

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

Resolution No. 2023-106

A RESOLUTION ADOPTING THE SANTA FE COUNTY DEVELOPER ASSISTANCE PROGRAM REGULATIONS, PROVIDING FOR THE PROVISION OF HOUSING ASSISTANCE GRANTS AND LOANS TO ACQUIRE, DEVELOP, CONVERT, REHABILITATE OR PRESERVE AFFORDABLE HOUSING, TO FINANCE OR SUPPORT INFRASTRUCTURE IMPROVEMENTS FOR AFFORDABLE HOUSING, AND TO ALLOW SANTA FE COUNTY TO PROVIDE DONATIONS OF LAND, BUILDINGS AND OTHER ASSETS FOR THE CREATION OF AFFORDABLE HOUSING PURSUANT TO THE COUNTY'S AFFORDABLE HOUSING PLAN, SANTA FE COUNTY ORDINANCE 2023-05, THE NEW MEXICO AFFORDABLE HOUSING ACT AND THE NEW MEXICO MORTGAGE FINANCE AUTHORITY ACT RULES

WHEREAS, the New Mexico Affordable Housing Act, NMSA 1978 6-27-1 et seq, ("Act") and the New Mexico Mortgage Finance Authority ("NMMFA") Affordable Housing Act Rules ("Rules") require that a county that makes housing assistance grants have a valid, existing affordable housing plan; and

WHEREAS, the Act and Rules further state that a County must establish a housing assistance grant ordinance, which conforms to the Act and Rules, and must also establish a process, requirements and procedures related to the award of housing assistance grants issued by the county pursuant to the Act; and

WHEREAS, the Act and Rules mandate that a county's affordable housing plan and housing assistance grant ordinance be reviewed and approved by NMMFA to ensure their conformity with the requirements of the Act and Rules; and

WHEREAS, in June of 2023, Santa Fe County ("County") established a new Affordable Housing Plan ("Plan") and Housing Assistance Grant Ordinance ("Ordinance"), which were reviewed and approved by NMMFA; and

WHEREAS, on July 25, 2023, the Board of County Commissioners of Santa Fe County ("BCC") approved Santa Fe County Resolution No. 2023-083, which adopted the Plan as approved by NMMFA, and Santa Fe County Ordinance No. 2023-05, which adopted the Ordinance as approved by NMMFA; and

WHEREAS, the Plan provides multiple recommendations on programs and policies to increase the development and supply of affordable housing in Santa Fe County; and

WHEREAS, the Plan outlines several potential programs, including use of County-owned land for affordable housing development, developer incentives and financing assistance for affordable housing developments; and

WHEREAS, in order to overcome the significant deficit of affordable housing units within the County, and to allocate limited resources to affordable housing projects that produce substantial amounts of affordable units within the County, the Developer Assistance Program Regulations have been created; and

WHEREAS, Housing Assistance Grants or Loans issued through the Developer Assistance Program would be provided to applicants seeking funding to create or subsidize affordable housing developments or projects; and

WHEREAS, Housing Assistance Grants or Loans provided through the Developer Assistance Program could be utilized to: acquire, develop, convert, rehabilitate or preserve an affordable housing project; finance or support the infrastructure improvements necessary to support an affordable housing project; and would allow the County to donate land, buildings and other assets for the purpose of developing affordable housing; and

WHEREAS, the Housing Assistance Grants or Loans issued pursuant to the Developer Assistance Program could be used to support various types of affordable housing, as identified as a community need in the Plan, including single family, multifamily, homeownership, rental, congregate, transitional and emergency housing projects; and

WHEREAS, the Developer Assistance Program Regulations have been established to ensure conformity with NMMFA requirement pursuant to the Act and Rules and are attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves of and adopts the Developer Assistance Program Regulations attached and incorporated hereto as Exhibit "A".

PASSED, APPROVED AND ADOPTED, THIS 10TH DAY OF OCTOBER, 2023.

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: *Anna C. Hansen*
Anna C. Hansen, Chair

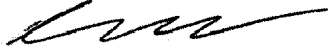


ATTESTATION:

Katharine E. Clark
Katharine E. Clark
Santa Fe County Clerk

Date: 10/11/2023

Approved as to form:



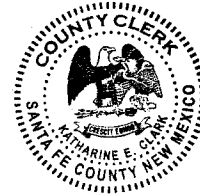
Jeff Young
Santa Fe County Attorney

COUNTY OF SANTA FE) BCC RESOLUTIONS
STATE OF NEW MEXICO) ss PAGES: 21

I Hereby Certify That This Instrument Was Filed for
Record On The 3RD Day Of November, 2023 at 11:28:39 AM
And Was Duly Recorded as Instrument # 2022840
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark

Deputy  County Clerk, Santa Fe, NM



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Santa Fe County Developer Assistance Program Regulations

Section One. Short Title. This Resolution May be cited as the Developer Assistance Program Regulations (“Regulations”).

