

**Assessment Agreement for Improvement Special Assessment
Financing**

COUNTY OF _____, NEW MEXICO

IMPROVEMENT SPECIAL ASSESSMENT PROGRAM

Special Assessment Agreement for Improvement Special Assessment Financing

[Name] County, New Mexico

This SPECIAL ASSESSMENT AGREEMENT for IMPROVEMENT SPECIAL ASSESSMENT FINANCING (this “**Agreement**”) is made and entered into as of this [] day of [], 20__, (the “**Effective Date**”) by and between the County of [], New Mexico (the “**County**”), [] (together with its designee or assigns, the “**Capital Provider**”) and [], the record owner(s) (the “**Property Owner**”) of the fee title to the real property identified on Exhibit A (the “**Property**”).

RECITALS

WHEREAS, the County has, on [] established the Improvement Special Assessment Program (the “**Program**”) through the adoption of Ordinance No. [] (“**County Ordinance**”) to allow the financing of certain renewable energy, energy and water efficiency, and resiliency improvements (“**Eligible Improvements**”), through the levy of contractual assessments pursuant to NMSA 1978, Section _____ (as may be amended from time to time, the “**Act**”); and

[**WHEREAS** the City of [CITY], which is located within the boundaries of the County, adopted ordinance/resolution No. _____ approving the application of the County Ordinance within the City of [CITY]]

WHEREAS, the purpose and method of approval of Improvement Special Assessment financing under the Program are described in the Program Guidebook attached to the County Ordinance, as the same may have been amended from time to time prior to the Effective Date of this Agreement (the “**Program Guidebook**”); and

WHEREAS, the Property is located in the boundaries of the County [and municipality] and the County [and municipality] has consented to owners of eligible properties within its jurisdiction participating in the Program; and

WHEREAS, the Property Owner has submitted application materials including a description of the Eligible Improvements that will be acquired, constructed on and/or installed on the Property; and

WHEREAS, the County [has designated a program administrator (“**Program Administrator**”) and that Program Administrator] has reviewed such application materials to assess compliance with the Improvement Special Assessment Act, the County Ordinance, and Program Guidebook, and the County [or Program Administrator] has determined that the project proposed by the Property Owner complies with such criteria and is approved for participation in the Program (the “**Approved Project**”); and

WHEREAS, the Approved Project is to be financed pursuant to a financing agreement between the Property Owner and the Capital Provider (the “**Special Assessment Financing Agreement**”) and under which the Property Owner agrees to repay such Capital Provider; and

WHEREAS, pursuant to the Improvement Special Assessment Act and as a condition to closing of the Special Assessment Financing Agreement, the County and the Property Owner must enter into a special assessment agreement whereby the Property Owner voluntarily consents to have an assessment levied and a lien placed on the qualifying property in exchange for receiving and repaying Improvement Special Assessment financing; and

WHEREAS, the Property Owner voluntarily and willingly agrees to have an assessment levied on the Property and to enter into this Agreement in order to finance the installation on the Property of the Eligible Improvements contemplated as part of the Approved Project, all on the terms set forth in the Special Assessment Financing Agreement;

WHEREAS, pursuant to NMSA 1978, Sections 4-55D-1 through 4-55D-10, that the County shall execute and record a special assessment lien (“**Special Assessment Lien**”) and shall execute and record a special assessment assignable certificate (“**Assignable Certificate**”) from the County to the Capital Provider of the Special Assessment Lien as defined herein; and

WHEREAS, the County and Property Owner desire the Capital Provider to collect and receive the sums payable under this Agreement, by directly collecting the Assessment, as well as any applicable fees and interest due pursuant to the Special Assessment Financing Agreement;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Property Owner, the County, and the Capital Provider formally covenant and agree as follows, with the intent to bind themselves and their respective successors and assigns:

AGREEMENT

Section 1. Purpose. The Property Owner, the Capital Provider, and the County are entering into this Agreement for the purpose of subjecting the Property to a Improvement Special Assessment to finance or refinance the purchase, installation, or construction of the Eligible Improvements identified on Exhibit B on the Property.

Section 2. The Property. This Agreement relates to the real property identified in Exhibit A. The Property Owner has supplied to the County and the Capital Provider current evidence of its ownership of fee title or an estate for years created pursuant to a written ground lease agreement or similar agreement to the Property and possesses all legal authority necessary to execute and deliver this Agreement.

Section 3. Assessment and Lien; Assignment.

