INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 738

AN ORDINANCE ENACTING AN IMPROVEMENT SPECIAL ASSESSMENT PROGRAM WITHIN LOS ALAMOS COUNTY; DESIGNATING THE COUNTY MANAGER OR DESIGNEE TO ADMINISTER THE PROGRAM AND EXECUTE NECESSARY DOCUMENTS TO ENABLE SPECIAL ASSESSMENT FINANCING WITHIN LOS ALAMOS COUNTY; APPROVING THE PROGRAM GUIDEBOOK AND RELATED DOCUMENTS REQUIRED TO IMPLEMENT THE PROGRAM; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, in 2023, the New Mexico Legislature passed Improvement Special Assessment NMSA 1978, Sections 4-55D-1 through 4-55D-10 (the "Act"), which allows counties to establish Improvement Special Assessment programs; and

WHEREAS, the Act allows owners of eligible commercial property to obtain long-term financing from private capital providers for qualifying energy efficiency, renewable energy, water conservation, and resiliency improvements for qualifying buildings and real property; and

WHEREAS, the Act allows individual counties to create Improvement Special Assessment programs to allow buildings and real property to become more efficient and resilient; and

WHEREAS, the New Mexico Economic Development Department has made available a program guidebook in conformance with the requirements of the Act; and

WHEREAS, voluntary Special Assessment financing is secured by a senior lien on the property recorded by the County and repaid to the Capital Provider through the levy of a voluntary assessment collected by the Capital Provider; and

WHEREAS, property taxes assessed by the County on eligible property benefited by improvements remain superior to the Special Assessment lien; and

WHEREAS, assessments for Special Assessment Financing is non-accelerating, meaning only current or past due payments can be collected, while future payments are the responsibility of whomever owns the property at the time; and

WHEREAS, the Improvement Special Assessment repayment obligation transfers automatically to the next owner if the property is sold, spreading the cost of qualifying improvements over the useful life of the measures.

BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS, as follows:

SECTION 1. **Definitions**

The definitions in this section apply throughout this Ordinance unless the context clearly requires otherwise.

A. "application form" means the list of items in a Project Application required by the Act, this Ordinance, and the Program Guidebook, and the corresponding documentation that the County accepts in order to show the application requirements are met.

B. "capital provider" means a private entity or its designee, successor or assigns that

finances or refinances an eligible improvement pursuant to the Act;

C. “County” means Los Alamos;

D. “County ordinance” means an ordinance adopted by the County pursuant to the Act to establish a program within a designated region;

E. “eligible improvement” means a permanently affixed energy efficiency improvement, renewable energy improvement, water conservation improvement or resiliency improvement installed on eligible property as part of the construction or renovation of the property;

F. “eligible property” means privately owned commercial, industrial, or agricultural or nonprofit real property or multifamily residential real property with five or more dwelling units, including real property owned by an entity formally recognized as tax exempt pursuant to the Internal Revenue Code of 1986, as amended. Eligible property may include ground leases on eligible property;

G. “energy efficiency improvement” means measures, equipment or devices that result in a decrease in consumption of or demand for electricity or natural gas;

H. “local government” means a municipality, county or other general function governmental unit established by state law;

I. “municipal” or “municipality” means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

J. “program” means the special assessment program established under this Ordinance;

K. “program administrator” means Adelante Consulting, Inc., which has a contract with the State to administer the program at no cost to the County and which is hereby designated by the County to administer the program in Los Alamos County;

L. “program guidebook” means the comprehensive document that is adopted under this Ordinance and is substantively in the form of program guidebook made available by the New Mexico Department of Economic Development.

M. “project application” means an application submitted to the program administrator to demonstrate that a proposed project qualifies for special assessment financing pursuant to the program;

N. “region” means the geographical area designated pursuant to this ordinance for the program;

O. “renewable energy improvement” means an energy system that generates energy by use of low- or zero-emissions generation technology with substantial long-term production, including solar, wind and geothermal resources, fuel cell equipment using an electrochemical process to generate electricity and heat or biomass resources;

P. “resiliency improvement” means improvements that increase the resilience of a property, including air quality, flood mitigation, storm water management, energy storage

and microgrids, alternative vehicle charging infrastructure, fire or wind resistance or inundation adaptation;

Q. “special assessment” means a voluntary assessment imposed on a property pursuant to the Act for the total amount of special assessment financing together with interest, penalties, fees and charges related thereto;