Section Two. Statutory Authority. The Developer Assistance Program exists under the authority of Art. IX Section 14 of the New Mexico Constitution, the New Mexico Affordable Housing Act, NMSA 1978 6-27-1 et seq. and Santa Fe County Ordinance No. 2023-05, and is consistent with the County’s 2023 Affordable Housing Plan, as approved by the New Mexico Mortgage Finance Authority.

Section Three. Purpose. The Developer Assistance Program shall establish program requirements and administrative process for Housing Assistance Grants or Loans provided by Santa Fe County to Qualifying Grantees for: the acquisition, development, conversion, rehabilitation or preservation of affordable housing; infrastructure improvements for affordable housing; and the donation of land, buildings or other assets for the purpose of creating affordable housing.

Section Three. Scope. The Developer Assistance Program shall apply within the jurisdictional boundaries of Santa Fe County.

Section Four. Definitions.

"Act" shall mean the Affordable Housing Act, NMSA 1978, §6-27-1 et seq.

"Affordable" shall mean consistent with minimum rent and/or income limitations set forth in the Act and in guidelines established by MFA.

"Affordable Housing" means residential housing primarily for persons or households of low- or moderate-income.

"Affordable Housing Funds" shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under the Act.

"Affordable Housing Plan" or "Plan" shall mean a plan pursuant to detailed research and analysis of the community and housing profile, including a review of land use and policy regarding land use, which produces a housing needs assessment for low- and moderate-income households in that locality.

"Affordable Housing Program" or "Program" shall mean any programs the County establishes pursuant to the Act.

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"Affordable Housing Project" or "Project" shall mean any work or undertaking, whether new construction, acquisition of existing Residential Housing, remodeling, improvement, rehabilitation or conversion, which may be developed in one or more phases, as approved by the County for the primary purposes as allowed by the Act.

"Affordability Period" shall mean:

1. If the fair market value of any housing assistance grant or the total amount of affordable housing funds that have been awarded, loaned, donated, or otherwise conveyed to the qualifying grantee is from one dollar (\$1.00) to fourteen thousand nine hundred ninety-nine dollars and ninety-nine cents (\$14,999.99), then the affordability period shall be not less than five (5) years.
2. If the fair market value of any housing assistance grant or the total amount of affordable housing funds is from fifteen thousand dollars (\$15,000.00) up to and including forty thousand dollars (\$40,000.00), then the affordability period shall be not less than ten (10) years.
3. If the fair market value of any housing assistance grant or the total amount of affordable housing funds is greater than forty thousand dollars (\$40,000.00) up to and including one hundred thousand dollars (\$100,000.00), then the affordability period shall be not less than fifteen (15) years.
4. If the fair market value of any housing assistance grant or the total amount of affordable housing funds is greater than one hundred thousand dollars (\$100,000.00), then the affordability period shall be not less than twenty (20) years.

"Applicant" shall mean, an individual, a governmental housing agency, regional housing authority, a non-profit organization, or a for-profit organization, including a corporation, limited liability company, partnership, joint venture, syndicate, or association meeting the appropriate criteria set by the County.

"Application" shall mean an application to participate in one or more Affordable Housing Projects or Programs under the Act submitted by an Applicant to the County.

"Builder" shall mean an individual or entity licensed as a general contractor to construct Residential Housing in the State that satisfies the requirements of a Qualifying Grantee and has been approved by the County to participate in an Affordable Housing Program. The term "Builder" shall also include an individual or entity that satisfies the requirements of a Qualifying Grantee and has been approved by the County to participate in an Affordable Housing Program, who is not licensed as a general contractor in the State, provided such individual or entity contracts with a general contractor licensed in the State to construct Residential Housing.

"Building" shall mean a structure capable of being renovated or converted into Affordable Housing or a structure that is to be demolished and is located on land donated for use in connection with an Affordable Housing Project.

"Congregate Housing Facility" shall mean Residential Housing designed for occupancy by more than four Persons of Low- or Moderate-Income living independently of each other. The facility may contain group dining, recreational, health care or other communal living facilities and

each unit in a Congregate Housing Facility shall contain at least its own living, sleeping, and bathing facilities.

“Commission” shall mean the Board of County Commissioners of Santa Fe County.

“County” shall mean Santa Fe County, New Mexico, a unit of local government under the Constitution and laws of the State of New Mexico.

“Developer Assistance Review Committee” shall mean an independent committee established by the County for the purpose of reviewing Applications and making recommendations to the Commission on the award of Housing Assistance Grants or Loans to Qualified Grantees.

“Developer Assistance Application Form” shall mean the uniform application for created by the County for the purpose of submitting Application for a Housing Assistance Grant or Loan under these Regulations.

“Federal Government” shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

“Household” shall mean one or more persons occupying a housing unit.

“Housing Assistance Grant or Loan” means the donation, provision or payment, or loan by the County of or for:

1. Land upon which affordable housing will be constructed; or
2. An existing Building that will be renovated, converted or demolished and reconstructed as Affordable Housing; or
3. The costs of acquisition, development, construction, financing, and operating or owning Affordable Housing; or
4. The costs of financing or infrastructure necessary to support Affordable Housing.

“Housing Related Services” shall mean any service necessary for resident support, residential amenities or the operation of an Affordable Housing Project.

