# SANTA FE COUNTY
# HAPPY ROOF PROGRAM HOUSING ASSISTANCE GRANT
# AFFORDABILITY AGREEMENT BETWEEN
# SANTA FE COUNTY AND QUALIFYING GRANTEE

**THIS Affordability Agreement** ("Agreement") is entered into on this 3rd day of February 2015, by and between Santa Fe County (hereinafter referred to as "County"), a New Mexico political subdivision, whose address is 102 Grant Avenue, Santa Fe, New Mexico, 87504 and **Orlinda F. Martinez, a single woman** ("Qualifying Grantee"), whose address is **530B NM76, P.O. Box 261, Chimayo, New Mexico 87522-0261**.

## RECITALS

**WHEREAS**, Qualifying Grantee, as owner in fee simple of real property located in the County of Santa Fe, State of New Mexico, described in Exhibit A attached hereto (the "Property"), has applied for and has been qualified for a Housing Assistance Grant ("Grant") from the Santa Fe County Housing Assistance Happy Roofs Program ("Program") pursuant to the provisions contained in the Affordable Housing Act, Section 6-27-1 NMSA 1978 *et seq.*, the New Mexico Mortgage Finance Authority Affordable Housing Rules ("MFA Rules") and the Affordable Housing Roof Repair or Replacement and Renovation Ordinance No. 2011-3 ("Ordinance");

**WHEREAS**, The Affordable Housing Act, the MFA Rules and the Ordinance impose occupancy and transfer requirements for the duration of an established Affordability Period, described in Section 3 of this Agreement.

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

**1. SCOPE OF AGREEMENT.** In order to satisfy the requirements of the Affordable Housing Act, the MFA Rules and the Ordinance and enable the County to issue the aforementioned Housing Assistance Grant and in consideration of the Grant and of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Qualifying Grantee and the County agree as follows:

A. This Agreement is in consideration of the Grant from the County to the Qualifying Grantee in the amount of **$11,850.00.** Qualifying Grantee understands and agrees that the Grant shall not be repaid to the County, with the exception of paragraph (D) below.

B. The Grant has been made to Qualifying Grantee through the Program after Qualifying Grantee submitted her application and was certified as Qualifying Grantee pursuant to the applicable rules of the Program. The Grant to Qualifying Grantee is made only if Qualifying Grantee agrees to the restrictions and requirements of all applicable rules and the Ordinance and as further set forth below.

C. The Qualifying Grantee hereby agrees to maintain the Property, as identified by the Program and Exhibit A to this Agreement, as an owner-occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period as defined in Section 3 of this Agreement; notwithstanding the foregoing:

i. the Property, the Agreement and the Grant, secured by a note and mortgage, may be transferred consistent with this Agreement with written approval of the County Affordable Housing Administrator pursuant to applicable rules and Ordinance, only if the transfer is to a person or family relation who is of low income, as established pursuant to the provisions contained in the Ordinance and Program; so long as such person or family member covenants and promises in writing to maintain the Property as the transferee's principal residence for the remainder of the Affordability Period set forth in this Agreement and otherwise to comply with all the terms and conditions of this Agreement; or

ii. the Property, the Agreement and the Grant, secured by a note and mortgage, may be transferred if the transfer is the result of the death of the Qualifying Grantee or the transfer is by devise or operation of law to the Qualifying Grantee's relation by blood or marriage within the third degree, in which case the transfer will cause an immediate termination of the Affordability Period, or the transfer is required by a marital settlement agreement, required by operation of bankruptcy or other insolvency laws or otherwise required by law.

D. Except as set forth in paragraph (C) above, if, at any time during the ten (10) year Affordability Period, the Property ceases to be the principal residence of the Qualifying Grantee, whether through sale or vacating of the Property or otherwise, then the entire outstanding amount of the Grant, including all accrued and unpaid interest, pursuant to Section 2 of this Agreement, will be immediately due and payable to the County. If such payment is not paid upon demand by the County by the Qualifying Grantee or valid transferee within thirty (30) days of such demand, the Qualifying Grantee or valid transferee shall be considered in default and in breach of this Agreement.

E. The County reserves the right to deny approval of a request to assume or transfer the Agreement and the Grant, secured by a note and mortgage, if the transferee cannot be certified as a qualifying grantee under the Program.

F. Qualifying Grantee certifies that the entire amount of the assistance will be used to perform roof repair or replacement work (the "Work") on the Property and that the County will only release Grant funds directly to the contractor repairing or replacing the roof following the Affordable Housing Administrator's receipt of all required information, including final inspection results. The Work shall be completed no later than six (6) months from the date of this Agreement.

G. The County may, as permitted by law, recover any attorney's fees and costs and seek all remedies afforded by law should Qualifying Grantee become in default or be determined to be in breach of this Agreement by the County.

H. Qualifying Grantee agrees that any default under the terms of the Grant, as those terms are set forth in this Agreement, will constitute a default under this Agreement and shall cause the full amount of the Grant to become immediately due and payable, including all accrued and unpaid interest, if any. If a default or breach of a term of this Agreement occurs, the County may proceed with all of its remedies to recover any amounts due and owing under the provisions of this Agreement and as afforded by law.

I. Qualifying Grantee understands and agrees that this Agreement will terminate, if not already expired, upon the happening of any of the following events: foreclosure and sale of the Property pursuant to an order of a court of competent jurisdiction.