(a) The Property Owner agrees that upon the execution and delivery of this Agreement by the parties, the Property Owner voluntarily and willingly consents to the placement of a special assessment on the Property by the County pursuant to this Agreement and applicable law in the principal amount of \$[REDACTED], together with all interest, penalties, and fees as described in the Special Assessment Financing Agreement (the “**Assessment**”). Upon execution and delivery of this Agreement, the County will execute and cause to be recorded in the real property records for the County the Special Assessment Lien, substantially in the form of Exhibit C and an Assignable Certificate, substantially in the form of Exhibit E. The recording of the Special Assessment Lien will cause the Assessment to attach as a lien upon the Property for the benefit of the County and provide record notice to third parties of the existence of the Special Assessment Lien.

(b) The execution and delivery of this Agreement by the parties authorizes and effectuates the levy of the Assessment by the County against the Property without any further action required by the parties.

(c) The Property Owner hereby promises to pay the Assessment for a period of [REDACTED] years on the due dates set forth in Exhibit D hereto (the “**Assessment Schedule**”). The Property Owner agrees, as provided in the Special Assessment Financing Agreement, to pay the amount due in installments according to the Assessment Schedule (each, an “**Assessment Installment**”), each such Assessment Installment to be paid by the Property Owner by its due date in order to avoid delinquencies and the accrual of interest and related penalties.

(d) The Assessment shall be secured by the Special Assessment Lien until paid in full. Failure to pay any Assessment Installment, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing on the amounts due on the terms and provisions of this Agreement. In addition, under those circumstances, the Special Assessment Lien may be foreclosed in the manner specified in Section 4, below.

(e) The Assessment and the Special Assessment Lien shall be assigned, pursuant to the Assignable Certificate. The Assignment shall be executed and delivered contemporaneously with this Agreement and recorded immediately following the Notice of Assessment.

(f) Pursuant to **[X]** of the County Ordinance, the Property Owner hereby acknowledges that the Assessment and any accrued interest or penalties secured by the Special Assessment Lien shall be effective during the period in which the Assessment is imposed and shall have priority superior to all liens, claims and titles except a lien for general ad valorem property taxes or an improvement district lien that is coequal to property taxes.

Section 4. Billing, and Collection of Assessment; Foreclosure.

(a) As of **[YEAR]** and each year thereafter for the term identified herein, each Assessment Installment shall be placed on a stand-alone bill by the Capital Provider. Property Owner agrees that the Assessment Installments will be included on a stand-alone bill and agrees to repay all Special Assessment Financing Agreement obligations through the Assessment which is due and payable on dates included in the Assessment Schedule.

(b) The amount and repayment of the Assessment are per the Special Assessment Financing Agreement separately negotiated and executed by the Property Owner and Capital Provider, and the repayment of financing is evidenced in an Assessment Schedule. The installments of principal and interest due and payable pursuant to the Assessment Schedule are attached hereto as Exhibit D. As evidenced in Exhibit D, the term of the Assessment will be **[XX]** years.

(c) The prepayment requirements and/or prepayment premium that apply are as follows: **[REDACTED]**

(d) The Capital Provider, upon receipt of a partial prepayment, shall submit the Amendment of Assessment Schedule, in a form acceptable for recordation, to the County to be recorded in the land records.

(e) Delinquent payments due on a special assessment incur interest and penalties as follows:

(f) If an Assessment Installment is delinquent after one year from the date upon which it is due, the county hereby acknowledges and agrees that the Capital Provider holding the Assignable

Certificate may foreclose the Special Assessment Lien on such delinquent Assessment Installment in accordance with the provisions of Sections 4-55D-1 through 4-55D-10 NMSA 1978 and the County Ordinance. Upon execution of the Assignable Certificate to the Capital Provider, the County shall have no obligation to prosecute such foreclosure on behalf of the Capital Provider, or to otherwise participate in such foreclosure except to the extent that any action on the part of the County or any County official is required in order to allow the Capital Provider to prosecute or effectuate the foreclosure, or to ratify or confirm any action of the Capital Provider taken in furtherance of the foregoing. The Property Owner expressly consents to prosecution of said action of foreclosure in accordance with the terms of this Agreement.

(g) The proceeds of any foreclosure sale of the Property shall be applied first to the payment of such outstanding general ad valorem property taxes or improvement district assessments that are coequal to property taxes to the extent necessary to satisfy such liens, and then to the delinquent Assessment Installments, interest, and penalties secured by the Special Assessment Lien. Any proceeds from the foreclosure sale of the Property received by the County or County treasurer for the delinquent Assessment Installments, interest, and penalties secured by the Special Assessment Lien shall be promptly within **X** days, remitted to the Capital Provider.

(h) [Because the Agreement covers multiple parcels, an action of foreclosure on a parcel or parcels pursuant to this section shall be brought in accordance with the terms specified in the Special Assessment Financing Agreement.]