“HUD” shall mean the United States Department of Housing and Urban Development.

“Infrastructure” shall mean Infrastructure Improvements and Infrastructure Purposes.

“Infrastructure Improvement” includes, but is not limited to:

1. Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;
2. Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;
3. Water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;
4. Areas for motor vehicle use for road access, ingress, egress and parking;
5. Trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for access, ingress, egress and parking;
6. Parks, recreational facilities and open space areas for the use of residents for entertainment,

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- assembly and recreation;
7. Landscaping, including earthworks, structures, plants, trees and related water delivery systems;
 8. Electrical transmission and distribution facilities;
 9. Natural gas distribution facilities;
 10. Lighting systems;
 11. Cable or other telecommunications lines and related equipment;
 12. Traffic control systems and devices, including signals, controls, markings and signs;
 13. Inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and
 14. Heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements that are affixed to real property.

"Infrastructure Purpose" shall mean:

1. Planning, design, engineering, construction, acquisition or installation of Infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the Infrastructure, provided the County may determine it appropriate to reduce or waive Building permit fees, sewer and water hook-up fees and other fees with respect to an Affordable Housing Project for which Affordable Housing Funds and/or Housing Assistance Grants are awarded, loaned, donated or otherwise distributed under the Act;
2. Acquiring, converting, renovating or improving existing facilities for Infrastructure, including facilities owned, leased or installed by the owner;
3. Acquiring interests in real property or water rights for infrastructure, including interests of the owner; and
4. Incurring expenses incident to and reasonably necessary to carry out the purposes specified in this subsection.

"MFA" shall mean the New Mexico Mortgage Finance Authority.

"Mortgage" shall mean a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the County, on a fee interest in real property located within the County or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the Mortgage Loan.

"Mortgage Loan" shall mean a financial obligation secured by a Mortgage, including a Mortgage Loan for a Project.

"Multiple Family Housing Project" shall mean Residential Housing that is designed for occupancy by more than four persons or families living independently of each other or living in a Congregate Housing Facility, at least sixty percent (60%) of whom are Persons of Low- or Moderate-Income, including without limitation Persons of Low- or Moderate-Income who are elderly and/or disabled as determined by the County pursuant to HUD definitions, provided that

the percentage of Low-Income persons and families shall be at least the minimum, if any, required by federal tax law.

"Multi-Family Housing Program" shall mean a program involving a Congregate Housing Facility, a Multiple Family Housing Project, a Transitional Housing Facility or a Shelter used to provide emergency or transitional housing opportunities to Low-Income or Moderate-Income families who are or are at risk of becoming homeless.

"Ordinance" shall mean this Santa Fe County Ordinance No. 2023-05.

"Persons of Low- or Moderate-Income" shall mean persons and families the County determines lack sufficient income to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary residential housing in the County and whose incomes are below the income levels established by the MFA and the Plan to be in need of the assistance made available by the Act, taking into consideration, without limitation, such factors as defined under the Act. For purposes of this definition, the word "families" shall mean a group of persons consisting of, but not limited to, the head of a Household; his or her spouse, if any; and children, if any, who are allowable as personal exemptions for Federal income tax purposes. In accordance with the Plan, persons of low- and moderate-income who are eligible for assistance in accordance with the plan are as follows:

1. Persons of Low-Income shall mean persons in Households with annual gross incomes below 80% of Area Median Income for the County as approved and published each year by MFA and verified by the County.
2. Persons of Moderate-Income shall mean persons in Households with annual gross incomes between 80% and 120% of Area Median Income for County as approved and published each year by MFA and verified by the County.
3. For purposes of this definition, "annual gross income" shall mean the annual anticipated income from assets, regular cash or noncash contributions, and any other resources and benefits determined to be income by HUD, as defined in 24 CFR Section 5.609.

"Public Service Agencies" shall include, but are not limited to, any entities that support Affordable Housing and which believe that the program or project proposed by the Applicant is worthy and advisable, but which are not involved, either directly or indirectly, in the Affordable Housing Program or Project for which the Applicant is applying.

"Qualifying Grantee" means:

1. An individual who is qualified to receive assistance pursuant to the Act, the Rules, and this Ordinance and is approved by the County and MFA, as applicable; and
2. A governmental housing agency, regional housing authority, corporation, a limited liability company, partnership, joint venture, syndicate, association or a non-profit organization that:
 - a. Is organized under State or local laws and can provide proof of such organization;
 - b. If a non-profit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

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- c. Is qualified to receive assistance pursuant to the Act, the Rules and this Ordinance; and
- d. Is approved by the County and MFA, as applicable.

"Recertification" shall mean the recertification of Applicants and/or Qualifying Grantees participating in any Affordable Housing Programs or in any programs under the Act as determined necessary from time to time by the County and/or the MFA.

"Rehabilitation" shall mean the substantial renovation or reconstruction of an existing single-family residence or a Multi-Family Housing Project, which complies with requirements established by the MFA. Rehabilitation shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other substantial renovation or reconstruction.

