLOWS:

**Section 1. Public Hearing and Findings.**

(a) The Board hereby finds and determines that the Project financed through the Borrowing or the issuance of the Bonds, as the case may be, constitutes a “housing development” within the meaning of Section 90-6-103(8) of the Act; and

(b) In accordance with Section 90-6-109 of the Act, following a public hearing, the Board finds:

(i) that there exists a shortage of decent, safe and sanitary housing at rentals or prices which persons and families of lower income can afford within the general housing market area to be served;

(ii) that private enterprise has not provided an adequate supply of decent, safe and sanitary housing in the housing market area at rentals or prices which persons or families of lower income can afford or provided sufficient mortgage financing for homes for occupancy by persons or families of lower income;

(iii) that the conditions, restrictions and limitations contained in the Indenture or the Funding Loan Agreement, as the case may be, and contained in the program documents relating to the mortgage loan financed thereby and to be

financed are sufficient to ensure that the Project will be well planned and well designed so as to constitute decent, safe and sanitary housing and that the “housing sponsors” (as defined in Section 90-6-103(10) of the Act) are financially responsible;

(iv) that the Project to be financed which is referred to in paragraph (a) above will be of public use and will provide a public benefit, taking into account the existence of local government comprehensive plans, housing and land use plans and regulations, area-wide plans and other public desires;

(v) that the Project to be financed with the proceeds of the Obligation or the Bonds, as the case may be, does not involve the construction of “second homes,” which are defined in the Act to mean homes which would not qualify as the primary residence of the taxpayer for federal income tax purposes relating to capital gains on the sale or exchange of residential property; and

(vi) that if the Mortgage Loan constitutes a direct loan, in accordance with Section 90-6-109(1)(f), by virtue of the Board loaning the Obligation proceeds or Bond proceeds, as the case may be, to the Borrower pursuant to the Mortgage Loan, the Project qualifies for federal funds through its receipt of 4% federal low-income housing tax credits.

**Section 2. Approval of Funding Loan Agreement.** To the extent a Designated Official determines it is in the best interests of the Board to finance the Project through the Borrowing, the Funding Loan Agreement is hereby approved in the form hereinabove described, and any Designated Official is hereby authorized and directed to select a Fiscal Agent and to execute and deliver the Funding Loan Agreement, with such changes, insertions or omissions therein as may be approved by such signatory, such approval to be evidenced conclusively by such execution of the Funding Loan Agreement, and the Treasurer, the Secretary, the Finance Officer, the Multifamily Program Manager or any other member of the Board is hereby authorized and directed to attest thereto.

**Section 3. Authorization and Execution of the Obligation.** To the extent a Designated Official determines it is in the best interests of the Board to finance the Project through the Borrowing, the execution and delivery of the Board’s Obligation to the Lender is hereby authorized and approved. The final amount and terms of the Obligation shall be determined by a Designated Official, consistent with the terms of the Funding Loan Agreement and subject to the following conditions. The Obligation shall not be a general obligation of the Board but shall be a limited non-recourse obligation payable solely and only from Mortgage Loan payments and any other moneys pledged under the Funding Loan Agreement by the Borrower as required by the Borrower Loan Agreement (including the right to deliver the pledged note as repayment of the Borrowing). The Obligation shall mature no later than 2028, bear interest at a fixed or floating rate no greater than the net rate paid on the Mortgage Loan (i.e., net of fees due the Board and any other parties), be in a principal amount not to exceed \$6,500,000, be subject to prepayment and have the other terms and provisions as described to the Board, and definitively set forth in the Funding Loan Agreement upon execution and delivery as aforesaid in Section 2 hereof. The Obligation shall be executed and delivered substantially in the form set forth in the Funding

Loan Agreement, with such additions, omissions and changes as are required or permitted by the Funding Loan Agreement and approved by the signatories thereto. The Obligation shall be executed in the name of the Board by the Chairman or the Vice Chairman of the Board, and attested to by the Secretary or the Treasurer, and their execution shall evidence their approval of the final terms thereof. Such signatures may be by facsimile; provided, however, that such Obligation shall not be valid or obligatory for any purpose unless the attestation by the authorized officer of the Board shall be a manual signature or the Obligation is authenticated by the manual signature of an authorized officer of the Fiscal Agent.

**Section 4. Approval of Indenture.** To the extent a Designated Official determines it is in the best interests of the Board to finance the Project through the issuance and sale of Bonds instead of a Borrowing, the Indenture is hereby approved in the form hereinabove described, and any Designated Official is hereby authorized and directed to execute and deliver the Indenture, with such changes, insertions or omissions therein as may be approved by such signatory, such approval to be evidenced conclusively by such execution of the Indenture, and the Treasurer, the Secretary, the Finance Officer, the Multifamily Program Manager or any other member of the Board is hereby authorized and directed to attest thereto.

**Section 5. Authorization of Bonds.** To the extent a Designated Official determines it is in the best interests of the Board to finance the Project through the issuance and sale of Bonds instead of a Borrowing, the execution and delivery of the Board's Bonds are hereby authorized and approved. The final amount and terms of the Bonds shall be determined by any Designated Official, consistent with the terms of the Indenture and subject to the following conditions: (a) the Bonds shall not be general obligations of the Board but shall be limited obligations payable solely and only from loan payments and any other moneys pledged under the Indenture by the Borrower as required by the Indenture; (b) the Bonds shall mature no later than 2028, bear interest at a fixed rate or rates no greater than 7% per annum, be in a principal amount not to exceed \$6,500,000, be subject to optional, special optional, mandatory or sinking fund redemption or tender and have the other terms and provisions as described to the Board, and definitively set forth in the Indenture upon execution and delivery as aforesaid in Section 4 hereof; (c) the Bonds shall be executed and delivered substantially in the form set forth in the Indenture, with such additions, omissions and changes as are required or permitted by the Indenture and approved by the signatories thereto; and (d) the Bonds shall be executed in the name of the Board by the Chairman or the Vice Chairman of the Board, and attested to by the Secretary or the Treasurer, each of whom is hereby appointed as an Authorized Officer (as such term is defined in the Indenture) for purposes of executing and attesting the Bonds, and their execution shall evidence their approval of the final terms thereof (such signatures may be by facsimile; provided, however, that such Bonds shall not be valid or obligatory for any purpose until authenticated by the manual signature of an authorized officer of the Trustee).

**Section 6. Approval of Preliminary Official Statement and Official Statement.** To the extent a Designated Official determines it is in the best interests of the Board to finance the Project through the issuance and sale of Bonds instead of a Borrowing, a Preliminary Official Statement for the Bonds is hereby approved in the form used for the Vista Villa Financing, with such changes, insertions or omissions therein as may be approved by a Designated Official, each of whom is hereby authorized to execute and deliver a final official statement (the "final Official Statement") substantially in the form of the Preliminary Official Statement with such changes,

insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the final Official Statement.

**Section 7. Approval of Purchase Contract and Sale of the Bonds.** To the extent a Designated Official determines it is in the best interests of the Board to finance the Project through the issuance and sale of Bonds instead of a Borrowing, a Purchase Contract for the Bonds is hereby approved in the form used for the Vista Villa Financing and the execution of the Purchase Contract by any Designated Official is hereby authorized and directed in order to effectuate the sale of the Bonds with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Purchase Contract.

**Section 8. Approval of Regulatory Agreement.** The Regulatory Agreement is hereby approved in the form hereinabove described, and any Designated Official is authorized and directed to execute and deliver the same, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Regulatory Agreement.

**Section 9. Ratification of Prior Actions.** All action previously taken by the officers, members or staff of the Board within the authority granted herein, with respect to the above described documents, as the case may be, is hereby approved, confirmed and ratified.

**Section 10. Execution of Documents.** In the event of the absence or disability of the Chairman, the Vice Chairman or the Executive Director and Treasurer of the Board, or if for any other reason any of them are unable to execute the documents referred to in this Resolution, such documents may be executed by another member of the Board or by the Multifamily Program Manager or the Accounting and Finance Manager, with the same effect as if done by the Chairman, the Vice Chairman or the Executive Director and Treasurer of the Board and without the further authorization of the Board. The execution of such documents by such member shall be conclusive evidence of his or her authority to so act.

**Section 11. Execution of No-Arbitrage Certificate.** Any Authorized Officer is hereby authorized to issue certifications as to the Board's reasonable expectations regarding the amount and use of the proceeds of the Borrowing or the Bonds as described in Section 148 of the Internal Revenue Code of 1986, as amended.

**Section 12. Additional Actions Authorized.** The Chairman, the Vice Chairman, the Secretary or any other member of the Board, and the Executive Director and Treasurer, the Multifamily Program Manager and the Accounting and Finance Manager, acting alone or acting with others, are hereby authorized and directed to execute and deliver any or all other documents which may be required under the terms of above-described documents, as the case may be, and to take such other action as may be required or appropriate for the performance of the duties imposed thereby or to carry out the purposes thereof, and the members and officers named above are hereby designated as Authorized Representatives or Authorized Officers, as the case may be, for such purposes.

**Section 13. Effective Date.** This Resolution shall become effective immediately.

ADOPTED by the Montana Board of Housing this 8th day of August, 2018.

MONTANA BOARD OF HOUSING

Attest:

By \_\_\_\_\_  
Patrick E. Melby, Chairman

By \_\_\_\_\_  
Bruce Brensdaal, Executive Director

# BOARD AGENDA ITEM

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## PROGRAM

Multifamily Program

## AGENDA ITEM

Rockcross 4 – Great Falls – Tax exempt bond resolution re-approval.

## BACKGROUND

The resolution for Rockcross 4 was approved in February \$7,000,000 was amended in May to \$14,000,000. This resolution will replace the previous resolution and amendment. The new amount is \$20,000,000.

Bids are coming in higher than expected. The budget at this time requires \$15,000,000. MBOH and bond counsel suggest the amount should be \$20,000,000 to cover any overages.

## PROPOSAL

Staff has reviewed the proposal to raise the bond amount. Staff proposes the resolution be approved pending underwriting.

**RESOLUTION NO. 18-0808-MF04**

A RESOLUTION OF THE MONTANA BOARD OF HOUSING AMENDING CERTAIN PORTIONS OF RESOLUTION NO. 18-0430-MF01 PROPOSED AND ADOPTED AT THE APRIL 30, 2018 BOARD MEETING RELATING TO THE FINANCING OF THE ROCKCRESS APARTMENTS.

WHEREAS, the Montana Board of Housing (the "Board") proposed and adopted Resolution No. 18-0430-MF01 (the "Resolution") related to financing the acquisition, construction and equipping of the Rockcress Apartments (the "Project") at its April 30, 2018 Board meeting, as set forth in said Resolution.

WHEREAS, it has come to the attention of the Board that certain portions of the Resolution need to be amended to facilitate the successful financing of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MONTANA BOARD OF HOUSING AS FOLLOWS:

1. That the Board hereby amends the Resolution by replacing the not to exceed amount of \$14,000,000 in the recitals thereto and in Section 3 of said Resolution, with the not to exceed amount of \$20,000,000.
2. That the Board hereby ratifies the remaining portions of the Resolution not specifically amended hereby.
3. This Resolution shall become effective immediately.

[Remainder of Page Intentionally Left Blank]

ADOPTED by the Montana Board of Housing this 8<sup>th</sup> day of August, 2018.

MONTANA BOARD OF HOUSING

Attest:

By \_\_\_\_\_  
Patrick E. Melby, Chairman

By \_\_\_\_\_  
Bruce Brensdal, Executive Director

[Rockcross Amended Resolution Signature Page]

# BOARD AGENDA ITEM

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## **PROGRAM**

Multifamily Program

## **AGENDA ITEM**

RAM Exception

## **BACKGROUND**

Couple in Missoula is seeking an exception for \$55,000 to pay off mortgages, medical bills, repairs and accessible shower. Annual income is \$31,000.

## **PROPOSAL**

Presentation for the Board to consider the exception

**REVERSE ANNUITY MORTGAGE PROGRAM**  
**2<sup>nd</sup> EXCEPTION REQUEST**  
**AUGUST 8, 2018**

**Cash Advance to: \$55,000**

- Couple in Missoula
- Current annual income:  
\$31,000 after medical deductions  
Income limit for 2 = \$32,920.00

Approval pending, the applicant wishes to use the RAM Loan Lump Sum to;

- Pay off a mortgage & 2nd \$50,000
- Medical bills \$1,500
- Home repairs & accessible shower \$3,500

# BOARD AGENDA ITEM

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## PROGRAM

Multifamily Program

## AGENDA ITEM

2020 Qualified Allocation Plan

## BACKGROUND

Every state Housing Credit allocating agency is required by Section 42 to have a Qualified Allocation Plan (QAP). The Housing Credits are awarded once a year. The QAP is the rulebook for the Housing Credit Program for the year.

## PROPOSAL

The 2020 QAP draft has been created by staff working with developers and other interested parties to update and make changes to the existing QAP.

Staff is presenting the draft for board members to review. Board member changes will be incorporated by legal counsel. Upon review staff will release the 2020 QAP for public comment.

# MONTANA BOARD OF HOUSING

## HOUSING CREDIT PROGRAM

### 20~~2019~~ QUALIFIED ALLOCATION PLAN (QAP)

MONTANA BOARD OF HOUSING  
PO BOX 200528  
HELENA, MONTANA 59620-0528  
(406) 841-2840  
(406) 841-2841 FAX

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## INTRODUCTION

The Low Income Housing Tax Credit is established under Section 42 of the Internal Revenue Code of 1986 ("Section 42"). The credit is a federal income tax credit for Owners of qualifying rental housing which meets certain low income occupancy and rent limitation requirements.

Congress established the Low Income Housing Tax Credit program by enactment of the Tax Reform Act of 1986. Montana Board of Housing (MBOH) implemented and began administering the Low Income Housing Tax Credit program in 1987 in the State of Montana. Since then, the program has assisted in providing for the retention, rehabilitation, and construction of rental housing for low income individuals and families for over 6,000 units throughout Montana.

The Omnibus Budget Reconciliation Act of 1989 required the appropriate administering agencies (in this case, MBOH) to allocate credits pursuant to a Qualified Allocation Plan (QAP), which sets forth the priorities, considerations, criteria and process for making Allocations to Projects in Montana. The Omnibus Budget Reconciliation Act of 1993 provided a permanent extension for the Low Income Housing Tax Credit.

MBOH is the state agency that allocates the tax credits for housing located in Montana. The per state resident amount of tax credit allocated annually for housing is limited to the amount specified by the IRS and adjusted from time to time as provided in notice from the IRS. The current allocation of Tax Credits plus any inflation factor the IRS may calculate is posted to the MBOH website, normally in August or September each year. Montana receives the minimum cap because of its population.

An Owner must obtain a Final Allocation from MBOH and meet all other applicable requirements before claiming the tax credit.

This QAP is intended to ensure the selection of those developments which best meet the most pressing housing needs of low income people within the State of Montana in accordance with the guidelines and requirements established by the federal government and the requirements, considerations, factors, limitations, criteria and priorities established by the MBOH Board.

At its ~~January 8,~~ \_\_\_\_\_, 2018 meeting, the MBOH Board considered and approved public notice and distribution of the proposed ~~2019-2020~~ QAP. Public notice of the proposed ~~2019-2020~~ QAP and the opportunity for public comment was published and distributed on \_\_\_\_\_, ~~January 8,~~ 2018 with a public hearing on \_\_\_\_\_, ~~January 23,~~ 2018. At its \_\_\_\_\_, ~~February 13,~~ 2018 meeting, after considering written and oral public comment on the proposed ~~2019-2020~~ QAP, the MBOH Board approved the proposed ~~2019-2020~~ QAP for submission to and approval by the Montana Governor. The Governor of Montana, Steve Bullock, approved the plan as the final ~~2019-2020~~ QAP on \_\_\_\_\_, ~~March 15,~~ 2018.

MBOH annually makes available for Reservation and Allocation its authorized volume cap of credit authority subject to the provisions of this QAP. Montana's QAP for the current and prior years, along with current Forms, are available at <http://housing.mt.gov/MFOAP>. MBOH evaluates tax credit Applications, selects the Projects for which tax credits will be reserved, and allocates credits to the selected developments meeting applicable requirements. Federal legislation requires that the administering agency allocate only the amount of credit it determines necessary to the financial feasibility of the development.

Tax credits not Awarded during a given round or any unused credits from earlier rounds may, at the discretion of MBOH: be carried forward for the next round of allocation; as MBOH determines necessary for financial feasibility, be used to increase the amount of tax credits Awarded for a Project selected for an Award of tax credits in a prior round; or be otherwise committed, Awarded or Allocated as provided in this QAP.

Consistent with the foregoing and notwithstanding any other provision of this QAP, all tax credit Awards, Reservation (Initial Allocations), Carryover Commitments, 10% Cost Certifications and Final Allocations are subject to and conditional upon IRS authorization and allocation of tax credits for the State of Montana.

## SECTION 1 - DEFINITIONS

As used in this QAP, the following definitions apply unless the context clearly requires a different meaning:

“4% Credits” means HCs that may be Awarded in accordance with the applicable QAP to Projects with tax-exempt financing under the volume limitation on private activity bonds and, except as otherwise provided by this QAP for Applications combining 4% and 9% Credits, outside the competitive allocation process applicable to 9% Credits.

“9% Credits” means HCs that may be Awarded through the competitive process in accordance with the Applicable QAP.

“10% Cost Certification” means an independent third-party CPA audit report, including a statement of eligible and qualified basis for the Project, submitted to MBOH on the Form specified by and in accordance with the requirements of this QAP.

“Absorption Rate” means the number of months projected in the Application’s market study for a Project to become fully leased, using the calculations listed in the full market study guidelines posted on the MBOH website.

“Acquisition” means obtaining title, lease or other Land and Property Control over a property for purposes of an HC Project. Acquisition includes purchase, lease, donation or other means of obtaining Land or Property Control.

“Acquisition/Rehab” means Acquisition of a property with one or more existing buildings and renovation meeting Montana’s minimum Rehabilitation standard set forth in Section 3, Substantial Rehabilitation, for existing buildings on the property that are part of an HC Project.

“Allocation” means an Initial Allocation or a Final Allocation.

“Applicable QAP” means: (a) for purposes of any substantive issues relating to an Award, the Development Evaluation Criteria, Scoring, Selection Criteria and Selection Standard for such Award, and the fee amounts charged for Letter of Intent, Application, Reservation (Initial Allocation), 10% Cost Certification and Final Allocation, the particular year’s QAP under which the Application is or was submitted, evaluated and Awarded HCs; (b) for purposes of Project changes, Reservation (Initial Allocation) (other than the fee amount), Declaration of Restrictive Covenants, Carryover Commitment, 10% Cost Certification (other than the fee amount), Final Allocation (other than the fee amount), compliance requirements, compliance audits, and any post-Award procedures, the QAP most recently adopted; ~~or~~ (c) for purposes of a Credit Refresh application, consideration and determination regarding a Credit Request application, and payment of MBOH legal fees relating to or required as a result of a Credit Refresh application or Credit Refresh, and for post-Credit Refresh Project changes, Reservation, Declaration of Restrictive Covenants, Carryover Commitment, 10% Cost Certification and Final Allocation (not including fees and

fee amounts for the foregoing specified post-award items), the QAP most recently adopted as of the date of submission of the Credit Refresh application; ~~or (d) except that~~ for Projects that have received a Credit Refresh and for purposes of fees and fee amounts for post-award items (post-Credit Refresh Project changes, Reservation, Declaration of Restrictive Covenants, Carryover Commitment, 10% Cost Certification and Final Allocation), compliance requirements, compliance audits, and any other post-Award procedures, the QAP most recently adopted.

“Applicant” means the entity identified as such in the Application, and who is and will remain responsible to MBOH for the Application. When used in reference to a Letter of Intent, the term means the person or entity on whose behalf the Letter of Intent is submitted and who is and will remain responsible to MBOH for the Letter of Intent.