(i) The remedies set forth in this Section 4 of this Agreement are not intended to be the exclusive remedies of the Capital Provider, and the Capital Provider reserves any and all right and remedies now or hereinafter available, in law or in equity, for the enforcement of the Special Assessment Lien, including any additional or alternative enforcement method now or hereafter permitted.

Section 5. Term; Agreement Runs with the Land.

(a) Except as otherwise set forth in this Agreement, this Agreement shall terminate upon the final payment or prepayment of the Assessment. Following such termination, the County shall cause to be executed, delivered, and/or recorded such instruments as are necessary in order to release the Special Assessment Lien. The Special Assessment Lien placed pursuant to this Agreement establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land.

(b) The balance of the Special Assessment Lien that has not yet become due is not accelerated or eliminated by foreclosure of the Special Assessment Lien or any lien for taxes or assessments imposed by the state, a local government or taxing district against the property on which the Special Assessment Lien is imposed.

(c) In the event the Property is subdivided while any portion of the Assessment remains unpaid, the Assessment will be assigned to each of the newly created parcels on the basis of [relative valuation], unless the Special Assessment Financing Agreement provides that the Assessment should be allocated in an alternate manner.

Section 6. Recordation of Documents. The County shall cause to be recorded in the real property records of the County the Special Assessment Lien, which includes this Agreement as an attachment, the Assignable Certificate, and such other documents that are attached as Exhibits to this Agreement.

Section 7. Amendment.

(a) This Agreement may be modified only by the written agreement of the Capital Provider and the Property Owner.

(b) The Property Owner agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in order to carry out the expressed intention of this Agreement.

Section 8. Binding Effect; Assignment. This Agreement inures to the benefit of and is binding upon the County, the Capital Provider, the Property Owner, and their respective successors and assigns. The obligation to pay the Assessment set forth in this Agreement is an obligation of the Property and no agreement or action of the Property Owner (other than repayment of the Assessment in full in accordance with the terms of the Special Assessment Financing Agreement) will impair in any way the right to pursue foreclosure of the Special Assessment Lien or the right to enforce the collection of the Assessment or any Assessment Installment against the Property. The County may furnish any information concerning the Property Owner in its possession from time to time to prospective assignees.

Section 9. No Liability of the County. Neither the County, its governing body, executives, or employees will be personally liable as a result of exercising any rights or responsibilities granted under the County Ordinance. Notwithstanding the obligation of the County treasurer under Section 4 of this Agreement remit an Assessment Installment received to the Capital Provider, the County is not liable in any way for the debt of the Property Owner, is not a third-party obligor and is not pledging or lending its credit to the Property Owner or the Capital Provider.

Section 10. Indemnification. Property Owner agrees to defend, indemnify and hold the County, its commissioners, employees, agents and contractors harmless from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from or connected with this Agreement, the Approved Project, the Assessment and the Special Assessment Lien. Property Owner's duty to indemnify the County shall not apply to liability for damages to the extent caused by or resulting from the sole or contributory negligence or willful misconduct of the County, its commissioners, employees, agents or contractors.

Section 11. Governing Law; Venue. This Agreement is governed by and construed in accordance with the laws of the State of New Mexico. Any legal action brought under this Agreement must be instituted in the district court of the County.

Section 12. Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 13. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Signatures Appear on Following Page

IN WITNESS WHEREOF, the County, the Property Owner, and the Capital Provider have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

COUNTY:

County of [XXXX], New Mexico

By: _____
Its: _____

PROPERTY OWNER:

[_____]

By: _____
Its: _____

CAPITAL PROVIDER:

[_____]

By: _____
Its: _____

STATE OF NEW MEXICO)
)
COUNTY OF _____)

This record was acknowledged before me on _____, 20__ ,
by _____,
the _____,
of _____]

WITNESS my hand and official seal.

Signature: _____ (seal)

STATE OF NEW MEXICO)
)
COUNTY OF _____)

This record was acknowledged before me on _____,
by _____,
the _____, of _____ County, New Mexico.

WITNESS my hand and official seal.

Signature: _____ (seal)

STATE OF NEW MEXICO)
)
COUNTY OF _____)

This record was acknowledged before me on _____,

by _____,

the _____, of _____ County, New Mexico.

WITNESS my hand and official seal.

Signature: _____ (seal)

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

[To be inserted]

EXHIBIT B

ELIGIBLE IMPROVEMENTS

[To be inserted]

EXHIBIT C

FORM OF NOTICE OF ASSESSMENT

[To be inserted]

EXHIBIT E

Assignable Certificate

[To be inserted]