R. “special assessment agreement” means a voluntary agreement between the County and the property owner to allow a County to place an assessment on the property owner’s property to repay special assessment financing pursuant to the Act;

S. “special assessment assignable certificate” means a document assigning a special assessment lien from the county to a capital provider in an amount not to exceed the amount of the special assessment financing for the term of the special assessment lien;

T. “special assessment financing” means the total amount of financing provided by a capital provider pursuant to a special assessment financing agreement, including accrual of interest and penalties, charges, fees, and cost of enforcement of a special assessment lien; The special assessment financing for a eligible improvement may authorize the Property Owner to (a) purchase directly the related equipment and materials for the installation or modification of an eligible improvement; and (b) contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of a eligible improvement.

U. “special assessment special assessment financing agreement” means a contract pursuant to which a property owner agrees to repay a capital provider for special assessment financing and to the terms of the special assessment financing, including the treatment of prepayment and partial payment of a special assessment, details of any finance charges, fees, debt servicing, and accrual of interest and penalties;

V. “special assessment lien” means a lien recorded in the County to secure the special assessment, which assessment remains on the property until paid in full;

W. “water conservation improvement” means measures, equipment or devices that decrease the consumption of or demand for water, address safe drinking water or eliminate lead from water used for drinking or cooking.

SECTION 2. Establishment; Region.

There is hereby established within the boundaries of the County the Program. The Program shall allow financing for the full range of Eligible Improvements on all Eligible Properties, as authorized by the Act, and shall abide by and operate according to the Act.

SECTION 3. Ratification.

All actions heretofore taken and not inconsistent with the provisions of this Ordinance by the County Council and officers of the County directed toward adoption of the Program, be, and the same hereby are, ratified, approved, and confirmed.

SECTION 4. Findings.

The County Council hereby declares that it has considered all relevant information and data and hereby makes the following finding:

A. The financing of eligible improvements, repaid by special assessments on eligible property benefited by such improvements, may be of broad general interest to public economic development.

SECTION 5. Territory.

The Program shall be available to all Eligible Property within the boundaries of the County.

SECTION 6. Program Administration

A. Pursuant to the Act, the County hereby designates, authorizes, and directs the County Manager or designee to enter into Special Assessment Agreements with property owners and Capital Providers and issue Special Assessment Assignable Certificates on behalf of the County to impose Special Assessments and assign Special Assessment Liens for assessments approved by the Program Administrator.
B. Pursuant to the Act, the County designates Adelante Consulting, Inc., as the Program Administrator. The Program Administrator shall review and approve the Project Applications submitted in accordance with the Program Guidebook, collect any fees, and work with the County to ensure recordation of the documents requested by a property owner and Capital Provider.
C. No services, including but not limited to energy audits, project development, or other activities associated or related to the development of a Project Application or installation of Eligible Improvements shall be offered through the Improvement Special Assessment Program unless priced separately and open to purchase by the property owner from third parties.

SECTION 7. Improvement Special Assessment Financing

A. Pursuant to the Act, the County authorizes Special Assessment Financing to be provided by Capital Providers through a Special Assessment Financing Agreement entered directly into with the owner of an Eligible Property to fund Eligible Improvements. The rate of interest, delinquent interest, penalties, terms of prepayment and other terms of Special Assessment Financing shall be established by a Capital Provider in the related Special Assessment Financing Agreement for such assessment;
B. The Special Assessment Financing through a Program established under this Ordinance may include:
   (1) The cost of materials and labor necessary for installation or modification of an Eligible Improvement;
   (2) Permit fees;
   (3) Inspection fees;
   (4) Financing or origination fees;
   (5) Project Application and administrative fees;
   (6) Project development and engineering fees;
   (7) Third-party review fees, including verification review fees;
   (8) Capitalized interest;
   (9) Interest reserves;
   (10) Escrow for prepaid property taxes and insurance;
   (11) Any other fees or costs that may be incurred by the property owner incident to the

installation, modification, or improvement on a specific or pro rata basis; or

(12) Any other costs or fees as outlined in the Program Guidebook.

C. Prior to entering into a Special Assessment Financing Agreement, the Capital Provider must receive written consent from every holder of a lien, mortgage, or security interest in the real property that will be subject to the Special Assessment and Special Assessment Lien agreeing that the property may participate in the Program and that the Special Assessment Lien 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.

