



Los Alamos County Home Renewal Program Affordability Agreement



EXHIBIT C

INCORPORATED COUNTY OF LOS ALAMOS HOME RENEWAL PROGRAM HOUSING ASSISTANCE AFFORDABILITY AGREEMENT

THIS AFFORDABILITY AGREEMENT (“Agreement”) is entered into on this the ___
_____ day of _____, 20___, by and between **Los Alamos County** (hereinafter “County”),
a New Mexico political subdivision, whose address is 1000 Central Avenue, Los Alamos, New
Mexico, 87544 and _____ (hereafter “Qualifying Grantee”), whose address is _____
_____, **Los Alamos, New Mexico 87544.**

RECITALS

WHEREAS, Qualifying Grantee, as owners in real property located in the County of Los Alamos, State of New Mexico, and as more fully described in **Exhibit A** attached hereto (“Property”), have applied for and have been initially qualified for a Housing Assistance Loan (“Loan”) from the Los Alamos County Home Renewal Program (“Program”) pursuant to the provisions contained in the Affordable Housing Act, NMSA 1978, §§ 6-27-1 *et seq.*, the New Mexico Mortgage Finance Authority Affordable Housing Rules (“MFA Rules”), and the Incorporated County of Los Alamos Code Chapter 14, Article VII, Division 2 or as may be amended from time to time (hereafter “Ordinance”); and

WHEREAS, The Affordable Housing Act, the MFA Rules, and the Ordinance impose income, occupancy, and transfer limitations and requirements for the established Affordability Period of the Program, as provided in this Agreement.

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

1. Definitions:

The following terms are herein defined, unless otherwise specified, as:

“*Affordability Period*” means that amount of time represented by the term of a mortgage which secures a Deferred Payment Loan made from County funds to low income households holding title to a home they occupy and which shall equal the following time periods: (1) with a Deferred Payment Loan in the principal amount of \$1,500.00 to \$14,999.00, then the Affordability Period shall be ten (10) years; or (2) with a Deferred Payment Loan in the principal amount of \$15,000.00 to \$45,000.00, then the Affordability Period shall be fifteen (15) years.

“*Contractor*” is _____, a New Mexico State Licensed contractor or contractors, and/or their duly licensed sub-contractors, selected by Qualifying Grantee for Program Work.

“*LAHP*” means the Los Alamos Housing Partnership, Inc., the entity selected by the County to administer the Program on behalf of the County.

“*Note*” means the Promissory Note entered into by and between the Qualifying Grantee and County and used to fund certain listed Program repairs, construction, or modifications and entered into simultaneously with the Mortgage and this Agreement.

“*Mortgage*” means the security instrument entered into simultaneously with the Note and this Agreement and securing the Note with a lien on the Property granted by Qualifying Grantee to the County, as is or will be recorded with this Agreement and Note in the Los Alamos County Clerk’s property records.

“*Work*” means the approved or agreed upon construction project or projects on the Property under the Program as authorized by the Ordinance and approved by LAHP, Inc.

2. 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 Loan and in consideration of the Loan, Note and Mortgage executed with this Agreement 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 Loan from the County to the Qualifying Grantee in the amount of _____ (\$ _____ US) set forth in Section 2 below (the “Loan”). Qualifying Grantee understands and agrees that the Loan, and all accrued interest, shall be repaid to the County, with exceptions as set forth in the executed Mortgage and Note and as found and provided herein.
- B. The Loan has been made to Qualifying Grantee through the Program after Qualifying Grantee submitted their application and were certified as Qualifying Grantee pursuant to the applicable policies and procedures of the Program. The Loan to Qualifying Grantee is made only if Qualifying Grantee agrees to the restrictions and requirements of all applicable Program policies and procedures and the Ordinance and as further set forth herein.
- C. The Qualifying Grantee hereby agree to maintain the Property in accordance with the Ordinance, Program policies and procedures and this Agreement, as an owner-occupied, residential housing and property for residential purposes only and in accordance with the following provisions:
- i. the Property may be transferred subject to the covenants and restrictions of the Ordinance, this Agreement the Note and the Mortgage, only if the transfer is to a person or family relation who is of low income, so long as such person or family member covenants and promises in writing to maintain the Property as the transferee's principal residence, as set forth in this Agreement, the Mortgage, and Note, and otherwise meets all requirements of the Program;
 - ii. The requirement set forth in C (i) above remains in effect in the event that 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, or the transfer is required by a marital settlement agreement, required by operation of bankruptcy or other insolvency laws or otherwise required by law;
 - iii. All restrictions on the Property imposed by this Agreement, the Note and the Mortgage shall be terminated and released in the event that the Loan, including all accrued and unpaid interest and fees thereon, is paid in full.