"Residential Housing" shall mean any Building or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more Households and any real property that is offered for sale or lease for the construction or location thereon of such a Building, or portion thereof. "Residential Housing," includes congregate housing, manufactured homes and housing intended to provide or providing transitional or temporary housing for homeless persons.

"RFP" shall mean any request for proposals made by the County to solicit proposals for Affordable Housing Projects and related services.

"Rules" shall mean the New Mexico Mortgage Finance Authority Affordable Housing Rules adopted pursuant to Section 6-27-8(B) NMSA 1978.

"State" shall mean the State of New Mexico.

"Transitional Housing Facility" shall mean Residential Housing that is designed for temporary or transitional occupancy by Persons of Low- or Moderate-Income, or Persons with special needs who require supportive housing opportunities, such as persons with physical or mental disabilities, the elderly, people with medical conditions, the homeless, victims of domestic violence, foster youth, refugees, and others as identified by HUD.

Section Five. Types of Housing Assistance Grants and Loans Allowable Under the Developer Assistance Program.

- A. A Qualifying Grantee may submit application to the County for a Housing Assistance Grant or Loan for the following purposes:
 - 1. to support the cost of acquiring land, an existing Building or other real property for the purpose of developing Affordable Housing;
 - 2. developing or constructing an Affordable Housing Project;
 - 3. converting a Building not initially created for Affordable Housing into Affordable Housing;

4. rehabilitating a Building, whose primary purpose is to provide Affordable Housing or Affordable Housing Services to Persons or Households of Low to Moderate Income after the Rehabilitation is complete;
5. preserving a current Affordable Housing Project, that otherwise would lose its designation as an Affordable Housing Project if the Project were not preserved;
6. to finance or support Infrastructure Improvements necessary to effectuate Affordable Housing; and
7. for donations of land or existing Buildings owned by the County for the purpose of developing Affordable Housing.

Section Six. Request for Proposals, Review of Applications and Approvals.

- A. The County, in its discretion, may issue one or more RFPs to solicit applications from Applicants or shall otherwise identify a Qualifying Grantee for the award and use of Housing Assistance Grants or Loans to be awarded, loaned, donated or otherwise distributed under Developer Assistance Program.
- B. Complete applications shall be reviewed by a Developer Assistance Review Committee, which shall make recommendations on the award of Housing Assistance Grant or Loans to the Commission for approval.
- C. The Commission acting directly, or under the delegation of its signature authority pursuant County Resolution 2014-143, shall approval all Housing Assistance Grant or Loans issued under the Developer Assistance Program.

Section Seven. Application Eligibility.

- A. The following Applicants are eligible under the Act to apply for Housing Assistance Grants or Loans to provide Affordable Housing to Persons of Low- or Moderate-Income in the community:
 1. All individuals who are qualified to receive assistance pursuant to the Act, the Rules, and Ordinance that are approved by the County and/or MFA, as applicable;
 2. All housing authorities and governmental housing agencies whose primary jurisdiction is within the jurisdictional boundaries of Santa Fe County;
 3. All for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate or association;
 4. All non-profit organizations meeting the following requirements:
 - i. A primary mission of the non-profit organization must be to provide or develop housing, or Housing Related Services, to Persons of Low- or Moderate-Income;
 - ii. The non-profit organization must have received its 501(c)(3) designation prior to submitting an application;

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- iii. Have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual
5. All non-individual Applicants must:
- i. Be organized under State or local laws and can provide proof of such organization to the County;
 - ii. Have a functioning accounting system that is operated in accordance with generally accepted accounting principles (“GAAP”) or has designated an entity that will maintain such an accounting system consistent with GAAP;
 - iii. Have among its purposes significant activities related to developing Affordable Housing for Persons or Household of Low or Moderate Income; and
 - iv. Have no significant, outstanding or unresolved monitoring findings from the County, MFA, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from the County, MFA or auditor stating that the findings are in the process of being resolved.

Section Eight. Applications.

- A. *Process for Applying.* Applicants wishing to apply for a Housing Assistance Grant or Loan for any of the allowable types of grants under the Developer Assistance program, are required to submit to the County the following (as applicable):
- 1. One original Application together with all required schedules, documents, or such other information which may be required by the County or in any RFP which may have been issued by the County;
 - 2. A proposal describing the nature and scope of the Affordable Housing Project proposed by the Applicant and for which the Applicant is applying for funds or a grant under the Act and Ordinance, and which documents the need for the requested funds or grant, describes the type and/or amount of assistance which the Applicant proposes to provide to Persons of Low- or Moderate-Income and documents the consistency of the proposal with the County's Affordable Housing Plan;
 - 3. An executive summary and project narrative(s) that address the evaluation criteria set forth in any RFP issued by the County for the Housing Assistance Grant or Loan for which the Applicant is applying;
 - 4. A proposed budget for the Affordable Housing Project for which the Applicant is applying for a Housing Assistance Grant or Loan;
 - 5. A copy of the most recent independent financial audit;
 - 6. A certification attesting that the Affordable Housing Project for which a Housing Assistance Grant or Loan is being requested will be administered in accordance

with Title 42 Chapter 45 of the United States Code, commonly referred to as the Fair Housing Act.