J. Qualifying Grantee authorizes inspection of the Property by the County or its authorized agent prior to and following completion of the Work. Qualifying Grantee agrees to participate in the final inspection of the Work and to delegate to the County or its authorized agent the authority to formally accept the Work and make payment for the project, provided that the Work is completed in compliance with the contractor's agreement with the Qualifying Grantee, in the sole discretion of the County.

K. Qualifying Grantee acknowledges that she has reviewed bids from contractors at several meetings, the last of which was on **December 15, 2014** and has selected **JRM Construction Company, LLC** to perform the Work, based on her own evaluation of the bid proposal.

L. Qualifying Grantee acknowledges that she fully understands and accepts the contractor's proposed scope of work as detailed in the Proposal/Contract signed by the Qualifying Grantee on February 3, 2015, after having discussed the scope of work and the contract with the contractor prior to execution of the contract.

M. Qualifying Grantee agrees that the County is not a guarantor or indemnitor of the Work, and that any and all disputes or defects in manufacture or installation shall be matters solely between the Qualifying Grantee and the manufacturer and contractor; the Qualifying Grantee therefore releases the County as to any such claims and waives any such claims. Moreover, the Qualifying Grantees agree to indemnify and hold harmless the County from and against any claims related in any way to the Work to be accomplished or completed pursuant to the terms of this Agreement. Qualifying Grantee acknowledges that the County is not responsible for any warranty claims relating to defects in manufacture or installation of the Work by the contractor and that the resolution of such claims shall be the sole responsibility of the Qualifying Grantee.

N. Qualifying Grantee states that she has no notice of any unpaid bills or claims for labor or services performed or material furnished on the Property.

2. **HOUSING ASSISTANCE GRANT**. The Grant is in the amount of **$11,850.00.** If applicable, repayment of the Grant shall be the principal amount of **$11,850.00** and bearing simple interest at the rate of 5% annual percentage rate (APR).

3. **EFFECTIVE DATE AND TERM OF AGREEMENT AND AFFORDABILITY PERIOD**. The Affordability Period for this Grant is ten (10) years, beginning as of the date this Agreement is fully executed by all parties and terminating ten (10) years after execution of this Agreement. This Agreement shall remain in effect throughout the Affordability Period, unless terminated earlier pursuant to Section 1 paragraph (C) or (D) above.

4. **RELEASE.** Qualifying Grantee agrees to release and pledge to hold harmless the County, its employees, departments, boards, past, present and future commissioners, officers, agents, servants and independent contractors acting in their individual and official capacities, from any liability resulting from the Work performed on the Property.

5. **PUBLICATION, REPRODUCTION, AND USE OF MATERIAL.** The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

6. **NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**. This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto.

7. **ENTIRE AGREEMENT; INTEGRATION.** This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

8. **COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW.**

A. In performing its obligations hereunder, Qualifying Grantee shall comply with all applicable laws, ordinances, and regulations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Qualifying Grantee and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the First Judicial District Court of the State of New Mexico.

9. **SEVERABILITY**. If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

10. **NOTICES.** Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

For Qualifying Grantees: Orlinda F. Martinez
530B NM76.
Chimayo, NM 87522-0261

For County: Affordable Housing Administrator
Santa Fe County
102 Grant Ave
Santa Fe, NM 87501

**11. FACSIMILE SIGNATURES.** The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

**12. NO THIRD-PARTY BENEFICIARIES.** This Agreement was not intended to and does not create any rights in any persons not a party hereto.

**13. NEW MEXICO TORT CLAIMS ACT.** No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

**14. CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to the County, subject to the terms of any mortgage, deed of trust or other security agreement with a priority over this Agreement.

**15. SURVIVAL.** The provisions of following paragraphs shall survive termination of this Agreement; INDEMNIFICATION, RELEASE, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

**IN WITNESS WHEREOF** the parties have duly executed this Agreement as of the dates written below.

**SANTA FE COUNTY:**

Katherine Miller

Katherine Miller, County Manager

**QUALIFYING GRANTEE**

Orlinda F. Martinez

Orlinda F. Martinez

**APPROVED AS TO LEGAL FORM:**

12/19/14

Gregory Shaffer, County Attorney

**FINANCE DEPARTMENT:**

Carole Jaramillo for TCM
Teresa Martinez, Finance Director

**Acknowledgement**

State of New Mexico )
) ss.
County of Santa Fe )

This Agreement was acknowledged before me this 3 day of February, 2015, by Orlinda L. Martinez and _____, Qualifying Grantee.

Rosemary L. Bailey
Notary Public

My commission expires:
July 22, 2017

**Acknowledgement**

State of New Mexico )
) ss.
County of Santa Fe )

This Agreement was acknowledged before me this 23 day of December, 2014, by Carole Jaramillo County Finance Director.

Rosemary L. Bailey
Notary Public

My commission expires: 7/22/17

## Acknowledgement

State of New Mexico )
) ss.
County of Santa Fe )

This Agreement was acknowledged before me this 26 day of December, 2014, by Katherine Miller, County Manager.

OFFICIAL SEAL
Ambra Garcia
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 8/1/17

Notary Public

My Commission Expires: 8/1/17

**EXHIBIT A**

# LEGAL DESCRIPTION OF THE PROPERTY

T20N R9E Section 3, otherwise known as 530B NM76, Chimayo, NM 87522.