Failure to comply with the above terms may, at the option of the County, constitute a default under this Agreement, the Note, and the Mortgage, and upon the County's acceleration of amounts due under the Note, may require early repayment of the Loan, and all accrued and unpaid interest, plus any additional fees, costs, or reimbursements pursuant to the Mortgage and Note.

- D. Except as set forth in paragraph (C) above, if, at any time following the date of execution of this Agreement the Property ceases to be the principal residence of the Qualifying Grantee, whether through sale, lease, sublease, vacating of the Property, or otherwise, then the entire outstanding amount of the Loan, including the entire principal amount and all accrued and unpaid interest, 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, the Note and the Mortgage.

- E. The County reserves the right to deny approval of a request for an assumption by a third party of the Qualifying Grantee's obligations under this Agreement, the Note and the Mortgage, if the transferee cannot be certified as a Qualifying Grantee under the Program or in the County's sole discretion.

- F. Qualifying Grantee certifies that the entire amount of the Loan will be used to perform the Work on the Property and that the County or its fiscal agent will only release Loan funds directly to the Contractor following receipt by LAHP of all required information, including inspection results. The Work shall be completed no later than one hundred twenty (120) days from the date of this Agreement, unless otherwise authorized or agreed upon in writing by the County or LAHP, Inc.

- 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 found to be in breach of this Agreement as determined by the County.

- H. Qualifying Grantee agrees that any default under the terms of the Loan, as those terms are set forth in this Agreement, the Note and the Mortgage, will constitute a default under this Agreement and shall cause the full amount of the Loan 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, the Note and the Mortgage and as afforded by law and as may be found in the Mortgage.
- I. Qualifying Grantee understands and agrees that this Agreement will terminate, if not already expired, upon the happening of any of the following events: (1) payment in full of the Loan amount, including any accrued and unpaid interest and/or fees; (2) foreclosure and sale of the Property pursuant to an order of a court of competent jurisdiction; or (3) any other voluntary or involuntary legal transfer of title to a non-qualifying Program party or individual.
- J. Qualifying Grantee authorizes inspection of the Property by the County, LAHP, or other authorized person prior to, during, and following completion of the Work or any other reasonable time. Inspections shall be at reasonable times and the County or its agents will attempt, where possible, to provide Notice, pursuant to Section 11 below and in accordance with the Note and Mortgage. Qualifying Grantee agrees and shall participate in the final inspection and review of the Work by Contractor.
- K. Qualifying Grantee acknowledges review of all bids from contractors at a meeting held on _____ and Qualifying Grantee selected Contractor to perform the Work, based on their own evaluation of the bid proposals.
- L. Qualifying Grantee acknowledges that they fully understand and accept the Contractor's proposed scope of work as detailed in the Proposal/Contract signed by the Qualifying Grantee on _____, after having discussed the scope of work and the contract with the Contractor prior to execution of the contract. Qualifying Grantee understands that the total cost of the contract is set and agrees to pay all of the costs over and above the Loan amount.