7. If the Applicant is a non-profit organization:
 - i. Proof of 501(c)(3) tax status; and
 - ii. Documentation that confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;
8. If an Applicant is a legal entity, including a non-profit organization:
 - i. A current annual budget for the Applicant, including all sources and uses of funds to be used on the Affordable Housing Project for which the Applicant is applying for a Housing Assistance Grant or Loan;
 - ii. A Pro Forma for the proposed Affordable Housing Project for which a Housing Assistance Grant or Loan is being requested;
 - iii. An approved mission statement that the Applicant has among its purposes significant activities related to developing Affordable Housing for Persons or Households of Low or Moderate Income;
 - iv. A list of members of the Applicant's current board of directors or other governing body;
 - v. Evidence or certification that the Applicant has a functioning accounting system that is operated in accordance with GAAP or has a designated entity that will maintain such an accounting system consistent with GAAP;
 - vi. Evidence that the Applicant has no significant outstanding or unresolved monitoring findings from the County, MFA, or its most recent independent financial audit; or if it has any significant, outstanding or unresolved monitoring findings it has a certified letter from the County, MFA or the auditor stating that the findings are in the process of being resolved;
 - vii. An organizational chart, including job titles and qualifications for the Applicant's employees; and
 - viii. Documentation that the Applicant is duly organized under State or local law and certification that the Applicant is in good standing with any State authorities, including the Public Regulation Commission and the Secretary of State;
9. Information as may be required by the County to determine the financial and management stability of the Applicant;
10. Information as may be required by the County to determine the demonstrated commitment of the Applicant to the community;
11. A completed cost-benefit analysis of the Affordable Housing Project proposed by the Applicant. Any cost-benefit analysis must include documentation that clearly evidences that there is a need for the Housing Assistance Grant or Loan being requested from the County; that there is or will be a direct benefit from the Project proposed by the Applicant to the community and/or to the purported beneficiaries of the Project, consistent with the provisions of the Act; and that the Project will

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meet the needs and affordability criteria defined in the County 's Affordable Housing Plan;

12. Proof of substantive or matching funds or contributions and/or in-kind donations to the proposed Project in connection with the Application for funds under the Act and Ordinance;
 13. Any certifications or other proof, which the County may require to confirm that the Applicant is in compliance with all applicable federal, State and local laws, rules and ordinances;
 14. A verification signed by the Applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the Applicant's information, knowledge and belief;
 15. Other information required by the County that clearly provides evidence of the need for the Housing Assistance Grant or Loan subsidy, that the value of the Housing Assistance Grant or Loan increases the supply of Affordable Housing in the County or reduces housing costs to Persons or Households of Low to Moderate Income.
- B. For Applicants submitting Applications in connection with a Multifamily Housing Program, the Applicant shall also provide:
1. A verified certificate that:
 - i. Identifies every Multi-Family Housing Program, including every assisted or insured project of HUD, Rural Housing Services, Federal Housing Administration and any other state or local government housing finance agency in which such Applicant has been or is a principal;
 - ii. States that except as shown on such certificate:
 1. No mortgage on a project listed on such certificate has ever been in default, assigned to the Federal Government or foreclosed, nor has any mortgage relief by the mortgagee been given;
 2. There has not been a suspension or termination of payments under any HUD assistance contract in which the Applicant has had a legal or beneficial interest;
 3. Such Applicant has not been suspended, debarred or otherwise restricted by any department or agency of the Federal Government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and
 4. The Applicant has not defaulted on an obligation covered by a surety or performance bond.
 - iii. If the Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances that the Applicant believes will explain the lack of certification. The County may then determine if such Applicant is or is not qualified. The experience of the Applicant in developing, financing and managing Multiple-Family Housing Projects; and

- iv. Whether the Applicant has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

C. Submission of Applications.

- 1. Applications must be submitted in accordance with timelines established by the County or pursuant to the requirements of the RFP.
- 2. Applications shall be submitted in a form required by the County and shall contain all information which is required by these regulations, the Ordinance and the RFP, if applicable.
- 3. Other factors to be considered by the County shall include:
 - i. Timely completion and submission of the Application and/or other documentation requested by the County pursuant to the Act, Ordinance and these Regulations;
 - ii. Timely payment of any fees which may be required to be paid to the County at the time of submission of the Application; and
 - iii. Compliance with program eligibility requirements as set forth in the Act, the Rules and Ordinance.

D. Submission Format.

- 1. A Developer Assistance Application Form will be provided on County form and evaluated for completeness and maintained by the Affordable Housing Administrator.
- 2. Applicants must provide the Developer Assistance Application Form in conjunction with any other forms, exhibits, attachments, addendums or other documents requested by the County prior to the application deadline in order for the application to be considered by the Developer Assistance Review Committee.
- 3. The County reserves the right to request further information following the submission of a completed application, so long as the request is done fairly and does not provide any Applicant an undo advantage over another Applicant.
- 4. The County, in its discretion, may cancel any solicitation or RFP or reject any or all proposals in whole, or in part, submitted by any Applicant.
- 5. The Applicant shall be responsible for any expenses incurred in preparing or submitting an Application for a Housing Assistance Grant or Loan under the Developer Assistance Program.
- 6. The County may also establish a fee schedule for the processing and review of Applications submitted pursuant to these regulations. Any related fees shall be clearly identified as part of the RFP or solicitation and shall also be identified on the Develop Assistance Application Form.