D. The proposed Special Assessment Financing for a qualified project may authorize the property owner to:

(1) Purchase directly the related equipment and materials for the installation or modification of an Eligible Improvement; and

(2) Contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of an Eligible Improvement.

SECTION 8. Special Assessment Lien

A. Upon entering into a Special Assessment Agreement, the County shall record a Special Assessment Lien on the subject property in the real property records of the County in which the property is located.

B. The recording of the Special Assessment Lien pursuant to Subsection A of this section shall include:

(1) the legal description of the property;
(2) the county assessor's parcel number of the property;
(3) the grantor's name, which shall be the same as the property owner on the Special Assessment Agreement;
(4) the grantee's name, which shall be the County in which the property is located;
(5) the date on which the Special Assessment Lien was created;
(6) the principal amount of the Special Assessment Lien;
(7) the terms and length of the Special Assessment Lien; and
(8) a copy of the Special Assessment Agreement.

C. A Special Assessment Lien shall be effective during the period in which the special 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.

D. A Special Assessment Lien runs with the land, and that portion 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.

E. Upon entering into a Special Assessment Agreement, the County shall execute and record a Special Assessment Assignable Certificate from the County to the appropriate Capital Provider. The Special Assessment Assignable Certificate shall convey the Special Assessment Lien including all the characteristics described in Section 8(C) and (D).

F. When the underlying Special Assessment Financing has been satisfied, the Special Assessment shall be removed from the property and the County shall record a release of the Special Assessment Lien.

SECTION 9. Application and Review

A. Property owner and Capital Provider shall complete a Project Application and submit it to the Program Administrator for review.
B. The Project Application shall require:
(1) for an existing Eligible Property:

(a) where Energy Efficiency Improvements, Water Conservation Improvements or Renewable Energy Improvements are proposed, certification by a licensed professional engineer or other professional listed in the Program Guidebook stating the proposed Eligible Improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, the reduction in demand for electricity or natural gas, or the addition of renewable sources of energy or water; or
(b) where Resiliency Improvements are proposed, certification by a licensed professional engineer stating the qualified improvements will result in improved resilience;

(2) for construction of a new Eligible Property, certification by a licensed professional engineer stating that the proposed Eligible Improvements will enable the property to exceed the energy efficiency, water conservation, renewable energy, renewable water or resilience requirements of the applicable building code, or the proposed eligible improvements will enable the property to reduce demand for electricity or natural gas compared to the requirements of the applicable building code;

(3) certification that the property owner requesting the proposed Eligible Improvements is the owner of record of the property on which the Special Assessment will be imposed and that there are no delinquent taxes or assessments on the property;

(4) the name of the Capital Provider providing the Special Assessment Financing and the proposed terms of the Special Assessment Financing Agreement, including:

(a) the Special Assessment Financing amount;
(b) the interest rate;
(c) administrative fees paid to the Program Administrator;
(d) a schedule of the installments of the Special Assessment;
(e) the number of years the Special Assessment shall be imposed on the property;
(f) delinquent interest or penalties; and
(g) the conditions by which the property owner may prepay and permanently satisfy the debt owed pursuant to the Special Assessment Financing Agreement and remove the Special Assessment Lien from the property; and

(5) written consent from any holder of a lien, mortgage, or security interest in the real property that the property may participate in the Program and that the Special Assessment Lien 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.

C. The Program Administrator shall review the application according to the Application Form solely to determine whether it is complete, proposes an Eligible improvement, contains no errors on its face, and that all information is provided in the substance and form required by the Application Form. If so, the Program Administrator shall sign the form indicating that the Project Application is deemed approved. If a Project Application is incomplete and/or does not conform to the requirements of the Application Form, the Program Administrator shall inform

the applicant as soon as practicable that the application is denied, the reasons for the denial, and any corrections that could make the application acceptable. If feasible, the applicant shall have an opportunity to correct the application.

D. Upon approval of a Project Application, a property owner or Capital Provider shall provide the following completed forms to the County Manager or designee appointed by the County Manager for execution at least five (5) days prior to close of the Improvement Special Assessment transaction, along with a requested date for recordation of the Special Assessment Agreement, Notice of Special Assessment Lien, and Certificate of Assignment of Notice of Special Assessment Lien. Expedited service may be available for a fee to be determined by the County Manager or designee appointed by the County Manager.
E. For a property owner and Capital Provider whose Project Application is denied by the Program Administrator, either party, or both, may request an adjudicative proceeding before the County's adjudicative body, consistent with the County's rules and subject to the applicable provisions of the New Mexico Administrative Procedures Act, NMSA 1978, Sections 12-8-1, et seq.