M. Qualifying Grantee agrees that neither LAHP nor the County is a guarantor or indemnitor of the Work or Contractor and that any and all disputes or defects in manufacture, construction or installation shall be matters solely between the Qualifying Grantee and the manufacturer of any materials or equipment installed by Contractor and/or Contractor; the Qualifying Grantee therefore releases LAHP and the County as to any such claims and waives any such claims arising out of or in relation to the Work pursuant to the terms of this Agreement. Qualifying Grantee acknowledges that LAHP and the County are 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 agrees and states that they have no notice of any unpaid bills or claims for labor or services performed or material furnished on or against the Property including but not limited to materialmen's or mechanics' liens.

3. HOUSING ASSISTANCE LOAN. The Loan for the Program Work is in and for the amount of _____ (\$ _____ US) ("Principal"). Repayment of the Principal shall be at the rate of _____ PERCENT (%) interest over and during the Affordability Period. No additional interest charges shall accrue beyond the end date of the Affordability Period except as provided in the Note and Mortgage. Interest for non-Loan required fees and costs, including but not limited to County provided insurance or repairs to protect the Property, shall accrue at a fixed **FIFTEEN PERCENT (15%) ANNUAL PERCENTAGE RATE.**

4. EFFECTIVE DATE AND TERM OF AGREEMENT AND AFFORDABILITY PERIOD. This Agreement is effective on the last date of signature below and shall remain in effect throughout the period that Qualifying Grantee owns the Property, unless earlier terminated pursuant to the conditions set forth herein.

The Affordability Period for this Loan is _____ (____) years, beginning as of the date this Agreement is fully executed by all parties and terminating _____ (____) years after execution of this Agreement.

5. RELEASE. Qualifying Grantee agrees to indemnify, release, and hold harmless LAHP, and the County, and their respective employees, directors, past, present, and future councilors, officers, agents, and independent contractors acting in their individual and official capacities, from any liability resulting from this Agreement and/or Work performed on the Property.

6. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL. The Qualifying Grantee permits, gives, and licenses to the County and LAHP the unrestricted, royalty-free right to publish, disclose, distribute, photograph, print, or otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement and related to the Qualifying Grantee's involvement in the Program. The County and LAHP will attempt to limit use and distribution of confidential or protected personal information pursuant to local, state, or federal law.

7. 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.

8. 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, which includes by reference the terms and agreements found in the Note and Mortgage. 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 or in the Note or Mortgage documents related to the Program and Loan between Qualifying Grantee and the County.

9. 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, Los Alamos Division.

10. 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.

11. 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 Grantee: _____

Los Alamos, New Mexico 87544

For County: County Manager, Los Alamos County
Re: Home Renewal Program
1000 Central Avenue
Los Alamos, New Mexico 87544

A copy of all notices required of Qualifying Grantee shall also be provided to the Program Manager, LAHP, at the following address: Los Alamos Housing Partnership, Inc., 1362 Trinity Drive, Suite C-1, Los Alamos, New Mexico 87544.

12. FACSIMILE SIGNATURES. The parties hereto agree that a facsimile signature or electronic signature has, unless otherwise stated or agreed, the same force and effect as an original for all purposes pursuant to the Uniform Electronic Transactions Act provisions of NMSA 1978, §§ 14-16-1 *et seq.*

13. THIRD-PARTY BENEFICIARIES. LAHP is an intended third party beneficiary of this Agreement. Except as provided in the immediately, preceding sentence, this Agreement is not

intended to and does not create or inure any rights, privileges, or benefits in any other persons, parties, or entities not a party hereto.

14. NEW MEXICO TORT CLAIMS ACT. No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County or its employees pursuant to the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.* or as may be amended and nothing herein is intended or shall be a waiver of such sovereign immunity.

15. CONDEMNATION AND INSURANCE PROCEEDS. 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. Any or all proceeds from insurance proceeds related to damage to the Property shall be governed by the Mortgage covenants and Note.

16. 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.

QUALIFYING GRANTEE(S):

Printed Name

Signature

Date