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Section Nine. Establishment of the Developer Assistance Review Committee (“Review Committee”)

A. Review Committee Voting Members.

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1. The Review Committee shall be made up of five (5) voting members, who shall evaluate Applications and make recommendations to the Commission for award of Housing Assistance Grants or Loans issued pursuant to these Regulations.
 2. The Review Committee shall have one (1) member from the following County Departments: Community Development (at large), Santa Fe County Housing Authority, Public Works, Growth Management and Finance Division.
- B. Review Committee Appointments and Terms.
1. Review Committee members shall be appointed by the presiding, acting or interim Department or Division Director, of the appropriate department in which the position is housed.
 2. Review Committee Members shall have a term of two (2) years.
 3. Appointments shall take effect January 1st of every even numbered year.
 4. If a Review Committee Member vacates their position on the Review Committee for any reason including separation from employment with the County, the presiding, acting or interim Department or Division Director shall appoint an alternate member, who shall take over the Department or Division's position on the Review Committee for the duration of the term.
 5. Review Committee Members shall not have term limits.
- C. Advisory Members Appointments.
1. The Santa Fe County Manager, or designee, may appoint Advisory Members to the Review Committee who are determined to have subject matter expertise in an area specific to the County's Request for Proposal for an Affordable Housing Project.
 2. An Advisory Member appointed by the County Manager or designee shall be a non-voting member.
 3. Advisory Members appointments to the Review Committee shall be specific to the Request for Proposal, and as such, the Advisory Member appointment shall terminate following the award of the Housing Assistance Grant or Loan to a Qualified Grantee pursuant to the Request for Proposal for which the Advisory Member was appointed.
- D. Review Committee Member Requirements.
1. All Review Committee Members, upon their appointment or shortly thereafter, shall be required to attend a training related to Affordable Housing development, financing and programs. This training may be held by County Affordable Housing Staff or a contractor who provides such services.

Section Ten. Review of Applications by the Review Committee.

- A. Upon receipt of a completed application, the Review Committee shall issue a written confirmation of receipt of a completed application to the Applicant.
- B. The Review Committee shall consider various factor when reviewing an application under these Regulations. Evaluation criteria shall include, but are not limited to:
 - a. Whether the application submitted by the Applicant is complete and responsive;
 - b. Whether the Applicant is a Qualifying Grantee as defined herein;

- c. A Review and analysis of whether the Applicant has shown a demonstrated need for the Project and that the proposal is consistent with the County's adopted Affordable Housing Plan;
- d. Whether the Applicant has demonstrated experience related to developing Affordable Housing, as well as experience and/or the capacity of the Applicant to develop, construct, convert, rehabilitate or preserve the Project for which the Applicant has applied;
- e. Whether the Applicant's proposal provides a plan for coordinating with other service providers in the community;
- f. Whether the Applicant's proposal addresses how Persons of Low-Income or Moderate-Income in need of housing and/or Housing Related Services can receive supportive services and referrals to federal, State and local resources; and, whether the Applicant's proposal addresses outreach efforts to reach the population to be served as identified by the County in any RFP or other solicitation, in the Affordable Housing Plan or otherwise;
- g. Whether the Applicant has support from Public Service Agencies, or such other support as may be required by the County for its proposed services in the community;
- h. Ascertain the amount of any matching funds or in-kind services specific to the program that may be utilized by the Applicant in connection with the program;
- i. Ascertain whether any local, private, or federal funds will be used by the Applicant in connection with the specific grant or loan for which the Applicant is applying;
- j. Ascertain whether the Applicant has and can demonstrate the capability to manage the implementation of the Program for which the Applicant is applying;
- k. If Applicant is a prior recipient of either a Housing Assistance Grant or Loan or other Affordable Housing Program funds which impose related performance criteria:
 - i. Confirmation that the Applicant had no outstanding findings or matters of non-compliance with program requirements from the County or MFA, as applicable, or if it has any such findings, it has a certified letter from the County, MFA or auditor stating that the findings are in the process of being resolved;
 - ii. Confirmation that the Applicant reasonably committed and expended the funds under the prior Program and/or met anticipated production levels as set forth in any contract with the County or the MFA, as applicable, for those prior Program funds;
- l. Evaluation of the Applicant's proposed budget for the Project for which the Applicant is applying for a Housing Assistance Grant or Loan, which proposed budget must be approved by the County before the Applicant can be approved as a Qualifying Grantee and any expenditure of grant funds or granted property is transferred to the Applicant;

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- m. If the Applicant is a Builder, the County will analyze the Builder's ability to construct and sell sufficient Residential Housing units to Persons of Low- or Moderate- Income within the time or times as may be required by the County; and
- n. Consideration of other factors deemed appropriate to ensure a reasonable geographic allocation for Housing Assistance Grant or Loans provided through the Developer Assistance Program.