Commented [A1]: Update LOI form to include complete contact information.

“Application” means a request for an Award of HCs submitted in the Form specified by and according to the requirements of this QAP.

“Architect” means a professional licensed ~~by the applicable by the state of Montana authority~~ as a building architect pursuant to Mont. Code Ann. Title 37, Chapter 65.

“Available Annual Credit Allocation” is defined as and includes the state’s actual or estimated credit ceiling for the current year plus any other available credits from prior year credit authority determined as of 20 business days prior to the applicable Application deadline, and includes any credits held back pursuant to court order or subject to Award under the Corrective Award set aside.

“Award” means selection of a Project by the MBOH Board to receive a Reservation of HCs.

“Award Determination Meeting” means the meeting of the MBOH Board at which the Board selects one or more Applicants to receive an Award.

“Carryover” means the process and determination of MBOH by which Awarded and reserved HCs are continued and carried ~~over into the second year to the end of the second calendar years year after the year of the credits awarded after Award of the HCs.~~ Carryover is made by MBOH issuance of a Carryover Commitment, according to the specific requirements of this QAP.

“Carryover Commitment” means a Carryover of HCs based upon an MBOH Carryover determination, which commitment is conditional upon the Applicant performing all conditions and requirements for Final Allocation as set forth in the Applicable QAP, the Carryover Commitment document issued by MBOH and applicable law. “Cold Weather Development and Construction” means experience of the HC Developer or Consultant on one or more Projects located above the 40 degrees north parallel.

“Commercial Purposes” means use of any Project Amenities, common space or other Project property or facilities by others than tenants for which the Project owner or management receives any compensation for such use, whether in cash or in kind.

“Common Area” means any space in the building(s) on the Project property that is not in the units (except manager units), i.e. hallways, stairways, community rooms, laundry rooms, garages/carports, manager units, etc. Common Area is eligible to be paid for with Housing Credits.

“Compliance Period” means, with respect to any building, the initial period of 15 taxable years beginning with the 1st taxable year of the applicable credit period as provided in 26 U.S.C. § 42.

“Construction Costs” means all costs listed on the UniApp, Section C, Uses of Funds, under the Site Work and Construction and Rehab sections.

“Consultant” or “HC Consultant” means an individual or entity advising a Developer or Owner with respect to the HC Application and/or development process.

“Contractor’s Overhead” means the contractor’s overhead shown in the Applicant’s properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

“Contractor Profit” means the contractor’s profit shown in the Applicant’s properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

“Credit Refresh” means a conversion of previously awarded Credits, from the original credit year (i.e., the year of the Available Annual Credit Allocation from which the Credits were awarded) to a more recent Credit year, pursuant to a Board-approved return of the Credits and immediate re-Reservation of the Credits as a more recent year’s Credits, as approved by the MBOH Board in accordance with the requirements of the Applicable QAP.

“Debt Coverage Ratio” or “DCR” means the ratio of a Project’s net operating income (rental income less Operating Expenses and reserve payments) to foreclosable, currently amortizing debt service obligations.

“Design Professional” means a housing/building design professional.

“Developer” means the individual(s) and/or entity(ies) specifically listed and identified as the developer in the Uniform Application, Section A - Applicant Developer/Sponsor, responsible for development, construction and completion of an HC Project.

“Developer Fee” means those costs included by the Applicant in the UniApp, adjusted as necessary to comply with the maximum Developer’s fee specified in Section 3, Additional Cost Limitations, Developer Fees, which are included as Developer’s fees by the Cost Analysis.

“Development Evaluation Criteria” means the evaluation and scoring criteria set forth in QAP Section 9, Evaluation and Award.

“Development Team” means and includes the Applicant, Owner, Developer, General Partner, Qualified Management Company, and HC Consultant identified as such in the Application.

“Difficult Development Areas” or “DDA” means an area designated by HUD as a Difficult Development Area.

“Disqualify” or “Disqualification” means, with respect to an Application, that the Application is returned to the Applicant by MBOH without scoring and without consideration for an Award of HCs, as authorized or required by this QAP.

“Elderly Property” means a Project for which a Fair Housing Act exemption for housing for older persons will apply, i.e., for households that include at least one individual age 55 or older or in which all household members are age 62 or older, as more specifically defined in the Fair Housing Act definition of “housing for older persons” as codified at 42 U.S.C. § 3607(b)(2)(B), (C) and (C)(i). If permitted by the rules applicable to other federal funding sources involved in the Project, households may also include disabled individuals below the specified age thresholds.

“Expense Coverage Ratio” means, with respect to a Project with no hard debt included in the UniApp, the ratio of the Project’s operating income to expenses.

“Experienced Developer” means a Developer who was entitled by written agreement to receive at least 50% of the Development Fees on a prior low-income housing tax credit Project that has achieved 100% qualified occupancy and for which the applicable state

housing finance agency has conducted a compliance audit which revealed no significant problems.

“Experienced Partner” means a member of the Development Team who was a member of the Development Team on a prior low-income housing tax credit Project that has achieved 100% qualified occupancy and for which the applicable state housing finance agency has conducted a compliance audit which revealed no significant problems.

“Extended Use Period” means the Compliance Period plus an additional period of at least 15 years, or a longer period, as specified in the Application and the Restrictive Covenants.

“Fee Schedule” means the most current version of the Fee Schedule Form referenced in this QAP. The Fee Schedule is available on the MBOH website.

“Final Allocation” means, with respect to HCs, MBOH issuance of an IRS Form 8609(s) (Low Income Housing Credit Allocation Certificate) for a Project after building construction or Rehabilitation has been completed according to the Project Application and any MBOH or MBOH Board-approved changes and the building has been Placed in Service.

“Final Cost Certification” means an independent third-party CPA audit report, including a statement of eligible and qualified basis for the Project, submitted to MBOH on the form specified by and in accordance with the requirements of this QAP, for purposes of obtaining IRS Form 8609(s).

“Form” means the most current version of any MBOH Form referenced in this QAP. All Forms are available on the MBOH website.

“General Partner” means the general partner of a partnership entity that is formed for purposes of a Project.

“General Requirements” means the contractor's miscellaneous administrative and procedural activities and expenses that do not fall into a major-function construction category and are Project-specific and therefore not part of the contractor's general overhead, categorized in accordance with NCSHA standards and shown in the Applicant's properly completed UniApp Supplement, Section C, Limitations and Requirements.

“Gut Rehab” means a Project that includes the replacement and/or improvement of all major systems of the building, including (a) removing walls/ceilings back to the studs/rafters and replacing them; (b) removing/replacing trim, windows, doors, exterior siding and roof; (c) replacing HVAC, plumbing and electrical systems; and (d) replacing and/or improving the building envelope (i.e., the air barrier and thermal barrier separating exterior from interior space) by either removing materials down to the studs or structural masonry on one side of the exterior walls and subsequently improving the building envelope to meet the whole-building energy performance levels for the project type, or creating a new thermal and air barrier around the building.

“Hard Costs” means and includes building Acquisition costs, Site Work costs and Construction and Rehab costs, as shown in the Applicant's properly completed UniApp Supplement, Sections C, Uses of Funds.

“Hard Cost Per Square Foot” means Hard Costs divided by Project Square Footage shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

“Hard Cost Per Unit” means an amount calculated by dividing Hard Costs by the number of units in the Project, as calculated in the UniApp Supplement, Section C, Cost Limitations and Requirements, Part XI, line “Cost Per Unit.”

“Housing Credits” or “HCs” or “Credits” means federal low-income housing tax credits allocated or available for allocation under this Montana QAP.

“Initial Allocation” means the conditional setting aside by MBOH of HCs from a particular year’s federal LIHTC allocation to the state for purposes of later Carryover Commitment and/or Final Allocation to a particular Project, as documented by and subject to the requirements and conditions set forth in a written Reservation Agreement, the Applicable QAP and federal law.

“Investor” means an entity that will directly or indirectly purchase HCs from the awardee.

“Land or Property Control” means legally binding documentation of title or right to possession and use of the property, or the right to acquire title or right to possession and use of the property, for purposes the Project, including but not limited to documentation of fee ownership, lease, buy/sell agreement, option to purchase or lease, or other right, title or interest that will allow the Owner to acquire Proof of Ownership for purposes of Carryover.

“Large Project” means, for purposes of the Soft Cost Ratio, a Project with more than 24 low-income units.

“Letter of Intent” means a letter and attachment submitted to MBOH on the MBOH Letter of Intent Form.

“Low-Income Housing Tax Credits” means federal low-income housing tax credits, referred to in this QAP as HCs.

“Management Company” means a person or entity that has contracted with the Owner to manage the Project property, including such activities as leasing units, enforcing lease requirements and rules, repairs and maintenance, Housing Credit compliance and other matters relating to the operation of the project.

“Nationally-Recognized LIHTC Compliance Training Company” means a company recognized in the Low Income Housing Tax Credit industry as a qualified Low Income Housing Tax Credit compliance trainer.

“NCSHA” means the National Council of State Housing Agencies.

“New Construction” means construction of one or more new buildings, and includes Gut Rehabs.

“Operating Expenses” means projected ongoing costs to run or operate a property, not including expenses for amortization, depreciation or mortgage-related interest.

“Owner” means the legal entity that owns the Project.

“Permanent Supportive Housing” combines affordable housing with wrap-around supportive services for people experiencing homelessness, as well as other people with disabilities.

**“Placed in Service” means: (a) for a new or existing building, the certification of the building or the date of certification of the building as being suitable for occupancy in accordance with state or local law through issuance of a certificate of occupancy, except as otherwise provided in this QAP or Section 42; and (b) for rehabilitation expenditures that are treated as a separate new building, the close of any the 24-month period, determined in compliance with Section 42, over which such expenditures are aggregated, except as otherwise provided in this QAP or Section 42. For purposes of subsection (b), or, if rehabilitation is completed and the minimum expenditures requirement of Code Section 42(e)(3)(A) is met in less than 24 months, the expenditures may be treated as placed in service at the close of that shorter period, determined in compliance with**

**Commented [A2]:** Define for rehab projects – see IRS definition. Can we reference IRS definition?

**Commented [A3R2]:** The proposed language follows Section 42 provisions. See IRC § 42(e)(4)(A); see also IRS Advance Notice 88-116 for definitions of “placed in service.” If the rehab is completed and the minimum expenditures requirement of IRC 42(e)(3)(A) is met in less than 24 months, the expenditures can be placed in service at the close of that shorter period of time. See PLR 107637-00.

Section 42, except as otherwise provided in. This definition is subject to the applicable provisions of this QAP or Section 42 and in the event of a conflict between this definition and Section 42, the provisions of Section 42 shall control.

"Preservation" means Projects that are for the Acquisition and ~~for~~ Rehabilitation, or Rehabilitation, of existing affordable housing stock.

"Project" means the low income residential rental building, or buildings, that are the subject of a Letter of Intent or an Application for or an Award of HCs.

"Project Square Footage" means such portion of the total square feet applicable to low-income Units and Common Areas and used for the applicable square footage calculation in the UniApp under Section B - Program Information, Part X, "Project Uses." Project Square Footage includes all building square footage available to or serving tenants, including units, management unit(s) and offices, Common Area, balconies, patios, storage and parking structures.

"Proof of Ownership" means title or right to possession and use of the property for the duration of the Compliance Period and any Extended Use Period plus one year, e.g., a recorded deed or an executed lease agreement.

"Qualified Allocation Plan" or "QAP" means this Montana qualified allocation plan required by Section 42 of the Code.

"Qualified Census Tract" or "QCT" means an area designated as such by HUD.

"Qualified Management Company" means a Management Company that meets the education requirements specified in Section 12, Education Requirements, and is not disqualified by MBOH to serve as a Management Company on existing, new or additional tax credit Properties or Projects, based upon the company's: (a) failure to complete timely any required training; (b) failure to have or maintain any required certification; (c) record of noncompliance, or lack of cooperation in correcting or refusal to correct noncompliance, on or with respect to any tax credit or other publicly subsidized low-income housing property; or (d) delinquent MBOH late fees (unless the Management Company demonstrates to the satisfaction of MBOH that such noncompliance or lack of cooperation was beyond such company's control).

"Qualified Nonprofit Organization" means, with respect to a Project, an organization exempt from federal income tax under Section 501(c) (3) or (4) of the Internal Revenue Code, which is not and during the Compliance Period will not be affiliated with or controlled by a for-profit organization, whose exempt purposes include the fostering of low income housing, which owns an interest in the Project, which will materially participate in the development and operation of the Project throughout the Compliance Period, and which is not affiliated with or controlled by a for-profit organization.

"Rehabilitation," "Rehab" or "Substantial Rehabilitation" means renovation of a building or buildings to house HC units meeting the required minimum Hard Cost Per Unit thresholds specified in Section 3, Substantial Rehabilitation.

"Related Party" means an individual or entity whose financial, family or business relationship to the individual or entity in question permit significant influence over the other to an extent that one or more parties might be prevented from fully pursuing its own separate interests. Related parties include but are not limited to: (a) family members (sibling, spouse, domestic partner, ancestor or lineal descendant); (b) a subsidiary, parent or other entity that owns or is owned by the individual or entity; (c) an entity with common control or ownership (e.g., common officers, directors, or shareholders or officers or directors who are family members of each other); (d) an entity owned or controlled through ownership or control of at least a 50% interest by an individual (the interest of the

individual and individual's family members are aggregated for such purposes) or the entity (the interest of the entity, its principals and management are aggregated for such purposes); and (e) an individual or entity who has been a Related Party in the last year or who is likely to become a Related Party in the next year.

"Reservation" means MBOH's Initial Allocation of HCs from a particular year's federal LIHTC allocation to the state for purposes of later Carryover Commitment and/or Final Allocation to a particular Project, as documented by and subject to the requirements and conditions set forth in a written Reservation Agreement, the Applicable QAP and federal law.

"Reservation Agreement" means a written contract entered into between MBOH and the taxpayer to provide for a Reservation and setting forth the terms and conditions under which the taxpayer may obtain a Carryover Commitment or Final Allocation.

"Restrictive Covenants" means the recorded covenants required by Section 42 of the Code.

"Selection Criteria" means and includes all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides and priorities set forth in this QAP and all federal requirements.

"Selection Standard" means the standard for selection of Projects to receive an Award of HCs set forth in the Award Determination subsection of Section 9, Evaluation and Award, i.e., the MBOH Board's determination that one or more Projects best meet the most pressing housing needs of low income people within the state of Montana as more specifically set forth in such subsection.

"Small Project" means a Project with 24 or fewer low-income units.

"Small Rural Project" means, ~~for purposes of the Small Rural Project set aside,~~ a Project: (a) for which the submitted tax credit Application requests tax credits in an amount up to but no more than 12.5% of the state's Available Annual Credit Allocation, and (b) proposed to be developed and constructed in a location that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula.

"Soft Costs" means the costs of professional work and fees, interim costs, financing fees and expenses, syndication costs, soft costs and Developer's fees as shown in the Applicant's properly completed UniApp, Section C - Uses of Funds. Soft Costs do not include operating or replacement reserves.

"Soft-Cost-to-Hard-Cost Ratio" or "Soft Cost Ratio" means total Soft Costs divided by the sum of total Hard Costs (as calculated in the UniApp) and land value (the highest value of what is shown in a comparative market analysis, appraisal or arm's length sale). Land value is added regardless of whether land is donated, leased, purchased or otherwise acquired.

"Sources and Uses" means the sources and uses of funds as specified in the Application.

"Substantial Change" means a substantial change in the Project from the Project as set forth in the Application, and includes a change in or to:

- A member of the Development Team occurring prior to Placed in Service;
- Participating local entity;
- Quality or durability of construction;
- Number of units or unit composition;
- Site or floor plan;
- Square footage of Project building(s);
- Project amenities;

- Income or rent targeting;
- Rental subsidies;
- Target group;
- Project location;
- Sources and Uses (to the extent any ~~line item~~UniApp section changes by 10% or more);
- Common Space square footage, location or purposes;
- Housing Credits required for the Project;
- Extended Use Period;
- Any Application item or information required by the Applicable QAP;
- Any item that would have resulted in a lower Development Evaluation Criteria Score under the Applicable QAP; and
- Any other significant feature, characteristic or aspect of the Project.

“Total Project Cost” mean all costs shown in UniApp Section C, Part II, Uses of Funds line “Total Projects Costs without Grant Admin”. Total Project Cost does not include grant administration costs.

“Total Project Cost Per Square Foot” means Total Project Costs divided by Project Square Footage shown in the Applicant’s properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

“Total Project Cost Per Unit” means an amount calculated by dividing Total Project Costs by the number of units in the Project, as calculated in the UniApp Supplement, Section C, Cost Limitations and Requirements, Part XI, line “Cost Per Unit.”

“UniApp” means the most current Uniform Application and Supplement available on the MBOH website at: <http://housing.mt.gov/FAR/housingapps.mcp.x>.

“UniApp Supplement” means the Supplement portion of the UniApp.

“Unit” means an income-restricted or market rate tenant or management (manager, security or other) residential apartment or single-family home.

“Vacancy Rate” means percentage of vacant affordable units in the Application’s market area or in the property.

## **SECTION 2 - OVERVIEW OF HOUSING CREDITS**

A BRIEF SUMMARY OF SOME ELEMENTS OF THE HOUSING CREDIT IS AVAILABLE ON THE MBOH WEBSITE AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THERE ARE NUMEROUS TECHNICAL RULES GOVERNING A BUILDING’S QUALIFICATION FOR THE HOUSING CREDIT, THE AMOUNT OF THE HOUSING CREDIT, AND AN OWNER’S ABILITY TO USE THE HOUSING CREDIT TO OFFSET FEDERAL INCOME TAXES. ANYONE CONSIDERING APPLYING FOR HOUSING CREDITS SHOULD REFER, IN ADDITION TO THIS QAP, TO SECTION 42 OF THE UNITED STATES INTERNAL REVENUE CODE (26 U.S.C. § 42). DEVELOPERS OR OWNERS INTERESTED IN APPLYING FOR A CREDIT ALLOCATION SHOULD CONSULT THEIR OWN TAX ACCOUNTANT OR ATTORNEY IN PLANNING A SPECIFIC TRANSACTION.

## **SECTION 3 - MONTANA SPECIFIC REQUIREMENTS**

### **A. Eligible Applicants**

An Applicant who previously received an Award of Credits for its first Housing Credit Project in Montana may not receive an Award of Credits for another Housing Credit Project until the

first Project has achieved 100% qualified occupancy and an MBOH compliance audit has been conducted which revealed no significant problems. For purposes of this rule, Applicants are considered to be the same Applicant if the Applicants are Related Parties or if the same Developer or a Related Party of the Developer will receive more than 50% of the Development Fees for both Projects. The foregoing rule does not apply to a subsequent Housing Credit Application if the Developer partners with an Experienced Developer who will be entitled under a written agreement to receive at least 50% of the Developer Fee on the subsequent Project. The Applicant is not eligible to apply for Credits if the Applicant or any member of the Applicant's Development Team is debarred from federal programs or FHLB (Federal Home Loan Bank), prohibited from applying for LIHTCs by another state HFA for disciplinary reasons, or has delinquent late fees due and payable to MBOH. If any member of the Development Team has delinquent late fees due and payable to MBOH at any time from submission of Letter of Intent through the Award Board meeting, the Application will be ineligible for an Award of Credits until such fees are paid in full. If such late fees are not paid in full within ten (10) business days of written notice, the Application will be returned and will receive no further consideration. Application fees will not be refunded.

## **B. Housing Credit Proceeds**

In order to allow MBOH to adequately evaluate Sources and Uses for Housing Credit Projects, the Applicant is required to provide information to MBOH regarding the proceeds or receipts generated from the Housing Credit.