SECTION 10: Program Guidebook.

A. The Improvement Special Assessment Program shall be administered in accordance with the requirements contained in the Program Guidebook, adopted, and incorporated herein as Exhibit A. The Program Guidebook shall include:

(1) A Project Application form, to be used by the property owner and Capital Provider to submit their application, and to be used by the Program Administrator to review and approve or deny an application.
(2) A form Special Assessment Agreement.
(3) A form of Special Assessment Lien.
(4) A form of Assignment of Notice of Special Assessment Lien.
(5) A statement that the period of the Special Assessment Financing Agreement will not exceed 30 years.
(6) A description of the application and review process established under Section 9 of this Ordinance.
(7) A statement explaining the lender consent requirement under Section 9 of this Ordinance.
(8) A statement explaining the engineer certification requirement under Section 9 of this Ordinance
(9) A statement that neither the County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Ordinance, especially and including all actions related to, or arising from, administering the program.

B. The Program Guidebook and forms may be updated by the Program Administrator without approval by the County Council, so long as it complies with this Ordinance and the Act.

SECTION 11: Billing, Collection and Enforcement

A. The holder of the Special Assessment Assignable Certificate shall be solely responsible for the billing and collection of the related Special Assessment and for the enforcement of the Special Assessment Lien.
B. The holder of the Special Assessment Assignable Certificate shall bill a Special Assessment imposed pursuant to a Special Assessment Agreement through a stand-alone bill for the property subject to the Special Assessment and shall collect the Special Assessment at the times described in the Special Assessment Agreement and as provided for in this Ordinance.

C. Delinquent payments due on a Special Assessment incur interest and penalties as specified in the Special Assessment Agreement.

D. Delinquent payments due on a special assessment shall be enforced in the event of a nonpayment of the special assessment or installment thereto. Delinquent payments due on a Special Assessment have the effect of a mortgage and shall be foreclosed and sold in the manner provided by law for the foreclosure of mortgages on real estate. The holder of a Special Assessment Assignable Certificate may institute proceedings to foreclose the Special Assessment Lien against the property that is delinquent in the payment of the Special Assessment or installment of a Special Assessment for a period of more than one year.

E. The Capital Provider may sell or assign, for consideration, any and all Special Assessment Liens received from the County. The Capital Provider or its assignee shall have and possess the same powers and rights at law or in equity to enforce the Special Assessment Lien in the same manner as described in paragraph D of this section.

SECTION 12: Fees.

Subject to approval of an application by a property owner and a Capital Provider, and upon recordation of documents for an Improvement Special Assessment transaction, the parties shall pay a fee (as outlined in the Program Guidebook) directly to the Program Administrator to reflect the reasonable costs of the Program Administrator to provide administrative services for the program and to make the costs of the Program cost-neutral.

SECTION 13: Enactment.

The provisions of this Ordinance are hereby declared to be severable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of the sections, phrases and provisions hereof. All Ordinances, orders, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed upon the effectiveness of this Ordinance. No provision of the County Code or violation of any provision of the County Code shall be deemed to impair the validity of this Ordinance or the instruments authorized by this Ordinance or to impair the security for or payment of the instruments authorized by this Ordinance; provided further, however, that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the County Code. In the event and to the extent of a conflict between this Ordinance and the Act, the Act shall govern.

SECTION 14. Effective Date.

This Ordinance shall take effect thirty (30) days after publication of the notice of its adoption. The Program Administrator shall begin accepting applications for review no sooner than sixty (60) days after the effective date.

[this section intentionally left blank]

SECTION 15: No Liability. No Public Funds.

A. This Ordinance does not confer any right of action nor property interest upon any party to a Improvement Special Assessment transaction against the County, and the County shall incur no liability for enacting this Program, nor shall the County, its governing body, executives, or employees be personally liable as a result of exercising any rights or responsibilities granted under this Ordinance.
B. The Special Assessment Financing Agreement shall specify that 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.

ADOPTED this 25th day of February 2025.

INCORPORATED COUNTY OF LOS ALAMOS

_____
Theresa Cull,
Council Chair

ATTEST:

_____
Michael D. Redondo,
Los Alamos County Clerk