Section Eleven. Certification of Qualifying Grantee and Discretionary Review by MFA.

- A. Upon review by the Developer Assistance Review Committee, the County shall certify to MFA that:
 - a. The County has successfully reviewed the Application;
 - b. The Application provided is complete and has met the requirements of the RFP or other solicitation;
 - c. All requirements of the Act, Rules and Ordinance have been satisfied;
 - d. A determination has been made that the Applicant is a Qualifying Grantee; and
 - e. That an award of a Housing Assistance Grant or Loan has been made.
- B. Upon its review of the certification, MFA, in its discretion, may review the applications and any supporting documentation submitted by the Applicant to the County to ensure compliance with the Act and Rules. MFA shall have 45 days, unless good cause for an extension has been determined, to confirm or deny the County's determination and award.

Section Twelve. Notice of Award.

- A. Upon the determination of award, the Qualifying Grantee who is the recipient of award shall be notified in writing of the determination by the Affordable Housing Administrator.
- B. The County shall follow all additional policies and procedures related to Commission approval of a Housing Assistance Grant or Loan issued pursuant to the Developer Assistance Program.

Section Thirteen. Securitization of Public Funds, Assets and Resources.

- A. All Housing Assistance Grants or Loans issued pursuant to these Regulations shall be secured by an appropriate security instrument, which may include, but are not limited to: Notes, Mortgages, Liens, Restrictive Covenants, Land Use Restriction Agreements, Development and Disposition Agreements, or other similar documents. Any instrument used to securitize a Housing Assistance Grant or Loan shall:
 - 1. Provide adequate security against the loss of public funds or property;
 - 2. Identify the appropriate Affordability Period identified in the Act, Rules and Ordinance, in accordance with the total award amount of the Housing Assistance Grant or Loan;
 - 3. Provide that in the event the Qualifying Grantee abandons or fails to complete the Affordable Housing Project, the County may, as may be permitted by law, recover any attorneys' fees and costs which the County may incur in enforcing the

provisions of the Ordinance or any agreement entered into by the County and the Qualifying Grantee;

4. Language clearly identifying that funds or assets provided as a Housing Assistant Grant or Loan, be used solely for the intend Project and purposes identified in the Application; and
 5. Shall include remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee.
- B. Prior to the release of funding, the Qualify Grantee shall enter into one or more contract or agreement with the County. These agreements shall include the security instruments listed in Section 11.A, but may also include additional agreements, such as Developer Assistance Agreements or other agreements, which identify roles and responsibilities pursuant to the Act, Rules, Ordinance and these Regulations.

Section Fourteen. Affordability Housing Requirements.

- A. All Affordable Housing Assistance Grants or Loans awarded under the Developer Assistance Program are to be used by Qualifying Grantees for the benefit of Persons of Low- or Moderate-Income subject to the provisions of the Act and with particular regard to their housing related needs.

1. Single-Family Property.

- i. Qualifying Grantees shall agree that they shall maintain any single-family property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from a Housing Assistance Grant or Loan, including but not limited to any loans which have been repaid with Housing Assistance Grant funds and which loans previously were secured by such properties, as Affordable Housing for so long as any or all of the funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, whichever is longer.
- ii. If any single-family properties are to be rehabilitated, weatherized, converted, leased, repaired, constructed or otherwise are to benefit from Housing Assistance Grant or Loan funds, and if the Qualifying Grantee intends to rent the single-family property out, those single-family properties shall be leased to Persons of Low- or Moderate-Income at the time of any such award. Grantees also shall agree that the Persons of Low- or Moderate-Income, who are tenants of those single family rentals, shall be allowed to remain tenants for so long as there are no uncured defaults by those tenants under their respective leases – which must be compliant with the New Mexico Uniform Owner-Resident Relations Act (NMSA 1978 Sections 47-8-1 through 47- 8-52) – and provided that there is no just cause (as outlined in Section 47-8-33 NMSA 1978) for the landlord to terminate any lease agreement with those tenants.