At Application, expected Credit proceeds must be estimated by the Applicant. **Within 30 days after the partnership or operating agreement is signed by all parties, the Applicant must provide MBOH with a copy of the executed agreement.** If MBOH does not receive a copy of the executed agreement within 30 days of execution, a late fee will be assessed. Prior to issuance of IRS Form 8609(s), MBOH will require the accountant's certification to include gross syndication proceeds and costs of syndication, even though the costs are not allowed for eligible basis.

## **C. Sources and Uses Certification**

Applicants must certify that they have disclosed all of a Project's Sources and Uses, as well as its total financing, and must disclose to MBOH in writing any future changes in Sources and Uses over 10% in any ~~line item~~ [UniApp section](#) or any increase in Soft Costs throughout the development period (until 8609's are received). Applicant's certification of such disclosure must be provided to MBOH at Application, at 10% Cost Certification and at Final Cost Certification on the MBOH Disclosure Certification Form.

## **D. Development Cost Limitations**

To balance housing needs in Montana with appropriate and efficient use of the state's allocation of tax credit authority, MBOH has adopted the following cost limitations and requirements for purposes of calculating the Housing Credit amount for a particular Project. These cost limitations are based upon and in accordance with NCSHA standards.

### **1. Hard Cost Per Unit/Hard Cost Per Square Foot and Total Project Cost Per Unit/Total Project Cost Per Square Foot**

Hard Cost Per Unit, Hard Cost Per Square Foot, Total Project Cost Per Unit and Total Project Cost Per Square Foot are subject to the specific limitations provided in other sections of this QAP. In addition, even for those projects meeting such specific limitations, MBOH will evaluate such Cost Per Unit and Cost Per Square Foot for all Projects for reasonableness, taking into account the type of housing, other development costs as detailed below, unit sizes, the intended target group of the housing and other relevant factors. MBOH will also

consider in this review the area of the state and the community where the Project will be located.

All Applications must provide justification for development costs. These costs will be analyzed and scrutinized considering the individual characteristics of the Project listed above and will be compared to other like Projects.

Even though the costs of some Projects may be justifiable and even in some contexts considered reasonable given their unique characteristics, MBOH may decline to Award Credits to a Project where it determines that costs do not reflect the optimal use of Housing Credits.

The following limit must be met:

- o Total Project Costs Per Unit may not exceed ~~\$235,000~~ **\$240,000**.

Applications exceeding this limit will be returned un-scored and will receive no further consideration, and the application fee will not be refunded. Projects must meet this limit at Letter of Intent, Application, 10% Cost Certification and Final Cost Certification. If this limit is exceeded at Final Cost Certification, negative points will be assessed with respect to future Applications as provided in Section 9, Item 9, Developer Knowledge and Responsiveness. The negative points assessment provided in this paragraph for exceeding the Total Project Costs Per Unit limit will apply only prospectively to Projects Awarded Credits in the 2017 or later Award rounds.

## **2. Additional Cost Limitations**

Applications must comply with the following limitations on Contractor Overhead, General Requirements, Contractor Profit and Developer Fee. To the extent an Application exceeds these cost limitations, as calculated in UniApp Section C, Cost Limitations and Requirements, the excessive costs will be reduced to the limit amount for all purposes under the HC program, including without limitation, calculation of basis and eligible Project costs, determination of Credit eligibility, and any Award, Reservation (Initial Allocation) or Final Allocation of Credits.

### **a. Contractor's Overhead**

Contractor's Overhead is limited to a maximum of 2% of Construction Costs.

### **b. General Requirements**

General Requirements are limited to a maximum of 6% of Construction Costs.

### **c. Contractor Profit**

Contractor Profit will be limited to a maximum of 6% of Construction Costs.

### **d. Developer Fees**

Developer Fees for New Construction or Rehabilitation will be limited to a maximum of 15% of Total Project Costs. For purposes of this Developer Fee limit, Total Project Costs do not include Developer Fees, Project reserves or land costs. HC Consultant fees (amount must be disclosed) will be included as part of and subject to the limit on Developer Fees. Architectural, engineering, and legal services are considered to be professional services, and fees for such services are not included as Developer Fees for purposes of this limitation.

Developer fees for Acquisition will be limited to a maximum of 15% of the Project Acquisition costs.

### **e. Disclosure of Transactions Involving Related Parties**

If the development includes transactions with Related Parties, all such transactions must be disclosed, any profit from those transactions must be subtracted from the Total Project Cost before calculating the 15% maximum Developer Fee and 6% maximum Contractor Profit. Failure to fully disclose Related Party transactions may result in the Project's not receiving an Award of Housing Credits. MBOH reserves the right to negotiate lower Developer Fees and Contractor Profit or other Soft Costs on Projects involving Related Party transactions.

**f. Limitation on Soft Costs**

The Soft-Cost-to-Hard-Cost Ratio ("Soft Cost Ratio") for the Project, based upon the Application's UniApp, may not exceed: (i) 32% for Large Projects (more than 24 units); (ii) and 37% for Small Projects (24 or fewer units) or Small Rural Projects; or (iii) 40% for 4% Credit Projects. For combined 4%/9% Projects, this limit will apply to the Soft Cost Ratio calculated based upon the combined costs for the 4% and 9% Projects. If the Soft Cost Ratio for a Project exceeds the applicable maximum, MBOH will contact the Applicant regarding the excessive costs and allow the Applicant to specify how and by what amount its Soft Costs will be reduced to comply with the maximum. The Applicant must communicate its chosen Soft Costs adjustments to MBOH staff in writing within ten (10) business days after such communication and the Application will be deemed amended to reflect such adjustments for all purposes under the HC program. All such Soft Cost adjustments and the Application, as amended to reflect such adjustments, must comply with this QAP in all other respects. If the Applicant fails to communicate its Soft Cost adjustments to MBOH staff within the required time, MBOH staff will decide how and by what amount Soft Costs will be reduced to comply with the maximum and the Application will be deemed amended to reflect such adjustments for all purposes under the HC program. Projects must meet this limit at Letter of Intent, Application, 10% Cost Certification and Final Cost Certification. For Projects Awarded Credits for 2018 or later years, if this limit is exceeded at Final Cost Certification, negative points will be assessed with respect to future Applications as provided in Section 9, Item 9, Developer Knowledge and Responsiveness.

**g. Professional Fees**

Professional fees include but are not limited to fees for architectural, engineering, environmental, accounting, legal, market analysis, construction management and asset management services. The ~~Application financial~~ narrative in the Uses Tab of the UniApp must address and provide justification for professional fees. These fees will be compared as a percentage to construction costs for reasonableness. Specific limits may be adopted in a future plan if needed.

**E. Underwriting Assumptions and Limitations**

**1. Credit Percentage Rate for Housing Credit Calculation**

The credit percentage rate published by the federal government for the month prior to the date of Application will be used by Applicants and MBOH for purposes of preparation, submission, underwriting and evaluation of Applications and Award of HCs.

**2. Operating Expenses**

MBOH will evaluate Operating Expenses and Vacancy Rate underwriting assumptions for all Projects for reasonableness, taking into account the type of housing, unit sizes, intended target group of the housing and the location of the Project within the area of the state and the community. Staff may require the Applicant to provide additional justification and documentation regarding any Operating Costs deemed to be outside the normal range.

**3. Debt Coverage Ratio**

The Debt Coverage Ratio (“DCR”) should be:

- For Projects whose DCR is projected to trend upward through the first 15 years of normal operation, the DCR should be between 1.15 and 1.35 in the first year of normal operation, i.e., year 1 as shown on the DCR calculation of the UniApp.
- For Projects whose DCR is projected to trend downward through the first 15 years of normal operation, the DCR should be between 1.10 and 1.50 during the entire first 15 years of normal operation i.e., the 15-year period that begins with year 1 as shown on the DCR calculation of the UniApp.

DCR's outside these ranges must be justified in the Application narrative to the satisfaction of MBOH, in its sole discretion. In determining whether the Applicant's justification is acceptable, MBOH will consider the reasonableness of the Project's proposed rent levels, Operating Expenses, reserve payments, projected Vacancy Rates, debt service obligations, Soft Costs and amount of Credits requested. If the DCR, as underwritten by MBOH at Application, falls outside the ranges specified above without justification acceptable to MBOH, MBOH will reduce the amount of Credits requested by the Applicant to an amount determined by MBOH to be necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period.

MBOH considers several variables, including projected Vacancy Rates (which may require upward adjustment for Small Projects) and Operating Cost data, in conjunction with debt service coverage, in judging the long-term financial viability of Projects. MBOH may require adjustments to rents or Credit amount to assure the Credits Awarded are no greater than necessary to make the Project feasible.

MBOH will evaluate the DCR at Application, at 10% Cost Certification and at Final Cost Certification. In addition, for Projects Awarded Credits for 2018 or later years, if the DCR at 10% or Final Cost Certification has changed significantly from the DCR as underwritten by MBOH at Application, MBOH may assess negative points to the next Application that includes any member of the Development Team.

#### **4. Total Expense Ratio**

MBOH will review the Project's Total Expense Ratio for reasonableness. The Total Expense Ratio is the total income divided by total expenses, including debt service. As a benchmark, NCSHA recommended practices use a 1.10 ratio. The Board will consider projects on a case by case basis that deviate materially from this ratio. Projects should discuss this ratio in their narrative if this ratio deviates materially.

#### **5. Maximum Rents**

The MBOH Board may require that rents be maintained at a specified percentage of maximum target rent throughout the Extended Use Period. If required for a particular Project, this limitation must be specifically included as a condition of the HC Award and included in the Project's Restrictive Covenants.

#### **6. Operating Reserves**

Minimum operating reserves must be established and maintained in an amount equal to at least four months of projected Operating Expenses, debt service payments, and annual replacement reserve payments. The specific requirements for reserves, including the term for which reserves must be held, must be included in the limited partnership or operating agreement and meet the requirements of the Investor. Using an acceptable third party source, this requirement can be met by cash, letter of credit from a financial institution, or a Developer guarantee that a syndicator has accepted the responsibility for a reserve.

#### **7. Replacement Reserves**

Replacement reserves must be contributed in an amount equal to at least \$300.00 per unit annually. Exceptions may be made for certain special needs or supportive housing developments. Exceptions must be documented and will be reviewed on a case by case basis. The specific requirements for reserves, including the term for which reserves must be held, will be included in the limited partnership or operating agreement and meet the requirements of the Investor.

#### **8. Utility Allowances**

The Montana Department of Commerce Section 8 Utility Allowances are the only acceptable utility allowances for Applications, unless otherwise provided by USDA (Rural Development), an MBOH-approved allowance or a HUD Utility Model Utility allowances provided by utility providers will not be considered or accepted. For purposes of calculating the Maximum Rent limitation under this QAP, the gross rent is the sum of the rent amount payable by the tenant and the utility allowance amount determined in accordance with this Subsection 8.

#### **9. Additional Underwriting Assumptions**

The following underwriting assumptions will be used by MBOH for underwriting of all Applications:

- Vacancy rates: 10% - 20 units and less, 7% - more than 20 and up to 50 units, 5%- more than 50 units or 100% project based rental assistance;
- Income Trending: 2%;
- Expense Trending: 3%;
- Reserves Trending: as proposed in Application but not to exceed 3%;
- Debt Coverage Ratio: see "Debt Coverage Ratio" subsection above;
- Structured Debt for pro-forma not allowed; and
- Operating expenses per unit: \$3,000-\$6,000 annually.

These underwriting assumptions will be used at Application, 10% Cost Certification and Final Cost Certification. Credits will not be Awarded in an amount beyond those needed to make the Project feasible according to these underwriting assumptions.

#### **F. Project Accessibility Requirements**

The Fair Housing Act, including design and accessibility requirements, applies to HC properties. In addition to meeting Fair Housing Act requirements, MBOH requires that all New Construction units and common areas and Rehabilitation that at least replaces interior walls and doors must incorporate the following:

For Rehab, items 3 and 4 below apply to all units and all floors where moving walls, removing wall coverings, or doing new wiring or rewiring.

1. 36 inch doors for all living areas (except pantry, storage, and closets).
2. All door hardware must comply with Fair Housing Act standards for all units.
3. Outlets mounted not less than 18 inches above floor covering.
4. Light switches, control boxes and/or thermostats mounted from 36 to 48 inches above floor covering.
5. Walls adjacent to toilets, bath tubs and shower stalls must be reinforced for later installation of grab bars.
6. All faucets must be lever style.
7. A minimum of a ground floor level half-bath with a 30X48 inch turn space (also required in Rehabilitation unless waived by staff for structural limitations or excessive cost, etc.) (does not apply if there is no living space on the ground floor level).

8. No-step entry to all ground floor level units.
9. Compliance with accessibility requirements must be certified in the architect's letter of certification submitted with the 8609(s) submission. It is suggested but not required that Projects also include parking for caregivers for tenants with disabilities and that a lease addendum provide for moving a household without tenants with disabilities from a handicapped accessible unit to a regular unit if the handicapped accessible unit is needed for rental to a tenant with a disability.

## **G. Energy, Green Building and Other Initiatives, Goals and Requirements**

The following items in Subparagraphs A through K specify voluntary initiatives and goals which MBOH encourages Developers to consider in the planning and development of Projects, as well as certain Project requirements. These items are required only where so indicated by the use of mandatory language (e.g., "must"). Such initiatives, goals and requirements are subject to any further applicable provisions of this QAP.

### **1. Integrated Design Process and Community Connectivity**

Project development and design includes a holistic approach. Processes include neighborhood and community involvement to ensure Project acceptance and enhancement. Integrated design processes ensure higher quality finish Project. Existing neighborhood edges, characteristics, fabric are considered in the Project design. Some considerations may include but are not limited to a community design charrette, incorporating Project into neighborhood fabric, energy modeling, commissioning, infrared testing, etc. (see Required Infrared Testing for Projects Awarded Credits, below).

### **2. Visitability and Universal Design Principles**

Applicants should consider inclusion of visitability and universal design principles in development of the Project. MBOH encourages strong advertising of accessible features when advertising new construction through the Multiple listing services or through MontanaHousingSearch.com.

### **3. Sustainable Site, Location and Design**

The building(s) and Project site, including the surrounding area, provide opportunities for education, alternative transportation, services, and community facilities. This is evidenced, for example, by Projects using existing infrastructure, reusing a building or existing housing, redeveloping a greyfield/brownfield, or developing in an existing neighborhood. Design elements use the site's characteristics and reduce impact on the site allowing for open space and other amenities, such as infill projects, rehabilitating existing building(s), rehabilitating existing housing, providing carpooling opportunities, using well water for landscaping, etc.

### **4. Passive House Standard**

Passive House is a voluntary international building standard developed by the Passive House Institute (PHI), located in Darmstadt, Germany (referred to as the "Passive House Standard"). The Passive House Standard is composed of several strict performance requirements for new building construction. For the renovation of existing buildings, PHI developed a similar if slightly more lenient performance standard. The resulting performance represents a roughly 90% reduction in heating and cooling energy usage and up to a 75% reduction in primary energy usage from existing building stock.

### **5. Energy and Water Conservation**

Design features, product selection and renewable energy options directly reduce use of resources and result in cost savings. Design and product selection exceeds applicable

energy codes in performance. Examples include but are not limited to Energy Star appliances, drip irrigation, low flow fixtures, dual flush or composting toilets, ground source heat, duct sealing, rain water collection, and low water consumption plants.

#### **6. Material and Resource Efficiency**

Material selections are better quality, designed for durability and long term performance with reduced maintenance. Products used are available locally and/or contain recycled content. Construction waste is reduced in the Project through efficient installation or recycling waste during construction. Considerations include but are not limited to construction waste management specification, recycled content products, local materials, reuse existing building materials, certified lumber, and sustainable harvest lumber.

#### **7. Amenities**

Applicants may consider for inclusion in the Project the amenities listed in the Amenities Form to be provided at no charge to tenants in the Project. Luxury amenities will not be considered or funded with tax credits. Items deemed luxury amenities include but are not limited to swimming pools, golf courses, tennis courts and similar amenities. The added costs of the Project attributable to higher quality amenities will be considered on a Project by Project basis for a cost to benefit assessment.

Amenities provided will not be used for Commercial Purposes. All Projects previously Awarded tax credits are subject to this restriction but are grandfathered only to the extent Commercial Purposes were specifically included in the Application.

#### **8. Healthy Living Environments (Indoor Environmental Quality)**

Materials and design contribute to a healthy and comfortable living environment. Mechanical system design, construction methods and materials preserve indoor air quality during construction as well as the long term performance such as fresh air circulation and exhaust fans, bathroom and kitchen fans exhausting air and moisture, material selection with low toxicity and low VOC (volatile organic compounds) paints, sealants, and adhesives.

#### **9. Smoke-Free Housing**

Promoting healthy behaviors can also have a large impact on residents at no additional cost to the Developer. Smoke-free policies protect residents against the harmful health impacts of tobacco smoke, greatly reduce the risk of fires, and prevent damage to units caused by tobacco smoke. Such policies also make properties more attractive to those who do not allow smoking in their own homes.

For New Construction Projects seeking or awarded 2016 or later year Credits, the Owner (and any Management Company) must establish and implement a written policy that prohibits smoking in the units and the indoor Common Areas of the Project, including a non-smoking clause in the lease for every Project unit. The Owner (and any Management Company) rather than MBOH will be responsible to establish, implement and enforce such written policy and lease clause. The Owner and Management Company also must make educational materials on tobacco treatment programs, including the phone number for the Montana Tobacco Quit Line, available to all tenants of the Project. The Montana Tobacco Use Prevention Program Smokefree Housing Project can provide educational materials and smokefree signage to property owners and managers free of charge, as requested. If smoking is allowed outside on the Project property, it is recommended that the written smoking policy require that smoking be restricted to areas no closer than 20 feet from all building entrances and exits. The written policy must provide appropriate exceptions for bona fide cultural or religious practices.

#### **10.State of Montana Building Code**

All Projects must comply with State of Montana Building Code, whether or not the State of Montana building code has been adopted in the Project's jurisdiction.

#### **11. Required Infrared Testing for Projects Awarded Credits**

*For Rehabilitation Projects Awarded HCs:* Infrared tests will be required on at least 10% of units and a representative sampling of Common Areas both before and after the Rehabilitation to demonstrate that improvement has been achieved. MBOH staff may approve changes to the sample size selected. A summaryProof of such testing must be submitted to MBOH within 30 days of testing and reviewed by MBOH to qualify for issuance of IRS Form 8609(s), demonstrating that at the time of testing there was at least 20 degrees temperature difference from outdoors to inside the unit. Infrared testing must be performed by a certified tester.

### **H. Substantial Rehabilitation**

Montana's minimum Substantial Rehabilitation standard is expenditures the greater of (1) \$15,000 (for 4% Projects)/\$25,000 (for 9% Projects) of Hard Cost Per Unit, or (2) an amount which is not less than 30% of the adjusted basis of the building during a 24-month or shorter period. Because Montana's Substantial Rehabilitation standard is higher than the federal minimum of \$6,200.00 in Hard Costs and 20% of adjusted basis, Montana's higher Substantial Rehabilitation standard applies.

Rehabilitation Projects applying for (9%) competitive credits must meet all requirements of the capital needs assessment and the Application must also include a list of items in each unit that will be replaced, refinished, repaired, upgraded, or otherwise rehabilitation in the Project and a detailed narrative explaining the scope, details and expectations of the rehabilitation.

### **I. Tax Exempt Bond Financed Projects**

Projects with tax-exempt financing under the volume limitation on private activity bonds ("4% Projects") may be eligible to receive Housing Credits outside the state's tax credit allocation volume cap. Applications must meet all requirements of the applicable QAP and must meet at least the minimum Development Evaluation Criteria score specified in Section 9, below, to receive an Allocation of Housing Credits. Projects with tax exempt financing must submit a certification from the bond financing agency indicating that the Project meets the public purpose requirements of the bonds and that the Project is consistent with the needs of the community. For purposes of Application, evaluation and Awarding tax credits with respect to 4% Projects, the Applicable QAP is the version of the QAP most recently and finally adopted as of the date of Application submission.