2. Multi-Family Property.

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- i. *Single Apartment within a Multi-Family Property.*** Qualifying Grantees shall agree that, if any single apartments are to be rehabilitated, weatherized, converted, leased, repaired, constructed or otherwise are to benefit from Housing Assistance Grant or Loan funds, those apartments shall be leased to Persons of Low- or Moderate-Income at the time of any such award. Qualifying Grantees, who are the landlords and/or owners of such properties, shall further agree to contribute at least sixty percent (60%) of the cost of the rehabilitation, weatherization, conversion, lease, repair, and/or construction. Qualifying Grantees also shall agree that the Persons of Low- or Moderate- Income, who are tenants of those apartments, shall be allowed to remain tenants for so long as there are no uncured defaults by those tenants under their respective leases -- which must be compliant to the New Mexico Uniform Owner-Resident Relations Act (NMSA 1978 Sections 47- 8-1 through 47-8-52) – and provided that there is no just cause (as outlined in Section 47-8-33 NMSA 1978) for the landlord to terminate any lease agreement with those tenants.
 - ii. *Multiple Apartments.*** Qualifying Grantees shall agree that, if multiple apartments or an entire multi-family property are to be acquired, rehabilitated, weatherized, converted, leased, repaired, constructed or otherwise are to benefit from Housing Assistance Grant or Loan Funds including but not limited to any loans which have been repaid with Housing Assistance Grant or Loan funds and which loans previously were secured by such properties, they shall maintain not less than sixty percent (60%) of the housing units as Affordable Housing for so long as any or all of the Housing Assistance Grant or Loan funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, whichever is longer.
- 3. *Non-Residential Property.*** Qualifying Grantees shall agree that they shall maintain any non-residential property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefitted from Housing Assistance Grant or Loan funds including but not limited to any loans which have been repaid with Housing Assistance Grant or Loan funds and which loans previously were secured by such properties, as a facility which provides Housing Related Services to Persons of Low- or Moderate-Income for so long as any or all of the Housing Assistance Grant or Loan funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, whichever is longer.
- 4. *Housing Assistance Grant or Loan Affordability Requirements.*** Qualifying Grantees shall agree that they shall maintain any land or buildings received as a Housing Assistance Grant as either single-family or multi-family Affordable Housing in accordance with the Ordinance or as a facility which provides Housing Related Services to Persons of Low- or Moderate-Income in accordance

with the Ordinance (as applicable) for the duration of the Affordability Period. Qualifying Grantees shall agree that they shall maintain any land or buildings for which they have received the costs of Infrastructure as a Housing Assistance Grant either as single- family or multi-family Affordable Housing or as a facility which provides Housing Related Services to Persons of Low- or Moderate-Income (as applicable) for the duration of the Affordability Period. In calculating the Affordability Period for Housing Assistance Grants of either land or buildings, the fair market value of the land or buildings or the costs of Infrastructure at the time of the donation by the County shall apply.

5. *Affordability Period.* The County, in its discretion, may increase the Affordability Period in any contract, note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the County may enter into with any Qualifying Grantee or beneficiary of the Housing Assistance Grant or Loan.

Section Fifteen. Compliance.

- A. The Qualifying Grantee shall be required to abide by a reasonable performance schedule and performance criteria that the County may establish.
- B. The Qualifying Grantee shall submit to and the County shall cause to be made such examinations of the books and records of each Qualifying Grantee as the County and/or MFA deems necessary or appropriate to determine the Qualifying Grantee's compliance with the terms of the Act, the Rules, Ordinance and these Regulations, and any contracts or agreements between the Qualifying Grantee and the County. The County may require each Qualifying Grantee to pay the costs of any such examination.
- C. Qualifying Grantees shall provide the County with any and all information which the County may reasonably require in order for it to confirm that the Qualifying Grantees continue to satisfy the requirements of this Ordinance throughout the term of any contract and/or any Affordability Period or otherwise as may be required by the County or the MFA in its discretion. At a minimum, on an annual basis, the County shall certify to the MFA in writing that to the best of its knowledge the Qualifying Grantee is in compliance with applicable provisions of the Act, the Rules and this Ordinance.
- D. **Recertification Procedures.**
 1. The Qualifying Grantee must meet the requirements of the Act, the Rules, Ordinance and these Regulations both at the time of any award and throughout the term of any grant and contract related thereto.
 2. The County may establish procedural requirements for recertifying Qualifying Grantees from time to time.
 3. Qualifying Grantees that fail to satisfy the requirements for Recertification shall cease to be eligible and shall be denied further participation in Affordable Housing Programs until those requirements are satisfied.

Section Sixteen. Requirements for Infrastructure Cost Reimbursement Pursuant to the Developer Assistance Program.

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A. Infrastructure Cost Reimbursement Contracts

1. *Cost Reimbursements.* Payment to a Qualifying Grantee under cost reimbursable contract provisions shall be made upon the County's receipt from the Qualifying Grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the Qualifying Grantee and the County.
2. *Cost Reimbursement for Units of Service.* Payment under any unit cost contract provisions shall be made upon the County's receipt from the Qualifying Grantee of a certified and documented invoice showing the number of units of service provided during the billing period.
3. *Rate at which Costs Incurred.* Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the Qualifying Grantee at an approximate level rate during the term of any agreement between the Qualifying Grantee and the County. If the County determines that the Qualifying Grantee is underspending or overspending, then the County may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.
4. *Invoices.* Qualifying Grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the County. Failure to submit invoices within twenty (20) calendar days of the close of the month for which payment is sought may result in the non-availability of funds for reimbursement.
5. *No Dual Application of Costs.* The Qualifying Grantee shall certify that any direct or indirect costs claimed by the Qualifying Grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the Qualifying Grantee and which has not been approved by the County in advance, in writing.
6. *Prohibition of Substitution of Funds.* Any Housing Assistance Grant or Loan funds or other amounts received by Qualifying Grantee may not be used by a Qualifying Grantee to replace other amounts made available or designated by the State or local governments through appropriations for use for the purposes of the Act.
7. *Cost Allocation.* The Qualifying Grantee shall clearly identify and distribute all costs incurred pertaining to the Affordable Housing Project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the County.