### **J. Eventual Home Ownership**

The opportunity for eventual home ownership allows for Projects, with sufficient justification, to make units available to be purchased by the current tenants after 15 years of successful performance as an affordable rental. Several supplemental Application documents are required for Projects that include eventual home ownership. The Application must: (1) address how the Owner will administer the transfer of ownership to a qualified homebuyer at the end of the Compliance Period; (2) either identify the price at the time of the title transfer or a reasonable process to determine the price; (3) document that the potential owners will be required to complete a homebuyer counseling program; and (4) identify how Reserve for Replacement funds will be used at the time of sale of the properties.

At the time of sale, the HC Owner must provide a copy of the title transfer together with a certificate verifying that the new homeowner completed a homebuyer program within five

years prior to the transfer of title. Enforceable covenants must maintain the home as affordable and prevent sale or resale to a realtor, financial institution, or a family with an income over 80% AMI, or more than 80% of FHA appraised value. Families who exceed income levels of 80% of AMI at the time of the sale must have qualified at the appropriate AMI contained in the recorded Restrictive Covenants for the Project evidenced by the Tenant Income Certification at the initial rent-up for the family. Tenant qualification documentation must be sent to MBOH for approval before the sale is completed. Please contact MBOH for current forms. Units not sold under the Eventual Home Ownership Program must remain in compliance with Section 42 until such time as they are sold to a qualified buyer or the end of the Extended Use Period.

## **K. 130% Basis Boost**

### **1. Basis Boost for QCT and DDA Projects**

Federal law permits MBOH to reserve Housing Credits based on a "basis boost" of 30% for Projects in a Qualified Census Tract ("QCT") or in HUD designated Difficult Development Areas ("DDA"). In addition, a 30% "basis boost" may be available for non-QCT or DDA Projects based upon the specific requirements specified below.

### **2. MBOH Discretionary Basis Boost for Non-QCT/DDA Projects**

For buildings not already eligible for the 30% "basis boost" by virtue of being located in a QCT or DDA, up to 130% of the eligible basis of a New Construction building or the Rehabilitation portion of an existing building may be considered in Awarding Housing Credits if MBOH determines that an increase in Housing Credits is necessary to achieve the Project's feasibility. MBOH staff may recommend an Award of Housing Credits, and the MBOH Board, at the time it considers authorizing Reservations of Housing Credits, may Award Credits for such buildings based upon a basis boost of up to 30%. Applications for Projects not located in a DDA or QCT may be submitted with requested Housing Credits calculated at up to 130% of eligible basis. The explanation, justification and supporting documentation must specify and explain in detail the applicable considerations supporting the need for the requested basis boost (i.e., any of items a through e, below) and provide a detailed justification for the requested basis boost. The justification must explain why the Project would not be feasible without the basis boost. In addition to the explanation and justification, MBOH may consider the following factors in determining whether Housing Credits will be awarded based upon the discretionary basis boost:

- a. Qualification of the Application ~~for as at the Small Rural Project~~ ~~set aside~~;
- b. Qualification of the building location for Rural Development funding;
- c. Targeting of more than 75% of Project units to 50% or below area median income level;
- d. The Project includes historical preservation, Preservation or replacement of existing affordable housing; or
- e. The Project is located within a community where unusual market conditions produce higher than normal labor and material costs, unusually high land cost and/or rent and income limits which are too low to support the cash flows required by the Project's financial structure.

The MBOH discretionary basis boost does not apply to non-competitive 4% Credits.

## **L. Non-Housing Amenities**

Swimming pools, tennis courts, golf courses, and other similar amenities will not be funded by Housing Credits. Proposed Projects may include such amenities only if the amenities are

funded by sources other than Housing Credits. Subject to the requirements of this QAP, garages or car ports may be funded by Housing Credits considering Montana's extreme winter weather.

### **M. Accountant and Owner Certification**

Prior to the 10% Cost Certification deadline and at Final Cost Certification, MBOH requires an independent third party Certified Public Accountant (CPA) audit report complying with the specific requirements listed in the CPA Audit Report Form.

### **N. Information Request and Release Policy**

Requests for information and documents from MBOH will be handled in accordance with and subject to applicable law and the MBOH Information and Release Policy, which policy is available on the MBOH website.

### **O. Ex Parte Communication Policy**

MBOH Board members should refrain from ex parte communications with interested persons or parties, or their representatives, who may be affected by any matter on which members may take official Board action. Ex parte communications may include communications that take place outside a duly noticed meeting or hearing of the Board, relate to a matter on which the Board may take action to determine to rights or obligations of the person or party, and which convey information or may otherwise influence the Board member regarding the matter.

If a Board member is unable to avoid such communications, the member will be required to disclose at a public meeting of the Board the full content of such communication and the identity of the person making the communication. In addition, the Board member may be disqualified from participating in Board action on the matter. Such communications may also subject the Board to challenge regarding its action on the matter.

Ex parte communications do not include communications regarding general matters of housing, funding for low-income housing, or other Board policy, and do not include Board member speaking appearances, conferences, consulting engagements or other events or settings to the extent not involving communications such as those described above.

The foregoing statement is provided as general information. Ex parte communications are addressed in further detail and governed by the MBOH Ex Parte Communication Policy, available on the MBOH website.

## **SECTION 4 - APPLICATION SUBMISSION AND AWARD SCHEDULE – MANNER OF SUBMISSION**

### **A. Competitive 9% Credit Applications**

Applicants may apply for an Award of 9% Credits (including an Award for a Project combining 9% Credits and other credit sources) for a particular Project no later than the applicable submission deadline specified below or otherwise set by MBOH.

Applicants must submit the Application and the applicable fee (as set forth in Fee Schedule) to MBOH as required in this QAP.

A single Application that combines 9% Credits and other credit sources must include sub-applications with a separate UniAPP for each credit source that provides the Project numbers attributable to the sub-application's credit source.

For Projects involving multiple properties in different locations to which different utility allowances and/or income limits apply, a combined Application with sub-applications for each property location must be submitted. Each sub-application must include a separate UniAPP that provides the Project numbers attributable to each location. A single Application or sub-application should include all buildings within a single Project.

Complete Letters of Intent/Applications meeting all requirements of this QAP must be received at MBOH's office by 5:00 pm Mountain Time on the Letter of Intent/Application submission date specified below. In the event that any submission date falls upon a weekend or holiday observed by Montana State government, the submission date will be the next business day thereafter as posted on MBOH's website.

### B. First Award Round

- o Letter of Intent Submission ~~Tuesday May 14, 2018~~Monday March 4, 2019
- o ~~Applicant Presentations/~~
- o Board Invitations to Apply ~~June 2018~~April 8, 2019 MBOH Board Meeting
- o Application Submission Monday ~~August 27, 2018~~July 1, 2019
- o Award Determination ~~November 2018~~Mid to late September 2019 MBOH Board Meeting

### C. Second Award Round (if any)

The Board may decide in its discretion to hold a second award round that is either: (1) limited to those Applicants invited to submit an Application but not awarded Housing Credits in the first award round (a "Closed Round"); or (2) open to submission of Letters of Intent by any interested party (an "Open Round").

If the Board elects to hold a Closed Round, the Board will announce (and post on MBOH's website) such Closed Round, along with all applicable submission requirements and deadlines, presentation opportunities and award meeting dates. A Closed Round need not include additional Letters of Intent or Applications, but may include only such additional documents and information submissions as the Board deems appropriate for purposes of such Closed Round.

If the Board decides to hold an Open Round, it will determine and post on MBOH's website the dates for submission of Letters of Intent and Applications, Board review, discussion and invitation to apply, Applicant presentations and Award determination.

### D. Changes in Deadlines or Dates; Board Waiver of QAP Requirements; Award Amounts

#### 1. Deadlines and Dates

Any of the above deadlines and dates may be extended or changed by MBOH if circumstances warrant, and in such event MBOH will provide notice of such extension or change by posting on MBOH's website.

#### 2. Waiver of QAP Requirements

The MBOH Board, in its discretion, may waive any requirement of this QAP if it determines such waiver to be in the best interests of MBOH, the HC program or the Award cycle.

#### 3. Award Amounts

In any Award round or rounds, the MBOH Board may elect to Award less than all available Credits or to not Award any Credits if the MBOH Board determines that such is in the best interests of MBOH, the HC program or the Award cycle.

### **E. Board Consideration and Determination Process**

At the MBOH Board's meeting in the month specified or established in accordance with the above schedule, MBOH staff will present Letters of Intent to the MBOH Board. MBOH will provide an opportunity for Applicants to make a presentation to the MBOH Board regarding their Projects and Letters of Intent and will provide an opportunity for public comment on proposed Projects and Applications. Applicant presentations will be limited to 10 minutes or less. The MBOH Board may ask questions of Applicants and discuss proposed Projects for purposes of assisting the Board in determining which Projects it will invite to submit Applications and assisting Applicants in presenting better Applications, but such questions, answers and discussions shall not be binding upon MBOH in any later Award determination or other MBOH process. Applicant presentations will include any comments from any party on the Development Team, videos and presentation materials. Public comment will include in-person comments, live conference call comments and written comments. Comments are subject to reasonable limitation by the Chair to minimize duplication, reading of written materials, etc.

After considering the Letters of Intent, presentations, questions and answers and discussion, the MBOH Board will select those Projects that it will invite to submit Applications. Selection for invitation to submit an Application may be based upon consideration of any of the Selection Criteria permitted to be considered for purposes of an Award under this OAP, but no evaluation or scoring of Letters of Intent will be done or considered for purposes of selection for invitation to submit an Application. No more than 8 Projects will be selected. If the total Credits requested in the Applications for such 8 Projects is less than the amount of Credits available for Award in such round, the Board may invite one or more additional Projects to submit Applications, but may invite only the number of additional Projects necessary to meet the amount of Credits available for Award (the "ceiling"), except that the invited Project that brings the total amount of Credits requested from invited Projects to the ceiling may cause the total Credits request to exceed the ceiling. Each Project so selected by the MBOH Board will be deemed invited to submit an Application. An Application may be submitted only for a Project invited by the MBOH Board to submit an Application. All other Applications will be returned without consideration.

At the Award Determination Meeting, MBOH staff will provide Project Application information to the MBOH Board. Applicants should be available to the MBOH Board to answer questions regarding their respective Applications. The MBOH Board may ask questions of Applicants and discuss proposed Projects but there will be no Applicant presentations. MBOH will provide an opportunity for public comment on proposed Projects and Applications. Applicants shall have a brief opportunity to make comments and respond to any information presented regarding their Applications.

MBOH staff materials provided to the Board will show Small Rural Projects and other Projects in separate groupings. In considering Applications for Award of Credits, the Board may first consider Award to the Small Rural Projects applying for Credits. After any such initial consideration of Small Rural Project Applications, the Board will consider Award of remaining Credits to any Applicant. The Board may but is not required by this provision to select any Small Rural Project for an Award of Credits.

## **F. 4% Credit Applications for Tax Exempt Bond/Loan Financed Projects**

Projects with tax-exempt financing under the volume limitation on private activity bonds (“4% Projects”) may be eligible to receive tax credits outside the state’s tax credit allocation volume cap. An Applicant for tax-exempt financing under the volume limitation on private activity bonds also seeking an Award of 4% Credits for a scattered-site Project under a single partnership may apply for such credits by submission of a single Application that includes sub-applications for each property included in the Project.

Full Applications for tax-exempt financing and related 4% Credits may be submitted at any time; submission is not limited to the Application schedule set forth above for 9% Credit competitive awards. However, complete Applications must be received by MBOH at least 6 weeks before the scheduled MBOH Board meeting at which the Application is to be considered. Changes to the Application that require MBOH to re-underwrite the Application will restart the minimum 6-week period.

The Application fee for 4% Projects must be submitted to and received in the MBOH office for the Application to receive consideration. In addition, Final Allocation of 4% Credits is subject to payment in full of applicable bond closing fees at bond closing per the MBOH Private Placement policy available on the MBOH website. Additionally, a 42M letter fee will be charged.

Applications for 4% Projects must meet all requirements of the Applicable QAP, including meeting at least the minimum Development Evaluation Criteria threshold score specified in Section 9 to receive an Allocation of Housing Credits. Projects with tax exempt financing must submit a certification from the bond financing agency indicating that the Project meets the public purpose requirements of the bonds and that the Project is consistent with the needs of the community. For purposes of Application, evaluation and Awarding Housing Credits with respect to 4% Projects, the Applicable QAP is the version of the QAP most recently and finally adopted as of the date of Application submission.

For 4% only projects, a Letter of Intent must be submitted with the request for an inducement resolution. The Letter of Intent does not require a Letter of Intent fee ~~or a [market study](#) or mini-market study.~~

## **G. Combined Credit Applications for Projects Involving Multiple Credit Sources**

A single Applicant may apply for credits by submission of a single Application that combines sub-applications for each property/credit request included in the Project (for example, combined 9%/4% applications, or a Housing Credit application that combines Housing Credits and another credit source). Each sub-application must include a separate UniAPP that provides the Project numbers attributable to the sub-application’s credit source. Letters of Intent and Application for Projects combining 9% Credits with other credit sources must be submitted in a competitive 9% Credit round and by the applicable deadlines specified for such competitive round.

## **H. Application Submission Method for 4% and 9% Letter of Intent and Credit Applications**

Electronic submission of Applications using MBOH’s system (~~currently [ShareFile](#) or [funding portal](#)~~) is preferred but hard copy Applications will also be accepted. Please contact staff (preferably at least a week ahead of the submission deadline) for set up and for specific instructions on how to access this system. In submitting or preparing to submit

Applications, Applicants shall not change or create folders or otherwise change the file structure within the ~~funding portal~~ ~~ShareFile submission~~. An Applicant may request an additional folder by contacting MBOH staff.

### **I. Request for Increase in Amount of Credit Reservation**

As MBOH, in its discretion, determines necessary for financial feasibility, returned or unreserved Housing Credits may be used to increase the amount of Housing Credits reserved for a Project after the first round Awards have been made. In considering a request for an increase under this subsection, MBOH may consider any anticipated potential need for returned or unreserved Credits to fund Projects that would otherwise be funded or require greater funding under the Corrective Award set aside under Section 7. An Applicant seeking an increase in the amount of reserved Credits must apply to staff in writing for such increase and must submit new financials (UniApp Section C) and supporting documentation for the cost increases (e.g., higher bids than expected, material costs, etc.). Staff will review and evaluate application materials and present a recommendation at a later MBOH Board meeting for consideration. Staff will not recommend and the MBOH Board will not approve any increase beyond that necessary to make the Project feasible. Any request for Credits above the amount initially Awarded is considered a request for additional Credits after Initial Allocation and is subject to the provisions of this subsection.

## **SECTION 5 ~~-- APPLICABLE FEES~~ ~~FEE SCHEDULE~~**

The amount(s) of and due dates for all fees required or imposed by this QAP, including but not limited to Application, Reservation, 10% Cost Certification, 8609 and Compliance fees, are as specified in the MBOH Housing Credit Fee Schedule Form (the "Fee Schedule"). All fee amounts may be adjusted by MBOH from time to time. Fees are set by MBOH staff, subject to Board approval. The amount and due date of each fee shall be posted on the MBOH website and any adjustments to any fee amount or due date shall be posted on the MBOH website in advance of the effective date of each adjustment.

All fees are nonrefundable unless otherwise specified in this QAP or the Fee Schedule. MBOH will not consider an Application or Letter of Intent if the applicable fee is not paid by the deadline set forth in the Fee Schedule. The following subsections A through F do not constitute a complete list of all fees required under this QAP.

### **~~A. Letter of Intent~~**

~~See Fee Schedule.~~

### **~~B. Application~~**

~~See Fee Schedule.~~

### **~~C. Reservation Agreement~~**

~~See Fee Schedule.~~

### **~~D. Requesting Additional Credits After Initial Allocation~~**

~~See Fee Schedule.~~

### **~~E. Compliance Fees~~**

~~See Fee Schedule and Section 12, Compliance Monitoring.~~

## **F.A. Developer/Owner Reimbursement of Board Legal Expenses**

See Fee Schedule. The Developer/Owner of any Project awarded credits will be required to reimburse MBOH for legal fees and expenses incurred by MBOH with respect to any non-standard request, change, document or other matters relating to Reservation (Initial Allocation), Carryover Commitment, compliance or other aspects of qualifying for or obtaining Housing Credits. Such fees and expenses must be paid within 30 days of MBOH's submission of an invoice. MBOH shall not be required to complete any pending process, approval or other action until such fees and expenses are paid in full.

## **SECTION 6 - MAXIMUM AWARDS**

### **A. Maximum Credit Award**

Twenty-five percent (~~25%~~20%) of the state's Available Annual Credit Allocation will be the maximum Credit Awarded or Allocated to any one Project or Developer. The state's Available Annual Credit Allocation is defined as and includes the state's actual or estimated credit ceiling for the current year plus any other available Credits from prior year credit authority determined as of 20 business days prior to the applicable application deadline, and includes any Credits held back pursuant to court order or subject to Award under the Corrective Award set aside. The Developer's percentage of the Development Fee, as specified in a written development agreement, will be that Developer's percentage of the ~~25%~~20% limit. The maximum Credit Award for a Project will be determined based upon the state's Available Annual Credit Allocation for the Housing Credit year from which the Project is first Awarded HCs. If the state's Available Annual Credit Allocation is not known as of 20 business days prior to the applicable application deadline, the Available Annual Credit Allocation from the previous year will be used, subject to later adjustment once the state's actual Available Annual Credit Allocation is known. If an estimated amount is used for Award purposes, all Awards based upon such estimate shall be conditional upon a final determination of the state's actual Available Annual Credit Allocation. The twenty percent (20%) limit shall increase to twenty-five percent (25%) beginning with 2022 Credits, unless Congress extends the 12.5% volume cap increase provided in the consolidated Appropriation Act of 2018, in which case the twenty percent (20%) limit shall continue for the same period as such Congressional extension.

For purposes of calculating the maximum Credit Award amount and determining the amount of Credits available for award or set aside at any time, the Available Annual Credit Allocation shall not include or be adjusted with respect to any increase or decrease as a result of any Credit Refresh.

MBOH does not commit tax credits from future years, except as specifically provided in this QAP. The MBOH Board may Award Housing Credits from a future year's Available Annual Credit Allocation at any time outside the competitive cycle for purposes of funding repair or replacement of a Project building due to a life/safety emergency as determined by the MBOH Board in its discretion. The Applicant must submit a Letter of Intent and the Board must invite the Applicant to submit an Application before making an Award. The Application must meet all QAP requirements.

## **SECTION 7 – SET ASIDES**

### **A. Non-profit**

Ten percent of each state's credit ceiling must be set aside for buildings which are part of one or more Projects involving Qualified Nonprofit Organizations.

The 10% non-profit set-aside requirement may be met by an Award to a Project involving a Qualified Nonprofit Organization out of any other set-aside or the general pool. If no Project Awarded HCs involves a Qualified Nonprofit Organization, the non-profit set aside (i.e., 10% of the state's credit ceiling) will be held back for later Award to a Project involving a Qualified Nonprofit Organization.

### **B. Corrective Award**

Such portion of the state's Available Annual Credit Allocation is reserved and set-aside as is necessary for Award of credits to:

- Any Project for which an Application was submitted in a prior round or year, if:
  - a final order of a court of competent jurisdiction determines or declares that such Applicant was entitled to an Award in such prior round or year or requires MBOH to make an Award or Allocation of tax credits to such Project;
  - a final order of a court of competent jurisdiction invalidates or sets aside an Award of credits to an approved Project from such prior round or year and a Reservation Agreement was executed by MBOH and such Applicant prior to issuance of such court order, unless such court order determines that such Project was not eligible or qualified under the applicable QAP to receive an Award of tax credits; or
  - MBOH, upon further consideration of any Award determination as required by and in accordance with the order of a court of competent jurisdiction, determines that such Project was entitled to an Award in such prior round or year.

All requirements and conditions of this Corrective Award set aside provision must be met to receive an Award under this set aside provision. The amount of any Award under the Corrective Award set aside shall be the amount specified by the court, or if no Award amount is specified by the court, an amount determined by MBOH in accordance with this QAP. The Corrective Award set aside shall be funded first from returned or unreserved tax credits from a prior year. Awards may be "future allocated" under this Corrective Action set aside, i.e., such Awards may be made from returned or unreserved tax credits from a prior year and/or the current year's credits at any MBOH Board meeting after the final court order has been issued and presented to MBOH. Such Award need not await the annual Application and Award cycle.

Where a court orders that an amount of the current year's credits be set aside for a Project pending the decision of the court, if the court's decision is not received before the end of the current year, the credits set aside will become classified as the next year's credits, as required by federal code.

If the court orders MBOH to Award credits to any Project under this set-aside, the Project must submit an updated Application so the MBOH can review and underwrite current numbers and assumptions to verify that the amount of credits requested or some other credit amount is justified for Project feasibility, unless otherwise ordered by the court. The corrective awardee must pay the Reservation fee as required in the Fee Schedule.

### **~~C. Small Rural Projects~~**

~~Twenty percent (20%) of the state's Available Annual Credit Allocation is set aside for Small Rural Projects. For purposes of this set aside, a Small Rural Project is a Project: (1) for which the submitted tax credit Application requests tax credits in an amount up to but no more than 12.5% of the state's Available Annual Credit Allocation, and (2) proposed to be~~

~~developed and constructed in a location that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula.~~

### ~~D.C.~~ **General Rules Regarding Set Asides**

MBOH reserves the right to determine in which set-aside a Project will be reviewed (subject to its eligibility), regardless of its eligibility for any other set-aside. ~~For example, if a Project is submitted as a Small Rural Project in order to utilize the Small Rural Project set-aside when it is clearly part of a larger or non-rural Project, the Project will be placed in the proper category as determined by MBOH staff.~~

To qualify and receive consideration to receive an Award of Credits under a set-aside, the Project must meet all applicable requirements of this QAP and must receive minimum Development Evaluation Criteria score specified in this QAP.

~~The MBOH Board reserves the right to not Award credits to a qualifying Small Rural Project even if the Project meets the minimum required score, if the MBOH Board, in its discretion, determines another Project or Projects better meet the most pressing housing needs of low income people within the state of Montana, taking into consideration the Selection Criteria of this QAP as determined in accordance with Section 9.~~

In the event there are insufficient tax credits available to fully fund all set aside categories, the respective set asides categories shall be funded in the following order of priority: (1) Non-profit; ~~and~~ (2) Corrective Award ~~and~~ (3) ~~Small Rural Project.~~

**Commented [A4]:** Do away with this as a set aside, and make it a procedural step in appropriate part of QAP – Bd looks at these first as a group, but not required to award, etc. Keep at 12.5%.

**Commented [A5R4]:** See process discussion added in Board Consideration and Determination Process, Section 4.E.

## **SECTION 8 – LETTER OF INTENT AND APPLICATION PROCESS**

Applicants are responsible to read and comply with this Qualified Allocation Plan (QAP) (and any other Applicable QAP) and accompanying materials.

Applicants are responsible to determine the degree that their building(s) and development correspond to the MBOH's Selection Criteria contained in this QAP.

Applicants are responsible to consult their own tax attorney or accountant concerning: (a) each building's eligibility for the Credit; (b) the amount of the Credit, if any, for which their building(s) may be eligible; and (c) their ability and/or their Investor's ability to use the Credit.

### **A. Letter of Intent**

All Projects wishing to apply for HCs in Montana must submit a Letter of Intent by the deadline specified in Section 4 with the applicable fee.

All Letters of Intent must be submitted using the Forms posted on the Board's website. The Project Location, type (e.g., family or elderly), and Developer specified in the Letter of Intent may not be changed in any later Application. Other information in the Letter of Intent (e.g., cost information, number of units, unit sizes, income targeting, rents, hard and soft loan sources, etc.) will be considered the Applicant's best estimates and may be changed in the Application. ~~A market study or mini-market study is required for purposes of a Letter of Intent, and the Letter of Intent must include the completed Market Study Summary Form posted on the MBOH website.~~

### **B. Application**

An Application may not be submitted for a Project unless a Letter of Intent has been submitted with respect to the Project according to the requirements of this QAP and the Board has invited that Project to submit an Application. MBOH will return all other Applications without consideration, along with the Application fee.

Applicants must commission a full market study as outlined in the MBOH Market Study Form. Such Market Study must be included with the Application submission in accordance with the Threshold Requirements below.

Applicants must complete and submit the Uniform Application and Supplement, all Threshold Requirements, full market study and full Application fee by the applicable Application deadline (see Section 4, Application Submission and Award Schedule). Applicants must use the most current Form of the Uniform Application (UniApp) and Supplement available on the MBOH website at: <http://housing.mt.gov/UniformApplication>.

### **C. Incomplete Letter of Intent or Application**

The Developer/Owner that submits either a Letter of Intent or Application that does not include any threshold item or that is substantially incomplete may submit additional information as requested and within the time specified by MBOH staff. The opportunity to submit such additional information is subject to payment of the applicable fee as set forth in the Fee Schedule. If the applicant does not submit the additional information and applicable fee, the Letter of Intent or Application will be returned to the Applicant and will not be considered further.

### **D. Threshold Requirements Are Mandatory**

Threshold Requirements are mandatory for all Letters of Intent and Applications. Letters of Intent and Applications received not meeting all Threshold Requirements or other requirements of this QAP will be returned un-scored and will receive no further consideration, except as provided above in subsection 8.C. Fees will not be refunded.

Submit complete Applications to MBOH. Electronic submission of Applications using MBOH's system (currently ShareFile or funding portal) is preferred but hard copy Applications will also be accepted. Please contact staff (preferably at least a week ahead of the submission deadline) for specific instructions on how to access this system. In submitting or preparing to submit Applications, Applicants shall not change or create folders or otherwise change the file structure within the ShareFile submission. Applicants may request an additional folder by contacting MBOH staff.

### **E. Threshold Requirements**

To be eligible for further consideration, all Letters of Intent and Applications must be submitted in accordance with the requirements of this QAP and the following Threshold Requirements.

ALL MBOH FORMS REFERENCED IN THIS QAP ARE AVAILABLE ON THE MBOH WEBSITE AT [HTTP://HOUSING.MT.GOV/MFOAP](http://HOUSING.MT.GOV/MFOAP). ALL FORMS SUBMITTED TO MBOH IN OR AS PART OF THE APPLICATION, DEVELOPMENT, UNDERWRITING, ALLOCATION, COST CERTIFICATION, COMPLIANCE OR OTHER PROCESSES UNDER THIS QAP MUST BE THE MOST CURRENT FORM AVAILABLE ON THE MBOH WEBSITE. If the most current Form(s) are not used, submissions may be returned and required to be resubmitted on the correct Form.

Letters of Intent must:

1. Include the applicable fee;
2. Be received by the applicable deadline;
3. Include a ~~market study or~~ mini-market study;

- ~~4. Include the completed Market Study Summary Form posted on the MBOH website;~~  
and  
~~5.4.~~ Be substantially complete and in the format prescribed in the MBOH Letter of Intent Form.

Applications must:

1. Include the Application fee;
2. Be received by the applicable deadline;
3. Include all of the documents, information and other items specified in Threshold Requirements 4 through 31 below;
4. Include a cover letter summarizing the Project, limited to 2 pages, ~~which will be provided to MBOH Board members within one week following the Application deadline;~~
5. Include a fully completed, UniApp, including all applicable Forms, all in the most current forms as posted on the MBOH website;
6. Specify the Qualified Management Company that will provide property management service to the Project and provide a copy of the written agreement with the Management Company evidencing the company's commitment to provide management services. Upon written notice from MBOH that the Application has identified a Management Company that is not a Qualified Management Company, the Applicant must submit to MBOH within ten (10) days a written designation of a Qualified Management Company and a copy of the written agreement with the Management Company evidencing the replacement company's commitment to provide management services;
7. Include a Market Study prepared and signed by a disinterested third party analyst, with certificate (included in MBOH Market Study Form) signed by analyst and notarized. Market Studies must be completed within six (6) months prior to the submission date of the Application, must have the market analyst complete a physical inspection of the market area within one (1) year of the Application and must adhere to minimum market study requirements in MBOH Market Study Form;
8. Include documentation of Land or Property Control;
9. Include documentation from the applicable local zoning authority that applicable zoning requirements are met or otherwise addressed, e.g., Project is within applicable zoning requirements, part of an approved planned unit development, subject to a zoning change request for which a change request has been submitted, or not subject to any existing zoning requirements. Acquisition/Rehabilitation Projects may provide documentation that the Project will not require a change in zoning requirements;
10. Include documentation of availability and capacity of utilities to serve the Project, including documentation that utilities are available to the Project and the present proximity of utilities to the Project location. Such documentation must be in the form of a letter or email from the electric, gas/propane, water and/or sewer/septic provider/company, as applicable verifying that the utilities are or will be available to the property and that the provider has the capacity to handle the load or additional load to be added by the Project. Such documentation must address water, sewer, electricity, and as appropriate, gas, propane and garbage pickup. Acquisition/Rehabilitation Projects need only provide a letter or email from the utility provider documenting the expected utility load and the utility's ability to meet such additional load. Documentation of utility availability and capacity must be current (within 18 months prior to Application date). MBOH staff may in its discretion require the Applicant to provide updated documentation. If Applicant obtains an updated letter from the utility provider, a copy of the updated letter must be provided to MBOH at Reservation or with the next submitted quarterly report;

11. Include a preliminary financing letter from a lender indicating the proposed terms and conditions of the loan. The financing letter must formally express interest in financing the Project sufficient to support the terms and conditions represented in the Project financing section of the Application;
12. Include a letter of interest from an equity provider including an anticipated price based on the market at time of the Application;
13. Except as otherwise provided in this Subparagraph 13, include a comparative market analysis ("CMA") or an appraisal done by an independent (non-related) party Montana-licensed real estate professional. Such CMA or appraisal is required regardless of the manner or method of Acquisition and must cover all real estate acquired, including land and/or buildings. **Land and existing building values must be listed separately.** A CMA or appraisal is not required to be submitted for property located within the exterior boundaries of a reservation. To qualify for this exception, the Application must include documentation demonstrating that the property is located within the exterior boundaries of a reservation;
14. For Rehabilitation Applications, include a full scale Capital Needs Assessment on the USDA Rural Development Capital Needs Assessment (CNA) template or similar form, a list of items in each unit that will be replaced, refinished, repaired, upgraded or otherwise rehabilitated, and a detailed narrative explaining the scope, details and expectations of the Rehabilitation. If the CNA will be more than 1 year old as of the date of Application submission, the CNA must include an update to within the most recent 6 months;
15. For Applications proposing Rehabilitation or replacement of existing units, include a preliminary relocation plan addressing the logistics of moving tenants out of their residences and providing temporary housing during the Rehabilitation or replacement and returning tenants to their residences upon completion of the Rehabilitation or replacement;
16. Include a site plan, and a Design Professional's preliminary floor plan and elevations/photos of existing properties for the Project;
17. For Applications for Projects involving Qualified Nonprofit Organizations and seeking to qualify for the non-profit set aside under Section 7, include: (a) a copy of the IRS determination letter documenting such organization's 501(c)(3) or (4) status; (b) an affidavit by the organization's managing partner or member certifying that the organization is not and during the Compliance Period will not be affiliated with or controlled by a for-profit organization; and (c) documentation that one of the exempt purposes of the organization includes the fostering of low-income housing;
18. For Applications proposing a property tax exemption for rental housing providing affordable housing to lower-income tenants pursuant to Mont. Code Ann. § 15-6-221, include documentation of intent to request that the local government unit where the property is located conduct a public hearing as required by Mont. Code Ann. § 15-6-221(2). Such public hearing must be conducted by the unit of local government where the property is located and documentation of such public hearing must be submitted prior to issuance of the Carryover Commitment. If the Application does not include documentation of intent to conduct the required public hearing, the Project will be underwritten as if no exemption was or will be received;
19. Specify the Extended Use Period;
20. For Projects targeted for Eventual Homeownership, provide the supplemental Application documents and information specified in Section 3, Eventual Home Ownership;
21. Specify the selected minimum set aside (20-50 test) or (40-60 test); income averaging (IA) will be available only to the extent permitted and subject to the procedures, restrictions and other requirements specified by MBOH in future compliance materials;

22. Include a copy of both the public notice and the **affidavit of publication** from the publisher, meeting the requirements specified in this Section 8, Public Notice;

a. Public Notice

An Applicant must place a notice in the local newspaper of the intent to apply for Housing Credits, and encouraging submission of public comment to MBOH. Such notice must include name of Project, number of units, location of Project, for-profit or non-profit status, and, if applicable, intent to request tax-exempt status for the Project. The notice will be placed as a box advertisement in the newspaper within 90 days prior to the due date of the Application and will allow for not less than 30 days for submission of comments to MBOH. The notice must be published twice, with an interval of at least 14 days between the 2 publication dates~~within a seven-day period~~. A copy of the notice, together with an affidavit of publication showing the dates published, must be included in the Application.

**Commented [A6]:** Changed to twice with at least 14 days in between to match requirements for tax exemption process in Mont. Code. Ann. § 76-15-103(4). Applicants may be able to combine notices into a single notice, if tax authorities permit.

b. Example of Public Notice

(Name of Developer, address, telephone number), a (for-profit/non-profit) organization, hereby notifies all interested persons of (city, town, community name) that we are planning to develop, (Name of Project) an affordable multi-family rental housing complex on the site at (street location). This complex will consist of (number) (one bedroom, two bedroom, or three bedroom) units for (elderly persons/families). This Project (will/will not) be exempt from property taxes.

An Application (will be/has been) submitted to the Montana Board of Housing for federal tax credits financing. You are encouraged to submit comments regarding the need for affordable multi-family rental housing in your area to the Montana Board of Housing, PO Box 200528, Helena, MT 59620-0528 or FAX (406) 841-2841. Comments will be accepted until 5 PM on (specify the date 3 weeks before the MBOH Board Award Determination Meeting (see Section 4, Application Cycle));

23. Include letters of community support. These support letters must be Project specific and address how the Project meets the needs of the community. New letters of support (as well as new letters of non-support) must be submitted for each Application for each Application round. Generic support for affordable housing will not be considered support for the specific Project being considered. These letters will be provided to the MBOH Board for its consideration;
24. If the Project is an Elderly Property, specify which exemption for housing for older persons will apply;
25. Include a narrative addressing each of the Development Evaluation Criteria, demonstrating how the Application meets each of these criteria, and providing a specific explanation and justification of the points sought for each scoring item. Narrative references to the Market Study must cite the specific page and paragraph of the Market Study. The narrative must include the Applicant's own proposed total score for each scoring item in the Development Evaluation Criteria and, at the conclusion of the narrative, the Applicant's own proposed total score;
26. Include the completed and signed Indemnification Form and Cost Sponsor Certification Form;
27. For Applicants that include as part of the Development Team a Developer with no previous history with the Montana Housing Credit Program, include the completed and signed Release of Information Form;

28. Include the explanation and justification for a request for discretionary basis boost, if applicable;
29. Identify the name of the entity that will have Legal ownership of the Project (LP, LLP, etc.);
30. Documentation of the number of households on current waiting lists for the local public housing authority (the PHA/HRC for the area in which the Project is located) (as required by IRC); and
31. Include the completed Amenity Form. This completed Form will be provided to the MBOH Board for its consideration.

Applications must also demonstrate that the proposed Projects are financially sound. This includes reasonable financing terms, costs, expenses, and sufficient cash flow to support the operations of the Project, all of which must meet the underwriting standards of MBOH.

## **SECTION 9 – EVALUATION AND AWARD**

### **A. Threshold Evaluation and Considerations**

MBOH staff will review all Applications received by the applicable submission deadline for compliance with all Threshold Requirements, including but not limited to completeness, soundness of the development, and eligibility based on federal requirements and this QAP. Except as provided above in subsection 8.C, Applications determined by MBOH staff to not substantially meet all Threshold Requirements or other requirements of this QAP or federal law will be returned un-scored and will receive no further consideration. Except as specifically provided in this QAP, Application fees will not be refunded.

MBOH staff may communicate with Applicants for purposes of providing interpretive guidance or other information or for purposes of clarifying, verifying or confirming any information in Applications, and for the purposes provided in subsection 8.C.

MBOH staff may query an Applicant or other persons regarding any concerns related to a Housing Credit Application or the management, construction or operation of a proposed or existing low-income housing Project. Questionable or illegal housing practices or management, insufficient or inadequate response by the Applicant, General Partners, or Management Company as a whole or in part, may be grounds for Disqualification of an Application and non-consideration for an Award of Housing Credits.

As part of its review of Applications, if MBOH has not received comments from community officials of the Project location, staff will contact such local community officials to discuss relevant evaluation criteria information pertaining to the Application and the proposed Project. MBOH may also contact any other third parties to confirm or seek clarification regarding any information in the Application, including but not limited to checking Development Team references, verifying credit reports and verifying information through direct contact with the Project Developer.

Between the submission deadline and the MBOH Board Award Determination Meeting, as required by federal law, MBOH will provide notice of the Project to the chief executive officer (or the equivalent) of the local jurisdiction within which the Project will be located and provide such individual a reasonable opportunity to comment on the Project.

Housing Credit Allocations will be subject to three underwriting evaluations: (1) evaluation for purposes of Award/Reservation and, for Projects that have received an Award of credits and entered into a Reservation Agreement, (2) evaluation for purposes of the 10% Cost Certification, and (3) evaluation for purposes of Final Cost Certification.

MBOH will return and will not consider for an Award of Credits:

1. Incomplete Applications, except as provided above in subsection 8.C.;
2. Unsound Applications, i.e., Projects for which the Market Study and other available market information fails to demonstrate adequate market need within the proposed location community or Projects that are not financially feasible, including but not limited to viable cash flow, based upon MBOH underwriting standards as set forth in this QAP;
3. An Application submitted by an entity with a demonstrated poor track record in completion of development or management of low income housing, whether located in Montana or another state;
4. Applications submitted by Applicants with current Project(s) that have/had numerous or unresolved substantial non-compliance issues or IRS 8823's (consideration will be given to the type of 8823);
5. Any other Application failing to meet any mandatory requirement of this QAP or federal law; and
6. Any Application as otherwise specified in this QAP.

Applications meeting all minimum Threshold Requirements and not excluded from further consideration under this QAP will be evaluated for the amount of Credits needed for feasibility and long term viability and will be evaluated and scored according to the Development Evaluation Criteria section below.

## **B. Amount of Housing Credit Allocation**

Although a proposed development may be technically eligible for a certain Credit amount, federal law prohibits MBOH from allocating more Credits than necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period. Accordingly, an Award of Housing Credits under this QAP will be limited to the amount of Credits that MBOH, in its sole discretion, deems necessary to make the development feasible and viable throughout the Compliance Period.

In determining the amount of Credits necessary, MBOH will consider:

1. The Sources and Uses of funds and the total financing planned for the Project. Funds, including funds from federal sources, such as HOME grant money, Rural Development, and similar funds, may be loaned by or through a parent organization to a Project at an interest rate below the Applicable Federal Rate (AFR). Such loans will not reduce the basis for the Project providing they are true loans.
2. Grants made with federal funds directly to a Project, which will reduce basis.
3. Any proceeds or receipts expected to be generated by the Housing Credits.
4. The reasonableness of the development and operational costs of the Project.

Based on its evaluation, MBOH will make a preliminary determination of the amount of Credits deemed necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period. This determination is made solely at MBOH's discretion, and is not intended to be a representation or warranty to anyone as to the feasibility of the development. Rather, it will serve as the basis for making an Award of Credits. A similar analysis will be done at the time of 10% Cost Certification and at Final Cost Certification prior to issuing IRS Form(s) 8609. Neither the selection of a Project to receive an Award of Housing Credits nor the amount of Credits to be allocated constitutes a representation or warranty that the Owner or Developer should undertake the development, or that no risk is involved for the Investor.

## **C. Full Funding of Applications**

Just as MBOH will not allocate more Credits than necessary for the financial feasibility of the development and its viability, MBOH will not award Credits in an amount less than it deems

necessary for these purposes. Therefore, if the Board Awards Credits to a Project, it will Award the amount of Credits determined by MBOH staff for the Project based upon the Applicant's requested amount (except for any *de minimis* reduction because of lack of available Credits to fully fund the full Credit amount). If the remaining amount of available Credits is insufficient to fully fund an additional Project, before Awarding Credits to a Project in an amount less than requested by the Applicant (except for any such *de minimis* reduction), the Board will prioritize the remaining Projects for an Award from the remaining Credits, and the first priority Project for such an Award will be allowed 30 days to re-submit its Application resized to the amount of Credits remaining available. After staff underwriting and evaluation of the resized Application, if MBOH staff determines based upon the resized Application that the development is financially feasible and viable as a qualified low income housing Project throughout the Compliance Period, MBOH staff will enter into a Reservation Agreement for the Project. If the first priority Project fails to submit a resized Application within 30 days or MBOH staff determines that the Project is not financially feasible or viable as proposed in the resized Application, the next priority Project will be invited to submit a resized Application, and so on, until remaining Credits are reserved for one of the prioritized Projects.

**D. Development Evaluation Criteria and Scoring**

In addition to evaluation under all other QAP Selection Criteria, Applications will be evaluated and scored according to the following Development Evaluation Criteria.

Awarding of points to Projects pursuant to these Development Evaluation Criteria is for purposes of determining that the Projects meet at least a minimum threshold of 1000 of the total possible 1260 available points to qualify for further consideration. Developments not scoring the minimum Development Evaluation Criteria score of 1000 of the total possible 1260 available points will not receive further consideration.

Non-competitive 4% Credit Bond Deals will meet at least a minimum threshold of 800 of the total possible 1260 available points to qualify for further consideration. Non-competitive developments not scoring the minimum Development Evaluation Criteria score of 800 of the total possible 1260 available points will not receive further consideration.

The Development Evaluation Criteria, other QAP Selection Criteria and information submitted or obtained with respect to Projects will be used to assist the MBOH Board in evaluating and comparing Projects.

Development Evaluation Criteria scoring is only one of several considerations taken into account by the MBOH Board. It does not control the selection of Projects that will receive an Award of tax credits. For purposes of this QAP and HC Awards and Allocations, the QAP Selection Criteria include all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides, priorities and data set forth in this QAP and all federal requirements.

**1. Extended Low Income Use\* (100 points possible)**

Federal law requires a 30-year or longer Extended Use Period. An Application in which the Applicant agrees to maintain units for low income occupancy beyond the Extended Use Period will receive points as indicated below and must incorporate these restrictions into the Restrictive Covenants.

**Years beyond initial 15**

Less than 31 years	0 points	
31 or more years	100 points	(46 years +)

Eventual Home Ownership\* Applications must also specify an Extended Use Period and will receive points for the Extended Use Period as provided above (refer to the "Eventual Home Ownership" portion of Section 3 for supplemental Application documentation and information requirements).

**2. Lower Income Tenants\* (200 points possible)**

An Application will receive points for the percentage of eligible units at the percentages of area median income ("AMI") levels listed below. An Application will receive points for 40%, 50%, and 60% categories when the development targets those income and rent levels. Points awarded for 40% units are independent of and not calculated as part of 50% or 60% units, except that the number of 40% units included in the Project, if any, that exceed 10% of eligible units will be added to the number of 50% units for purposes of point scoring under the chart below. Developments will be bound by the terms committed to in the application process through the mandatory Declaration of Restrictive Covenants. Section C, Part IV, Rent and Forecasted Income of the UniApp will be used to calculate the score for this item. Scoring under the following chart is based upon the total number of HC units including a manager's unit if applicable.

Target Median Income Level	Percentage of Eligible Units	Points
40%	10% (or greater)	20 NOTE 1
50%	15-20%	60 NOTE 1
50%	21-40%	80 NOTE 1
50%	41-60%	150 NOTE 1
50%	61-100%	180 NOTE 1
60%	40%	0
60%	41-60%	20
60%	61-100%	40

**NOTE 1:** Rents @ 40% allowed to income qualify to 49% AMI.

Rents @ 50% allowed to income qualify to 55% AMI (40-60 election must apply)

(Note 1 is applicable to all existing HC properties) awarded between 1990-2016, inclusive. For all other projects, such requirements will be included in the Project's Declaration of Restrictive Covenants if applicable.

**3. Project Location\* (100 points possible)**

An Application will be awarded points to the extent the Project is located in an area where amenities and/or essential services will be available to tenants, determined according to the following specifications. For scattered site Projects, all site locations must meet the following criteria for any points to be awarded. An Application will be awarded points with respect to an amenity or service as specified below, if: (i) a Project is located within 1½ miles of the specified amenity or essential service; (ii) public or contracted transportation (not including taxi or school bus service) is reasonably available to the specified amenity or service (i.e., the Project is located within ¼ mile of fixed bus stop or on a same day call basis) (or letter from provider committing to establish such service); or (iii) where applicable, the specified amenity or service is available via a no-charge delivery service to the Project Location (all distances must be as specified in the Project's market study):

- a grocery store (convenience store does not count); or

- Medical services appropriate and available to all prospective tenants (e.g., hospital, doctor offices, etc.).

**4. Housing Needs Characteristics\* (100 points possible)**

Development meets area housing needs and priorities and addresses area market concerns, such as public housing waiting lists\* (for all units and tenants), Vacancy Rate and type of housing required.

**a. Local Community Input (30 points possible)**

30 points will be awarded if the Application includes documentation of at least one of the following forms of Local Community Input, as shown by evidence provided in the Application ~~or in response to MBOH inquiries~~: (i) local neighborhood meetings held expressly for this Application with attendance rosters and minutes; (ii) local charrettes held expressly for this Application with supporting documents, concept drawings, and input from local community; (iii) other appropriate form of local community input specifically designed to gather local community input for this Application and/or (iv) City or County Commission meeting. In order to obtain the available points under any item, there must be actual local community input in some form. If a community meeting is held but there is no attendance, another form of local community input must be used. No points will be awarded if the meeting or charrette is part of another public or design meeting, unless the minutes demonstrate that a portion of the meeting was specifically dedicated to community input for this Application. No points will be awarded if the Application does not provide evidence of qualifying local community input, including minutes of any meeting, charrette or other form of local community input and copies of any written comments received. Documentation of community outreach efforts to inform and invite community members to attend any of the community input events must be included. All meetings, charrettes and other Local Community input events must be held within 6 months before the Application deadline.

**b. Appropriate Size (35 points possible)**

Points will be awarded for the appropriateness of size of the development for market needs and concerns as reflected in the Market Study. 35 points will be awarded if the number of units being proposed is 50% or less than the number of units needed as projected by the Project's Market Study. No points will be awarded if the number of units being proposed is more than 50% of the number of units needed as projected by the Project's Market Study. For projects developed, rehabilitated or constructed in a location that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula, no points will be awarded if the number of units being proposed is more than 75% (rather than 50%) of the number of units needed as projected by the Project's Market Study. If the Project is existing in the community, the number of units in the Project will be added to the new units needed and the above test will be applied. The Application narrative must address this scoring item with citations to the relevant pages and paragraphs of the market study.

**c. Market Need (35 points possible)**

The Application will be awarded 35 points based upon the required Market Study's documentation that the Project meets the market needs of the community, as follows:

- o Vacancy Rate is at or below 57%; and
- o Absorption Rate is less than 5 months; and
- o Rents are at least 10% below adjusted market rents.

Narrative references to the Market Study must cite the referenced page and paragraph of the Market Study.

**5. Project Characteristics\* (200 points possible)**

**a. 100 points for any one of the following items:**

**i. Affordable Housing Stock**

The Application proposes either the Preservation of existing affordable housing stock (including as part of a local (not national, state or regional) community revitalization plan\* or similar plan) or increases the affordable housing stock, through the use of funds from other sources (e.g., donation of land, other substantial donations, reduction in taxes through tax abatement (other than non-profit exemption) or impact fees) to leverage the tax credit dollars.

**ii. Qualified Census Tract/Local Community Revitalization Plan**

The Project is located in a Qualified Census Tract,\* and its development contributes to or involves existing housing as part of a local (not national, state or regional) community revitalization plan\* or similar plan. The Application must include any such local community revitalization plan and identify where in the plan such existing housing may be found.

**iii. Historic Preservation**

The Application proposes the Acquisition and/or Rehabilitation of buildings with local, state, and/or federal historic\* preservation designations.

**iv. Project-Based Rental Subsidy**

The Project has project-based rental subsidy for at least 50% of the units. The Application must provide a copy of the relevant contract or other documentary proof of subsidy from the provider. MBOH staff will verify claimed subsidies with the funding source.

**b. 100 points for Green Building and Energy Conservation Standards\*:**

Applicant's justification for green building and energy conservation includes but is not limited to Energy Star building and appliance initiatives, water saving devices and green construction and materials. For New Construction and Rehabilitation, the Application will be awarded 100 points if the Project will include at least 10 of the items as listed and described on the MBOH Green Building and Energy Form. The Application must include the completed MBOH Green Building and Energy Form. The Applicant's architect, who is qualified with respect to energy and green building standards, must provide a letter confirming the listed green building items, as shown in the MBOH Green Building and Energy Form which is referenced in and attached to the architect letter, are incorporated into the Project. For all Projects (New Construction and Rehab), the Form must list each scoring item and **specify each unit** by unit number or number of each unit type (e.g., 4 of the 10 3-bedroom units) that will include the item. This letter and the accompanying Form must be included in the Application. NOTE: The Applicant's architect also must provide certification at Final Cost Certification for 8609(s) purposes confirming that the initiatives were incorporated.

Please refer to Section 3 for mandatory infrared testing for Projects that have been Awarded HCs.

**6. Development Team Characteristics\* (400 points possible)**

Applications meeting all of the requirements of subsections a., b. and c. of this Section 6 will be awarded 400 points. Applications failing to meet any of the requirements of subsection a., b. or c. will be awarded no points for Development Team Characteristics.

**a. Development Team Experience**

Participation by an entity with a demonstrated track record of quality experience in completed development or management of low income housing tax credit Projects. MBOH will consider all members of the Development Team (Applicant, Owner, Developer, General Partner, Management Company, and HC Consultant) and whether housing Projects have been developed and operated with the highest quality either in Montana or another state. Special attention will be paid to existing Projects, amount of active local community participation used to develop Projects, and a management entity with a good compliance track record and specialized training. If a new Developer, this requirement may be met through Experienced Partners.

**b. Management Education**

(i) one member of the Management Company meets the education requirement under Section 12, and (ii) one member of the Development Team (other than the Management Company) who is directly and actively involved with the Project has been trained by a Nationally Recognized LIHTC Compliance Training Company. For MBOH purposes, to maintain certification, the person must attend a complete class with a Nationally Recognized LIHTC Compliance Training Company at least once every four years (certificates must be attached with each Application). MBOH annual compliance training does not qualify for credit under this category.

**c. Cold Weather Development Experience**

The Project's Developer or Consultant who is actively involved in the actual construction process has experience with Cold Weather Development and Construction, as reported on the MBOH Cold Weather Experience Form. Cold Weather Development and Construction is defined as experience of the HC Developer or Consultant on one or more Projects located above the 40 degrees north parallel.

The application must list all affordable housing including low-income housing tax credit Projects in Montana or any other state developed, owned, managed or consulted on by Applicant and any member of the Development Team or for which an Award of tax credits was received, whether or not such Projects were successfully completed. All Development Team members, including Applicant, Developer, General Partner/Owner, Management Company, and HC Consultant must sign and the Application must include the completed and signed UniApp Supplement Tax Credit Information Release Form, providing consent to the release of information by other third parties.

**7. Participation of Local Entity (60 points possible)**

The MBOH Board has determined that Owner/Developer communication with local entities and/or significant participation of local entities increases the success and acceptance of the Project into the community. For purposes of this scoring item, a local entity includes a provider serving the Project locality from a physical office in the region of the state where the Project is located even if the provider does not maintain a local office in the locality.

**a. Communication/Relationships (30 points possible)**

30 points will be awarded if the Application includes documentation in the form of a detailed and descriptive narrative, confirmed in writing by the local entity, indicating that the Owner/Developer has met with one or more local entities to discuss the local entities' participation in the Project through provision of any of the following:

- a. screening and referring of individuals as prospective tenants;
- b. providing on-site services to Project tenants;
- c. donation of land or sale at a reduced price to enhance affordability;
- d. use of grant money to develop infrastructure or for other uses;
- e. significant fee waivers on local government fees; or
- f. other forms of significant monetary or in-kind support.

**b. Service Commitments/Understandings (30 points possible)**

30 points will be awarded if the Application includes a narrative in which the Owner/Developer commits to provide or arrange for provision of one or more specifically described supportive services for the duration of the Extended Use Period. The narrative must provide evidence of how such described supportive services will benefit the Project. The same component of participation by a local entity may not be counted toward more than one item, and may be given credit by an award of points only once.

Points will not be awarded for the same item in both this Development Evaluation Criteria 7 and Development Evaluation Criteria 5, Preservation of Affordable Housing.

**8. Tenant Populations with Special Housing Needs\* (100 points possible)**

An Application will be awarded 10 points for each 5% of the units targeting or meeting the following identified needs up to a maximum of 100 points. The Application must specify the number of units targeted for or meeting each category. Section B Part XII, Units Accessibility, of the UniApp will be used to calculate the score for this item. Units may not be counted more than once or in more than one category for purposes of awarding points.

- a. Units targeted specifically for individuals with children or large families (units with 2 or more bedrooms).
- b. Units targeted specifically as Section 504 fully accessible units exceeding minimum fair housing requirements.
- c. Units targeted specifically for persons with disabilities (points limited to a maximum of 25% of units in the Project) (Application must describe the strategy that will be used to market available units to disabled persons throughout the Extended Use Period).
- d. Units targeted to veterans (points limited to a maximum of 25% of units in the Project).
- e. Units targeted to victims of domestic violence (points limited to a maximum of 25% of units in the Project).
- f. Units that provide Permanent Supportive Housing (points limited to a maximum of 25% of units in the Project).

If the Project is an Elderly Property as defined in federal law, the Application will receive 100 points under this provision.

**Example:**

2 – 2 bdrm units meet family requirement 20% – 40 points

2 – 1 bdrm units exceed section 504 20% – 40 points

- 1 – 1 bdrm unit targeted to mental illness 10% – 20 points
- 5 – 1 bdrm units with no targeting 50% – 0 points
- 10 – Total units in Project – 100 total points received

**9. Developer Knowledge and Responsiveness (*Up to minus (-) 400 points possible*)**

If an entity or individual participating in a Project as a member of the Development Team identified in an Application has a demonstrated poor track record or demonstrated past management weaknesses with respect to developments in Montana or in another state, or has failed in the past to respond timely to an MBOH letter of inquiry with respect to a Project, MBOH may assign negative points.

MBOH will provide written notice within thirty (30) days of MBOH learning of any event that will result in a negative point assignment, unless MBOH learns of the event after Application submission and prior to the MBOH Board's Award meeting. If MBOH learns of the event after Application submission and prior to the MBOH Board's Award meeting, MBOH will provide written notice to the Applicant within five (5) business days. The written notice must describe the event giving rise to the negative point assignment and specify the Development Team member or members affected by the negative point assignment, the number of negative points to be assigned and the number of future Applications to which negative points will be assigned. If MBOH has learned of the event after Application submission and prior to the MBOH Board's Award meeting, the notice must be provided to the Applicant and affected members of the Development Team and inform such persons or entities that they may respond in writing to MBOH within five (5) business days of the date of the notice or, if earlier, by 3 days prior to the MBOH Board's Award meeting. If MBOH learns of the event outside the period from Application submission to MBOH Board Award meeting, the notice must be provided to the particular Development Team member affected and inform such Development Team member that they may respond in writing to MBOH within thirty (30) days of the date of the notice.

**a. Demonstrated Poor Track Record**

For purposes of determining a participant's track record, MBOH may contact community officials, Development Team or Development Team member references, credit bureaus, other state tax credit administering agencies and any other sources as MBOH deems appropriate. Up to minus (-) 100 points may be assigned for each of the following: (i) demonstrated poor track record with respect to developments in Montana or in another state, and/or (ii) failure to respond within 10 working days of MBOH letter of inquiry. (***Up to Minus (-) 200 points possible***)

**b. Demonstrated Management Weaknesses**

Development Team members with past demonstrated management weaknesses, including but not limited to those management weaknesses listed below may be assigned negative points for this section (***Up to Minus (-) 200 points possible***), for example:

- i. Has not followed-through on the development of a Project from Application to rent-up and operation;
- ii. Has not complied with MBOH submission, compliance or other requirements applicable during Project development, construction and Extended Use Period;
- iii. Has not maintained a Project to Section 42 or other program standards;
- iv. Has or had numerous or outstanding substantial non-compliance issues or IRS 8823's (consideration will be given the type of 8823);

- v. Has not completed required training in a certified compliance training program;
- vi. Has not completed required management compliance retraining at least every four years;
- vii. Has requested income targeting changes that are not supported by unanticipated hardship;
- viii. For Projects Awarded Credits for 2018 or later years, has a debt coverage ratio at 10% cost certification or final allocation that has changed significantly from the debt coverage ratio as underwritten by MBOH at Application;
- ix. Has requested additional credits more than once;
- x. Has made Substantial Changes to previous tax credit applications or has failed to notify MBOH and seek approval of Substantial Changes according to QAP requirements;
- xi. Has significantly diminished the quality and long term viability of a previous Project by lowering costs below a reasonable level;
- xii. Has delinquent late fees due and payable to MBOH;
- xiii. Has intentionally provided false information to MBOH in connection with an Application, Project or any related Board inquiry or process;
- xiv. Has been a member of the Development Team for a prior Project that exceeded maximum Hard Cost Per Unit or Total Project Cost Per Unit at Final Cost Certification; or
- xv. Has been a member of the Development Team for a prior Project Awarded Credits from 2018 or later years that exceeded the applicable maximum Soft Cost Ratio at Final Cost Certification.

Negative points may not be assigned for the same matter under both Section 9(a) and 9(b).

**c. Method of Assigning Negative Points**

Any negative points will be assigned as follows:

- i. The factors that will be considered in determining whether to assign negative points and the number of any negative points to be assigned with respect to poor track record items, management weaknesses and failure to response to MBOH letters of inquiry, include:
  - A. The nature and seriousness of the incident(s);
  - B. The frequency of such incidents;
  - C. The incidents were or were not within the control of the individual or entity;
  - D. The degree and timeliness to and with which the entity or individual responded to correction and educational efforts;
  - E. The responsiveness of the individual or entity in responding timely to fees, penalties and other sanctions imposed;
  - F. The cost or financial harm caused to the Project, the tax credit agency or third parties;
  - G. The nature and extent of inconvenience and harm caused to Project tenants;
  - H. The nature and extent of damage or expense caused to Project property;
  - I. The extent to which the Project as completed failed to comply with the Project as represented in the Application or in approved Project changes;
  - J. The extent to which the incident would have affected scoring of the Project Application if known as the time (although no such effect on

Application scoring need be shown to justify an assignment of negative points);

- K. The extent to which completion of a Project that received an Award of Credits was substantially delayed or prevented;
  - L. The extent to which Credits that were Awarded were recaptured;
  - M. The extent to which unreasonable or excessive fees, profits or other improper remuneration was derived improperly from a Credit Award or Project; and
  - N. The presence of any other relevant factors or considerations.
- ii. Except as otherwise provided in this Section, negative points will be assigned on the next competitive 9% Credit Application (or multiple Applications in the same competitive round) which includes as part of its Development Team any person or entity that participated as a Development Team member in the Project or Projects giving rise to the negative point assignment.
  - iii. If multiple and/or repeat instances of poor performance, management weakness or fail to respond occur or have occurred, negative points may be assigned with respect to a Development Team member for not only the first competitive round in which an Application involving such member participates but may also be assigned for such Applications in multiple future years or competitive rounds.
  - iv. If negative points are assigned as a result of poor track record, management weakness or failure to respond that occurred as part of the development/construction/rehabilitation process prior to beginning of lease-up activities or other involvement of the Qualified Management Company, negative points will not be assigned with respect to such Qualified Management Company.
  - v. If more than one Development Team member subject to a negative point assignment from a prior Project is part of the Development Team on a current or future Project Application, the total negative points assigned to the Application will be the greatest number of negative points assigned with respect to any one such participating Development Team member.
  - vi. If the Project giving rise to the negative points would have received a lower Development Evaluation Criteria score under the QAP under which the Project initially was evaluated, scored and awarded credits had the poor track record, management weakness or failure to respond been known as of Application scoring, the negative points assigned with respect to a Development Team member from the earlier Application will be the number of points corresponding to the difference in scoring that would have resulted. Such point difference shall be converted as appropriate and necessary to correspond to the current QAP point scoring system.

\* Indicates federally mandated criteria

### **E. Minimum Scoring Threshold**

Developments not scoring the minimum Development Evaluation Criteria score of 1000 points (or 800 points for non-competitive 4% Credit Bond Deals) will not receive further consideration. Applications scoring at least the minimum Development Evaluation Criteria score of 1000 points or 800 points for non-competitive 4% Credit Bond Deals and meeting all other requirements of this QAP will be considered for an Award of Housing Credits as provided in this QAP.

## **F. Award Determination Selection Standard**

### **1. Selection Standard**

The MBOH Board will select those Projects to receive an Award of Housing Credits that it determines best meet the most pressing housing needs of low income people within the state of Montana, taking into consideration: (a) all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides, priorities and data (including without limitation the statistical data in the MBOH Statistical Data Form) set forth in this QAP and all federal requirements (together referred to in this QAP as the "Selection Criteria"); (b) the Development Evaluation Criteria scoring; and (c) all other information provided to the MBOH Board regarding the applicant Projects.

The awarding of points to Projects pursuant to the Development Evaluation Criteria is for purposes of determining that the Projects meet at least the minimum Development Evaluation Criteria required for further consideration and to assist the MBOH Board in evaluating and comparing Projects. Development Evaluation Criteria scoring is only one of several considerations taken into account by the MBOH Board and does not control the selection of Projects that will receive an Award of Housing Credits.

### **2. Additional Selection Factors**

In addition to any other Selection Criteria specified in this QAP, the MBOH Board may consider the following factors in selecting Projects for an Award of Housing Credits to qualifying Projects:

- a. The geographical distribution of Housing Credit Projects;
- b. The rural or urban location of the Projects;
- c. The overall income levels targeted by the Projects (including deeper targeting of income levels);
- d. The need for affordable housing in the community, including but not limited to current Vacancy Rates;
- e. Rehabilitation of existing low-income housing stock;
- f. Sustainable energy savings initiatives;
- g. Financial and operational ability of the Applicant to fund, complete and maintain the Project through the Extended Use Period;
- h. Past performance of an Applicant in initiating and completing tax credit Projects;
- i. Cost of construction, land and utilities, including but not limited to costs/credits per square foot/unit;
- j. The Project is being developed in or near a historic downtown neighborhood; and/or
- k. The frequency of Awards in the respective areas where Projects are located.

If the MBOH Board Awards Credits to an Applicant where the Award is not in keeping with the Selection Criteria of this QAP, it will publish a written explanation that will be made available to the general public pursuant to Section 42(m)(1)(A)(iv) of the Internal Revenue Code.

If all of the authorized Credits are Awarded after a particular cycle, MBOH may place qualifying Applications which did not receive an Award of tax credits on a waiting list for potential Award of Housing Credits in the event Credits become available at a later date. Any available Credits that are not Awarded or reserved in a particular cycle may in the discretion of the MBOH Board be made available for Award in a future cycle or may be used to increase the amount of Housing Credits reserved for a previously Awarded Project as provided in this QAP.

## **SECTION 10 – RESERVATION, CARRYOVER, CREDIT REFRESH AND FINAL ALLOCATION**

Once MBOH has selected Projects and determined the Award of Housing Credits and amount of Credits to be reserved, MBOH will provide a Reservation Agreement, Gross Rent Floor Election, and Declaration of Restrictive Covenants to the partnership for execution and return to MBOH. Upon recording, the original recorded Restrictive Covenants must be returned promptly to MBOH. The following requirements apply to Reservation Agreement, Gross Rent Floor Election, Declaration of Restrictive Covenants, Carryover Commitment, 10% Test, Credit Refresh, Placed in Service and Final Allocations/8609.

### **A. Reservation Agreement**

MBOH will provide a Reservation Agreement, Gross Rent Floor Election, and Declaration of Restrictive Covenants to the partnership for execution and return to MBOH. The partnership should review, complete, sign, and return the Reservation Agreement and Gross Rent Floor Election, along with the additional information and materials required below. A Reservation Agreement is MBOH's conditional commitment to make a Carryover Commitment and/or Final Allocation to the Project, subject to the requirements and conditions of the Reservation Agreement, the QAP and federal law. Such requirements include but are not limited to submission of evidence of timely progress toward completion of the development acceptable to MBOH and compliance with federal tax credit requirements.

If an unsuccessful Applicant, or a party associated with such Applicant, commences any legal action or proceeding challenging MBOH's Award determination or process, MBOH will make a Carryover Commitment or Final Allocation of Housing Credits as required by an executed Reservation Agreement to the same extent it would have been bound to do in absence of the legal challenge, unless the court determines that such Applicant was not eligible or qualified under the applicable QAP to receive an Award of Housing Credits or MBOH otherwise determines that it is precluded by Court order from doing so. If a court determines in any such action or proceeding that MBOH must Award Credits to one or more unsuccessful Applicants from such round or year, such Award or Awards will be made using any available returned or unreserved Housing Credits or current year's Credits as provided in Section 7.

MBOH will send the successful Applicant a Reservation Agreement shortly after Award and upon meeting the foregoing requirements. The Applicant will have a maximum of 120 days after award to accept, sign and return the Reservation Agreement. **Failure to return the Agreement by the deadline will result in a late fee as listed on the Fee Schedule.** Where applicable, however, if the Owner elects the federal percentage(s) in the month that the Reservation (Initial Allocation) is issued by MBOH, the Reservation Agreement must be signed and returned on or before the 25<sup>th</sup> of that month to assure the lock-in of the rate. Owners electing the placed-in-service date should return the signed Reservation Agreement immediately. Upon receipt, MBOH will sign the Reservation Agreement, and return a copy to the partnership.

The Reservation Fee specified in Fee Schedule will be due and must be received by MBOH on or before the date specified in the Fee Schedule.

Once the partnership enters into a Reservation Agreement with MBOH, the partnership must then meet the requirements and conditions described in the Reservation Agreement and provide the required documentation before it receives a Carryover Commitment or Final Allocation of Housing Credits.

MBOH will revoke an approved Reservation (Initial Allocation) and terminate the Reservation Agreement when a Project fails to make successful progress toward completion or otherwise fails to perform its obligations under the Reservation Agreement. Submitting quarterly status reports demonstrating satisfactory evidence of the Project's completion is the responsibility of the Applicant. Successful progress toward Project completion and Project completion require that such progress and completion are in substantial accordance with the Project as described and proposed in the Project Application, except to the extent that Substantial Changes have been approved by MBOH or the MBOH Board as provided in the Applicable QAP.

NOTE: Reservation Agreements for tax credit Projects funded through tax-exempt bonds must be completed, signed, and returned to MBOH not later than five business days following the close of the bond financing agreement.

### **B. Gross Rent Floor Election**

The election on this form verifies when the Owner elects the gross rent floor for the Project. There are two options: at the Reservation/Initial Allocation, or at the date Placed in Service. This form reflects the election made by the Owner in the Reservation Agreement. This form must be returned with the executed Reservation Agreement.

### **C. Declaration of Restrictive Covenants**

To be eligible for HCs, a building must be subject to an extended low income housing commitment between the Owner and MBOH, which commitment must be established by recorded Restrictive Covenants effective for the full Extended Use Period. The Owner must meet compliance criteria for the full Extended Use Period specified in the Restrictive Covenants. Through execution and recording of the Declaration of Restrictive Covenants with respect to Housing Credits, all Owners waive and forfeit the right to request that MBOH locate a non-profit qualified buyer (the "qualified contract process") and the Owner must maintain HC units through the Extended Use Period as provided in the Restrictive Covenants. The Extended Use Period specified in the Declaration of Restrictive Covenants may not be terminated early through the qualified contract process.

The Declaration of Restrictive Covenants assures that the land and its use will be restricted for the purposes of providing low-income housing for the period proposed in the Application. Provisions included in the Restrictive Covenants will include Exhibit A-1 (Legal Description of Project Land); Exhibit A-2 (Conditions of Tax Credit Allocation) indicating the number of units at the appropriate elected rent levels, e.g., 30%, 40%, 50%, 60% AMI as determined by the Application (Owners will be required to maintain those rent levels through the Extended Use Period of the Project); Exhibit A-3 (Energy and Green Building) indicating the architect's letter provided in the Application outlining those energy and green building initiatives; Exhibit A-4 (Amenities); Exhibit A-5 (Participation by Local Entity); and Exhibit A-6 (Special Housing Needs).

**It is the Developer's responsibility to record the Declaration of Restrictive Covenants in the county in which the Project real property is located. Upon recording, the original recorded Restrictive Covenants must be returned promptly to MBOH not later than the deadline specified in Section D, Carryover Commitment.**

**In unusual circumstances, and for good cause shown, MBOH may permit amendments to the Declaration of Restrictive Covenants at a subsequent date.**

## D. Carryover Commitment

MBOH will issue a Carryover Commitment in December of the year for which the credits are being Awarded and such Carryover will be for a period of two (2) years. To preserve this commitment the Owner/Developer must submit the 10% Cost Certification by the deadline specified in the Applicable QAP.

In order to receive a Carryover Commitment, Owners must provide the executed Reservation Agreement and Gross Rent Floor, Proof of Ownership (evidence of title or right to possession and use of the property for the duration of the Compliance Period and any Extended Use Period plus one year, e.g., a recorded deed or an executed lease agreement), executed and recorded Restrictive Covenants, and the Reservation fee. Land lease periods must be at least one year longer than the Restrictive Covenant period. When submitted to MBOH, the executed and recorded Restrictive Covenants must be accompanied by a copy of the ALTA survey and title commitment for the Project real property evidencing the recording priority of the Restrictive Covenants. If the title commitment does not show that the Restrictive Covenants are in a first priority position, MBOH will require a subordination agreement from the owner or holder of any prior-recorded lien or encumbrance as a condition of issuance of IRS Form 8609, unless such prior lien or encumbrance is required by a federal agency to have priority over the Restrictive Covenants or MBOH otherwise determines in writing that subordination is not required (e.g., where such lien or encumbrance would not preclude operation of the property as low-income housing in accordance with the Restrictive Covenants or preclude enforcement of the Restrictive Covenants).

These items must be received by December 1, of the year for which the Award of Credits was made. MBOH will issue Carryover Commitments before year end. MBOH staff may grant one or more reasonable extensions of the December 1 deadline for any of the required items upon written request of the Owner/Developer documenting good cause for such extension.

## E. 10% Test

MBOH requires that more than 10% of the expected basis in a Project, including land, must be expended by the 10% Cost Certification deadline. MBOH requires that Developers provide an independent third party CPA audit report, in a format and meeting the requirements established by MBOH, verifying compliance with the 10% test.

Developers must submit the 10% requirements, including the required CPA audit report, other documents and the 10% test underwriting fee by the deadline. Failure to do so will result in the loss of the Credit Award. See Fee Schedule for fees.

**Because MBOH's submission deadline is set at the latest date allowed by federal law, no extensions will be granted. If 10% test information is submitted by the deadline but any forms are incomplete or omitted, a correction fee will be imposed for each incomplete or omitted item.**

At 10% Test, MBOH staff will re-evaluate:

1. The Sources and Uses of funds;
2. Total financing planned for the Project;
3. Proceeds or receipts expected to be generated by the Housing Credits;
4. Reasonableness of the development and operation costs;
5. Projected Rental Income and Operational Expenses;
6. Debt Coverage Ratio; and
7. Housing Credits required for financial feasibility of the Project.

Deadline for submission of the required 10% information is the first anniversary of the date on which MBOH executed the Reservation Agreement. This submission deadline will apply to 10% test submissions for Projects awarded Housing Credits in the 2016 or later year allocation rounds. Developers that fail to pay the required fee will be deemed not to have met the 10% Test requirements. Failure to submit certification for 10% documentation or to meet the 10% Test will cause forfeiture of Awarded, reserved or allocated Housing Credits for the Project.

## F. Refreshing Credits

The MBOH Board may in its sole discretion approve a Credit Refresh for Projects that have been issued a Carryover Commitment by MBOH as provided in Subsection D, above, and that have submitted all required 10% Cost Certification materials and fees, and for which MBOH has approved such 10% Cost Certification, as provided in Subsection E, above.

The amount of Credits reserved through a Credit Refresh shall not exceed: (i) the amount of Credits originally allocated by MBOH for the Project; or (ii) the amount of the maximum Credit Award specified in the Qualified Allocation Plan under which the Credits were originally allocated.

To obtain a Credit Refresh, the Owner must submit a Credit Refresh application to MBOH in the form and according to the requirements provided in the Credit Refresh Application Form, along with the Credit Refresh fee as specified in the Fee Schedule. Upon receipt of a complying Credit Refresh Application Form and completion of staff evaluation of such application, the application will be placed on the agenda for consideration at the next MBOH Board meeting. The Owner or its representative should appear at the meeting to answer Board questions, if any, regarding the application and the factors leading to the submission of the application.

The MBOH Board may approve or deny the application, or may defer action on the application pending additional information or compliance with specified conditions. The Board may place any one or more conditions on approval or further consideration of an application.

In considering and making its determination regarding an application, the Board may consider any or all of the following:

1. The diligence, or lack of diligence, by the Development Team, Owner or other Project participant in seeking to complete the development, approval, construction and opening of the Project;
2. Any factors beyond the control of the Development Team, Owner or other Project participant, significantly contributing to the need for the Credit Refresh;
3. The likelihood that the Project will be completed and ~~Placed~~ in Service within a reasonable time, under the circumstances, if the Credit Refresh is approved;
4. The likelihood that the Project will not be completed or ~~Placed~~ in Service if the Credit Refresh is denied;
5. The need for the Project, as determined in the original Application and Award processes;
6. Any significant changes in market conditions or other factors that affect the financial feasibility of or need for the Project; and
7. Any other factor or factors that the Board deems relevant to the determination.

Upon approval of an application, the Owner shall return the Credits according to the instructions of MBOH staff and staff shall promptly provide for the re-Reservation of the

Credits, as refreshed, to the Owner by providing a Reservation Agreement in accordance with Subsection A, above.

In addition to payment of any applicable fees, the Owner will be required to reimburse MBOH for legal fees and expenses incurred by MBOH in connection with the Credit Refresh Application in accordance with the Applicable QAP.

All requirements of the Applicable QAP and applicable law shall apply to such Reservation and Credits as if such Reservation were the original Reservation of Credits for the Project, including without limitation, Gross Rent Floor Election, Declaration of Restrictive Covenants, Carryover, 10% Test, Placed on Service and Final Allocations/8609 and payment of the Reservation fee and all other applicable fees; provided, that no further submission of executed and recorded Restrictive Covenants, or related survey or title commitment, shall be required if previously submitted in accordance with Applicable QAP requirements, but amendment of such covenants will be required as necessary to conform the covenants to the refreshed credits or to comply with any additional or different requirements in the Applicable QAP.

### G. Placed in Service

Placed in Service is ~~defined in Section 1 of this QAP the certification of the building or the date of certification of the building as being suitable for occupancy in accordance with State or local law through issuance of a certificate of occupancy.~~

New Construction and Gut Rehabilitation buildings must be Placed in Service not later than the close of the second calendar year following the calendar year in which the Carryover Commitment is made.

Other Rehabs that are accomplished with residents in place during Rehab can be Placed in Service at the end of the 24 month or shorter period over which the required amount of expenditures are aggregated, as provided in the definition of Place in Service in Section 1 of this QAP. ~~The Owner selects the Placed in Service date in this case unless local approval is required.~~

### H. Final Allocations/8609

Documentation supporting a request for issuance of IRS Form 8609(s) must be submitted to MBOH within 6 months of the last building Placed in Service date. MBOH will not allocate tax credits on IRS Form 8609(s) until a qualified building is Placed in Service. A site visit and file audit by MBOH may be conducted prior to the issuance of the IRS Form 8609(s). Notwithstanding other provisions of this QAP, to obtain issuance of IRS Form 8609(s), the Project must be Placed in Service in substantial accordance with the Project as described and proposed in the Project Application, except to the extent that Substantial Changes have been approved by MBOH or the MBOH Board as provided in the Applicable QAP.

The Final Allocation/8609 underwriting fee must be paid at the time of submission of the request for issuance of IRS Form 8609(s). If the paperwork is not received by MBOH within 6 months of the last building Placed in Service date, a late fee will be assessed. **If 8609 information is submitted by the deadline but any forms are incomplete or omitted, a correction fee will be imposed for each incomplete or omitted item. If a draft 8609 is sent to Developer for review and 8609s must be redone because of Developer/Accountant error, there will be a fee for additional underwriting. See Fee Schedule for fees.**

The request for issuance of IRS Form 8609(s) must include:

1. Certification of required infrared test results (if not previously submitted);

2. The independent third party completed MBOH CPA's audit report and Owner's Statement Forms;
3. Sponsor Certification section of the UniApp;
4. The architect's verification that the items for green and amenities listed in the Application as well as provisions of accessibility listed in Section 3 have been incorporated;
5. Certificates of Occupancy (C of O's);
6. Copies of all permanent loan and/or grant documents;
7. Copy of partnership/operating agreement;
8. Detailed list of items or costs excluded from eligible basis (for example, parking lot is not in eligible basis);
9. Statement identifying the first year of the credit period, which statement must name the specific year (e.g., 2017);
10. The Final Allocation/8609 underwriting fee; and
11. Documentation evidencing that the site manager and Management Company personnel have completed a Nationally-Recognized LIHTC Compliance Training Company certification course, passing the test; and have attended a class with a Nationally-Recognized LIHTC Compliance Training Company in the last four years.

If the required fee is not submitted, the Project will be deemed not to have met Final Allocation requirements and MBOH will not issue IRS Form 8609(s). MBOH will complete the final credit Allocation evaluation. Typical turn-around time for 8609(s) is 4-8 weeks after submission of all required documentation and the fee. Once the 8609(s) are issued and delivered to the Owner, the bottom half must be completed and signed.

**A copy of each completed and signed 8609 must be sent back to MBOH within 90 days of issuance. Failure to provide the completed and signed 8609(s) so that they are received by MBOH by the deadline will result in a late fee. If the 8609(s) need to be reissued after completed by MBOH due to Developer error, the MBOH underwriting fee must be paid again. See Fee Schedule.**

## **SECTION 11 - DEVELOPER/APPLICANT RESPONSIBILITIES**

Applicant must respond to a written MBOH request within 10 working days. Failure to do so may result in the Application being deemed ineligible for that funding round.

Applicant must proceed according to the timeframe identified in the Implementation Schedule. Adjustments of up to 60 days are acceptable. Any changes in the Implementation Schedule greater than 60 days must be submitted in writing with justification to MBOH within 10 business days of the change. Any changes not reported or not approved may jeopardize the credits. If the schedule is more than 60 days behind and has not been updated as stated above, a late fee will be assessed. See Fee Schedule.

### **A. State Law Requirements**

The Applicant and Development Team must agree to comply with Montana State law requirements (e.g., certificate of contractor registration, workers compensation, unemployment compensation, and payroll taxes). ~~MBOH will include this certification in the execution of all Reservation (Initial Allocation) and Carryover Commitment documents.~~

### **B. Public Notification**

Any public relations actions by a recipient of tax credits involving MBOH funds or tax credits must specifically state that a portion of the funding is from MBOH. This will be included in radio, television, and printed advertisements (excluding rental ads), public notices, and on

signs at construction sites, e.g., "Housing Credits allocated by the Montana Board of Housing, Montana Department of Commerce."

### C. Quarterly Status Reporting

All Applicants receiving Reservations (initial Allocations) of credits must provide written status reports for each calendar quarter, beginning with the quarter in which the tax credit Award is made. Status reports will be due on or before January 10<sup>th</sup>, April 10<sup>th</sup>, July 10<sup>th</sup> & October 10<sup>th</sup> until the Applicant receives its 8609(s). The documentation regarding the progress must be development specific, and include such items as planning approval and building permits, firm debt and/or equity financing commitments, construction progress (foundation, framing, rough in, enclosed, drywall, etc., **for each Project building**), and lease up progress. Submission of photos is encouraged.

The following items must be addressed for **each building** on the quarterly report that is submitted to MBOH. If all items are not addressed, the report will be returned and must be corrected and resubmitted. If the resubmitted report is received after the due date the late fee will apply.

1. Updated implementation schedule if more than 60 days behind schedule submitted with application;
2. Advertising for construction bids;
3. Construction bid awards;
4. Pre-construction meeting date;
5. Groundbreaking ceremony date (at least 2 weeks' notice);
6. Future dates of construction/draw meetings;
7. Each phase of construction for **each building including photos** (excavation, foundation framed, etc.);
8. Certificate of Occupancy for **each building** as issued for the month of report;
9. Number of units occupied and number left to full lease up each quarter; and
10. Grand Opening date (at least 2 weeks' notice).

**Owners must provide a copy of the Certificate of Occupancy for each building. The Certificate of Occupancy must be included in the status report covering the period in which it was issued. Failure to provide the reports so that they are received by MBOH by the deadline will result in a late fee. This also applies to those Properties with ARRA funding.**

All ARRA reports are due on or before the dates listed in the ARRA Exchange or TCAP Program Agreement.

Late fees will be assessed for each of the following:

1. the financial audit is not received by MBOH by the deadline,
2. the annual budget is not received by MBOH by the deadline, or
3. the annual insurance binder is not received by MBOH by the deadline.

See Fee Schedule for all above fees.

### D. Changes to Project or Application

The Applicant must notify MBOH in writing at least 30 days before any proposed Substantial Changes in the Project. Proposed Substantial Changes to the Project must be approved by MBOH.

Specific approval by MBOH is required for Substantial Changes. MBOH staff will review requested Substantial Changes and may approve or deny approval of such changes, or may request Board consideration and determination of the change request. If MBOH staff denies approval of any Project Change, the Applicant may request Board review and approval of the change request. Requests must be submitted to MBOH with proper justification at least 30 days before the change is expected to take place. The Applicant must inform MBOH staff if the proposed change requires immediate or urgent review and approval. MBOH review and approval of changes must be completed prior to the change taking effect. Changes completed without MBOH approval may result in the termination of the Reservation Agreement and/or loss of some or all credits.

Any requested changes submitted requiring MBOH action may incur additional fees. Changes to the Project site, construction of building(s), architectural, engineering, or any on-site review by any member of MBOH will incur additional charges. Fees will be determined based upon the cost of MBOH Staff travel for that purpose.

## **SECTION 12 - COMPLIANCE MONITORING**

Federal law requires state allocating agencies (MBOH) to monitor compliance with provisions of Section 42 of the Internal Revenue Code (26 U.S.C. § 42). In addition, Federal law requires allocating agencies to provide a procedure the agency will follow in monitoring for non-compliance and to inform tax credit recipients (Owners) of procedures and requirements. The Project must comply with the Housing Credit requirements set forth in Section 42 and this QAP for the entire Extended Use Period. Periodic file audits and inspection of units will be performed by MBOH staff as provided in this QAP.

Included in the requirements are procedures for notifying the Internal Revenue Service (IRS) of any non-compliance of which the allocating agency becomes aware. Federal income tax regulations related to Procedures for Monitoring Compliance with Housing Credit Requirements are published in 26 CFR Part 1 and 602.

For complete HC compliance guidance, refer to the MBOH HC Compliance Manual, available at <http://housing.mt.gov/MFCompManual>

### **A. Compliance Fees** (See Fee Schedule for all fees mentioned below)

Developments will incur and must pay to MBOH a compliance monitoring fee to offset the costs for MBOH compliance monitoring. The compliance monitoring fee is payable annually at the time of the Owner's Submission of the Owner's Certificate of Continuing Program Compliance for the time period being submitted.

**A late fee will be assessed if the complete Annual Compliance Package is not received by the deadline.**

Failure to provide corrections on noncompliance so that they are received by the deadline set by MBOH will result in an initial late fee and an additional per-week fee until all required documentation is received by MBOH. A one-time extension may be granted if a written request is submitted to MBOH no later than 10 days prior to the deadline. If an extension is granted and the extension deadline passes without MBOH receipt of the complete documentation, a per-week fee will be imposed until all required documentation is received by MBOH.

The following procedure describes MBOH plans for monitoring compliance on Housing Credit Projects. At minimum, each Project that has been Placed in Service will be subject to the following monitoring requirements:

## **B. Recordkeeping, Record Retention and Data Collection**

### **1. Recordkeeping**

The Owner of a low-income housing Project must keep records for each building in the Project that shows unit qualifications for each year throughout the term of the Declaration of Restricted Covenants, including the Compliance Period and the Extended Use Period in effect for such Project.

The information must show for each year in the Compliance Period:

- a. The total number of residential rental units in a building (including the number of bedrooms and the size in square feet of each residential rental unit);
- b. The percentage of residential rental units in the building that are qualified units;
- c. The rent charged on each residential rental unit in the building (including any utility allowances and mandatory fees);
- d. HC unit vacancies in the building and information that shows when, and to whom, the next available units were rented. If a unit is left vacant, or in a mixed use Project is rented to a non-qualifying tenant, the Owner must maintain documentation showing a diligent attempt was made to rent the unit to a qualifying tenant;
- e. The tenant income certification of each HC tenant (by unit), including annual certifications for each continuous tenant;
- f. Documentation to support each HC tenant's income certification. This must include a copy of (i) verification of income from third parties, or (ii) 6 consecutive paystubs;
- g. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- h. The character and use of any non-residential portion of the building included in the eligible basis of the building, if applicable.

### **2. Records Retention**

Federal regulations require the Owner of a HC Project receiving tax credits to retain the records listed above. The Owner is required to retain such records for at least 6 years after the due date for filing the federal income tax return for that year. Records for the first year of the credit period must be retained for at least 6 years beyond the due date for filing the federal income tax return for the last year of the Compliance Period. Owner should also retain records relating to the amount of credit claimed for the Montana Housing Tax Credit, including the IRS Form 8609(s) and Schedule A of IRS Form 8609(s).

### **3. Data Collection**

To the extent required by federal law, the Owner will assist the MBOH with meeting federal reporting requirements by collecting and submitting information annually concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the United States Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of all qualified households.

## **C. Owners Certificate of Continuing Program Compliance**

The Owners Certificate of Continuing Program Compliance is required on an annual basis for each property. The certificate must to be signed by the Owner and notarized. This

statement must be filed with MBOH every year throughout the Extended Use Period. Owners must file annual certifications on the Form provided by MBOH. Substitute forms are not acceptable. Failure to provide an annual certification before the date established by MBOH may trigger an IRS Form 8823.

#### **D. Income and Expense Summary**

All property Owners must submit operating income and cost information for the property's latest fiscal period, including a current balance of replacement and operating reserve accounts.

#### **E. Submission Deadlines**

The Owners Certificate of Continuing Program Compliance and Tenant Income Certifications (TIC) must be submitted on or before the 25th of the month following the assigned annual period. Federal regulations stipulate there must be no more than 12 months between certifications.

All submissions must be filed through Certification On Line (COL).

#### **F. Review by MBOH Staff**

MBOH will review the items listed above for compliance with the requirements of Section 42 of the Code and with the requirements of the MBOH HC program.

#### **G. Ownership/Management Changes**

Written Notification of changes to property management companies, managers, site managers, or changes to points of contact must be submitted to MBOH prior to or immediately upon implementation of the change. Changes not received by MBOH prior to change or immediately upon change, or within a 15-day grace period thereafter, will result in an initial late fee and monthly late fees thereafter until written notification is received. If no notification is received MBOH will research and identify the date of the change, and impose late fees based upon such date (and allowing for a 15-day grace period). No Change in Management Company shall be acceptable unless it results in a Qualified Management Company assuming management of the property. Replacement of a Management Company with a company that is not a Qualified Management Company or failure to timely submit such notification to MBOH may trigger issuance of a IRS Form 8823. All management companies, whether in place or being hired, must meet Qualified Management definition.

Subject to the requirements of Section 42 of the Code, the Restrictive Covenants and the Applicable QAP and any other applicable restrictions, the Owner may sell, transfer or exchange the entire Project at any time. No portion of a building to which the Restrictive Covenants apply may be sold to any person unless all of such building is sold to such person. Prior to such sale, transfer or exchange, however, the Owner must notify in writing and obtain the written agreement of any buyer, successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of the Restrictive Covenants, the requirements of Section 42 of the Code and applicable Regulations, and the Applicable QAP. Such written agreement of the buyer, successor or other person acquiring the Project must be in the form required by MBOH, which agreement form is available on the MBOH website. Such form, executed by the buyer, successor or other person acquiring the Project must be submitted to MBOH prior to closing of the sale, transfer or exchange. The Board may void any sale, transfer or exchange of the Project if the buyer, successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.

## H. Education Requirements

Persons responsible for qualifying tenants and verifying compliance (involved in tenant qualification and compliance) must be certified in LIHTC compliance by one of the Nationally-Recognized LIHTC Compliance Training Companies within the time specified in this section. Property managers and property Management Company personnel must complete a Nationally-Recognized LIHTC Compliance Training Company certification course, passing the test. Once certification has been obtained, to maintain certification for MBOH purposes, the person must attend a class with a Nationally-Recognized LIHTC Compliance Training Company at least once every four years. For each of the other three years, all property managers and property Management Company personnel should attend annual MBOH compliance training. The property Management Company and site manager for an HC property must be trained and certified before the property is Placed in Service. New site managers hired for existing HC properties must be certified within their first 6 months of employment. New property management companies hired for existing properties must be certified before they assume management of a property. ~~On a case-by-case basis, MBOH in its sole discretion may approve its compliance training as adequate training until such time as the next Nationally-Recognized LIHTC Compliance Training Company program is available.~~ Training requirements must be met to maintain Qualified Management Company status.

Persons responsible for qualifying tenants and verifying compliance (involved in tenant qualification and compliance) must also attend Fair Housing training at least once every four years. The manager for a HC property must complete such training before the property is Placed in Service.

Such Fair Housing training must include and cover the following subjects and requirements:

1. Protected Classes;
2. Accessibility requirements;
3. Reasonable accommodation/modification;
4. Applicant screening;
5. Disparate impact;
6. Domestic violence issues;
7. Occupancy standards;
8. Section 504; and
9. Service Animals.

In the event a Management Company fails to meet the certification or training requirements in this Subsection H, MBOH will notify the Management Company and the Owner of such noncompliance and the date by which such noncompliance must be corrected. If such noncompliance is not corrected by such date, the Owner will be required to pay the applicable fees specified in the Fee Schedule for each week that such noncompliance remains uncorrected.

## I. Tenant Income Certifications (TIC)

### 1. Frequency and Form

Owners must complete the MBOH TIC *for all new move-ins* and file it with MBOH through Certification On Line (COL). Documentation supporting the TIC will not be submitted. MBOH staff will review supporting documentation during file audits. Timely annual Re-certifications (TICs) *for mixed Projects* (with market units) are required must be submitted to MBOH through COL.

The MBOH COL TIC must be used. Any other TIC must be preapproved by MBOH prior to use.

### **J. Student Status Certification**

Student status certifications must be completed *annually* within the 30 day period *prior to their move-in anniversary date*.

### **K. On-Site Inspections**

MBOH staff (staff) will perform an on-site inspection of each property at least once every three years during the Extended Use Period. Staff will notify the Owner/manager in advance of the inspection.

Staff must inspect and review at least 20% of the tenant files and corresponding units. MBOH will not notify the Project's manager, Owner or other representative of the unit selection before the site inspection. The selected sample may be expanded.

Complete copies of all tenant files for each unit from original lease-up forward must remain within the State of Montana at the location of the rental property or the regional in-state office.

If MBOH determines it is necessary, properties may be inspected on a cycle of more than once every three years. The cost of any additional inspections will be billed to the respective property.

MBOH may schedule on-site inspections at any time with minimal notice.

In event of non-compliance under Section 42 of the Code or the implementing regulations MBOH may be required or elect to undertake additional monitoring. The Owner will take any and all actions reasonably necessary to achieve and maintain compliance. Staff may require the Owner to document correction of non-compliance and/or MBOH may elect to conduct one or more site visit(s) to verify correction of non-compliance and/or require additional Owner or manager training. The Owner will pay a reasonable fee to MBOH for any such additional monitoring activities.

### **L. Notice to Owner (26 CFR 1.42 (e)(2))**

MBOH must provide prompt written notice to the Owner if MBOH becomes aware of non-compliance. These items include:

- Non-receipt of the certification(s) described in this QAP.
- Inaccessibility of tenant income supporting documentation, rent records, or the property.

In addition, MBOH must provide prompt written notice to the Owner if MBOH discovers by inspection, review, or in some other manner, that the Project is not in compliance with the provisions of Section 42.

### **M. Correction Period (26 CFR 1.42 (e)(4))**

The Owner will be given a reasonable correction period from the date of non-compliance. If Staff determines that good cause exists, an extension may be granted.

### **N. Notice to IRS (26 CFR 1.42 (e)(3))**

MBOH must file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance" with the IRS (even if non-compliance has been corrected) no later than 45 days after the end of the correction period, and no earlier than the end of the correction period.

### O. Liability (26 CFR 1.42 (g))

Compliance with the requirements of Section 42 is the responsibility of the Owner of the building for which the credit is allowable. MBOH's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an Owner's noncompliance.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relation to, the compliance monitoring of a low-income housing Project.

### P. Marketing the Project

The Owner must put all HC properties into the free State-approved Housing Locator website, MTHousingSearch.com within one year after Placed in Service. If not completed within such time period, MBOH will do so and charge the Owner for the related costs. Properties will be contacted by MTHousingSearch for required information. Using this website meets the criteria for advertising vacant units and provides for broad coverage to those searching for affordable housing in Montana.

### Q. Qualified Contract Process

Federal law, in Section 42 of the Code, provides for a state housing credit agency process for early termination of the Extended Use Period for certain Projects and subject to certain requirements. Such process provides for the early termination of the Extended Use Period: (1) if the Owner submits a written request to MBOH in accordance with certain requirements to find a person to acquire the Property, and (2) if MBOH is unable to present within a one-year period a qualified contract for the acquisition of the Property by any person who will continue to operate the low-income portion of the building as a low-income building as defined in Section 42 of the Code. MBOH has adopted certain requirements and procedures applicable to the qualified contract process in the Montana Board of Housing, Montana Housing Tax Credit Program, Qualified Contract Process and Instructions for Calculation of the Qualified Contract Price (March 2017). MBOH hereby adopts and incorporates herein by reference the Montana Board of Housing, Montana Housing Tax Credit Program, Qualified Contract Process and Instructions for Calculation of the Qualified Contract Price (~~March 2017~~ 2018) (the "Qualified Contract Process") for purposes of eligibility, submission, consideration, determination and all other aspects of a request for a qualified contract as provided in Section 42. The Qualified Contract Process shall govern all aspects of a Project Owner's request to MBOH for a qualified contract.

**Commented [A7]:** We will propose revisions to the QCP to clarify requirements.

## SECTION 13 – DISCLAIMER

MBOH is charged with allocating no more tax credits to any given development than is required to make that development economically feasible. This decision shall be made solely at the discretion of MBOH, but in no way represents or warrants to any Applicant, Investor, lender, or others that the development is feasible or viable.

MBOH reviews documents submitted in connection with this Allocation for its own purposes. In Allocation of the tax credits, MBOH makes no representations to the Owner or anyone else regarding adherence to the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing Montana Housing Tax Credits.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relations to, the Allocation of the Housing Credit.

If it is determined that an Applicant or any member of the Development Team has intentionally submitted false information, a credit Award may be withdrawn or credits may be recaptured and the Applicant or any Applicant involving any related parties or any individual or entity supplying the false information will be ineligible to apply for credits for the next five years or may be assessed negative points as provided in Section 9.

#### **A. MBOH Policy on Non-Discrimination**

Montana Board of Housing is an Equal Opportunity organization. All employees who work for MBOH, agree not to discriminate against any client or co-worker based on any protected class under applicable Federal or Montana law. The failure of any employee to comply with this policy may lead to disciplinary action in accordance with applicable employment policies and procedures, including but not limited to immediate termination of employment.

#### **B. Qualified Allocation Plan Revisions**

This QAP may be amended at any time after compliance with applicable notice, comment and approval requirements.

#### **C. MBOH Policy on Civil Rights Compliance**

The Owner, Developer, borrowers and any of their employees, agents, or sub-contractors, in doing business with the Montana Board of Housing understand and agree that it is the responsibility of the Owner(s) and such other persons and entities to comply with all applicable Federal Civil Rights laws and regulations, including without limitation applicable provisions of the Fair Housing Laws and Americans With Disabilities Act, and any applicable State and local Civil Rights Laws and regulations. Should requirements, such as design, not be specified by MBOH, it is nonetheless the Owner(s) responsibility to be aware of and comply with all applicable non-discrimination provisions related to any protected class under Federal or Montana law, including design requirements for construction or Rehabilitation, Equal Opportunity in regard to marketing and tenant selection and reasonable accommodation and modification for those tenants covered under the Laws.

## **Housing Credit Forms:**

**All Forms Referenced in this QAP are available at:**

**<http://housing.mt.gov/MFQAP>**

Applicants, Developers, Owners, Management Companies and all other interested persons submitting Applications, Cost Certifications, Compliance materials, other materials and any fees to MBOH are responsible to review the website and to make such submission on the most current Form, including the most current Fee Schedule available on the MBOH website as of the date of the submission. MBOH may require resubmission of any item if submitted without using or complying with the current Form or without submission of the current fee amount, and late fees may be incurred if the need for such resubmission results in late submission of the correct Form or fee. Please contact MBOH staff with any questions regarding the appropriate or current Form or fee.