

**SANTA FE COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**ORDINANCE NO. 2024-08**

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**AN ORDINANCE  
ENACTING AN IMPROVEMENT SPECIAL ASSESSMENT PROGRAM  
WITHIN SANTA FE COUNTY; DESIGNATING OFFICIAL OR  
OFFICIALS TO ADMINISTER THE PROGRAM AND EXECUTE  
NECESSARY DOCUMENTS TO ENABLE SPECIAL ASSESSMENT  
FINANCING WITHIN SANTA FE COUNTY; APPROVING THE  
PROGRAM GUIDEBOOK AND RELATED DOCUMENTS REQUIRED  
TO IMPLEMENT THE PROGRAM; AND PROVIDING FOR OTHER  
MATTERS PROPERLY RELATING THERETO.**

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**SECTION 1. SHORT TITLE.**

This Ordinance shall be cited as “Improvement Special Assessment Program Ordinance,” hereinafter referred to as the “Ordinance.”

**SECTION 2. PURPOSE.**

The purpose of this Ordinance is to implement Santa Fe County’s Improvement Special Assessment Program (the “Program”).

**SECTION 3. FINDINGS.**

A. The Improvement Special Assessment Act, NMSA 1978, Sections 4-55D-1 through 4-55D-10 (the “Act”) allows owners of eligible commercial property to obtain long-term financing from private Capital Providers (defined below) for qualifying energy efficiency, renewable energy, water conservation, and resiliency improvements for qualifying buildings; and

B. The Act allows individual counties to create Improvement Special Assessment programs to allow buildings to become more efficient and resilient; and

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

D. Voluntary Special Assessment Financing (defined below) 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

E. Property taxes assessed by the County on eligible property benefited by improvements remain superior to the Special Assessment Lien (defined below); and

F. 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

G. 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; and

H. The financing of Eligible Improvements (defined below), repaid by special assessments on eligible property benefited by such improvements, is in the interest of public health, safety and welfare; and

I. The County's adoption of the Program is necessary and advisable to meet the needs of the County and its residents; and

J. The Program is designed to have no impact on County liabilities or finances.

#### **SECTION 4. AUTHORITY.**

The Act allows counties to establish Improvement Special Assessment programs.

#### **SECTION 5. DEFINITIONS.**

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

- (1) "Application Checklist" 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.
- (2) "Capital Provider" means a private entity or its designee, successor or assigns that finances or refinances an Eligible Improvement pursuant to the Act;
- (3) "County" means Santa Fe County;
- (4) "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;

- (5) "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;
- (6) "Energy Efficiency Improvement" means measures, equipment or devices that result in a decrease in consumption of or demand for electricity or natural gas;
- (7) "local government" means a municipality, county or other general function governmental unit established by state law;
- (8) "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;
- (9) "Ordinance" means this ordinance adopted by the County pursuant to the Act to establish a program within the Region;
- (10) "Program" means the Special Assessment program established under this Ordinance;
- (11) "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 Santa Fe County;
- (12) "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.
- (13) "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;
- (14) "Property Owner" means the owner of the eligible property for eligible improvements.
- (15) "Region" means the geographical area designated pursuant to Section 2 of this Ordinance for the Program;
- (16) "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;

- (17) “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;
- (18) “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;
- (19) “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;
- (20) “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;
- (21) “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.
- (22) “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;

(23) "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;

(24) "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 6: 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 7: RATIFICATION.**

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

#### **SECTION 8: TERRITORY.**

The Program shall be available to all Eligible Property within the boundaries of the County but outside the limits of any municipality. In accordance with the Act, the Program may be available within the limits on a municipality if the municipality adopts a resolution or an ordinance approving the application of the County's ordinance within the municipality.

#### **SECTION 9: PROGRAM ADMINISTRATION**

A. Pursuant to the Act, the County hereby designates, authorizes and directs the Santa Fe County Manager 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 record the documents requested by a Property Owner and the 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 10: IMPROVEMENT SPECIAL ASSESSMENT FINANCING**

A. Pursuant to the Act, the County authorizes Special Assessment Financings 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; or
- (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.
- (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 11: 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 12: 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 County and 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 Project Application according to the Application Checklist 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 Checklist. If so, the Program Administrator shall sign the Application Checklist 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 Checklist, the Program Administrator shall inform the applicant as soon as practicable that the Project 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 Project Application.

D. Upon approval of a Project Application, a property owner or Capital Provider shall provide the following completed forms to the Santa Fe County Economic Development Office for execution at least five 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 Special Assessment Assignable Certificate. Expedited service may be available for a fee to be determined by the Santa Fe County Economic Development Office.

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 13: 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.
- (2) A form Special Assessment Agreement.
- (3) A form of Special Assessment Lien.
- (4) A form Special Assessment Assignable Certificate.
- (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 Board of Commissioners, so long as it complies with this Ordinance and the Act.

#### **SECTION 14: 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 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 15: 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 Property Owner or the Capital Provider, as agreed upon between them, 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 16: 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 Santa Fe County ordinances or violation of any provision of such ordinances 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 Santa Fe County ordinances in the event and to the extent of a conflict between this Ordinance and the Act, the Act shall govern.

**SECTION 17: NO LIABILITY. NO PUBLIC FUNDS.**

A. Notwithstanding anything contained in this Ordinance, neither the County's property, its full faith and credit nor its taxing power shall be pledged to the payment of any obligation or indebtedness under this Program. The amount and structure of debt of under this Program shall not have any direct negative material impact on the County's debt ratings with Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investor Services, Inc. or

any other nationally recognized bond-rating agency service then rating the County's outstanding bonds.

B. This Ordinance does not confer any right of action nor property interest upon any party to an 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.

C. The Special Assessment Agreement shall specify that the County: (1) is not liable in any way for the debt of the property owner; (2) is not a third-party obligor; (3) is not pledging or lending its credit to the property owner or the Capital Provider within the meaning of any provision or limitation of the New Mexico Constitution, statutes of the State of New Mexico or any County ordinance; and shall require the Property Owner to indemnify the County and their agents and employees and hold harmless the County and their agents, officers and for, from and against any and all liabilities, claims, costs, and expenses, including attorneys' fees, demands, losses and liabilities to or by third parties, arising from or related to the processing of the Project Application, administration of this program, or the levying of any tax, assessment, or special levy or charge related to the Program.

#### **SECTION 18: REPEAL.**

Resolution No. 2009-127, Authorizing and Requesting the County Treasurer and County Assessor to Take Necessary Action in Connection with Requests By Owner of Real Property Within the County for the Imposition, Administration and Disbursement Of Solar Energy Improvement Special Assessments Pursuant to the Solar Energy Improvement Special Assessment Act, is hereby repealed in its entirety.

#### **SECTION 19: EFFECTIVE DATE.**

In accordance with NMSA 1978, Section 4-37-9(C), the Board of County Commissioners hereby declares that is necessary for the public peace, health, and safety that this Ordinance take effect immediately; therefore, this Ordinance shall take effect immediately when the Ordinance is authenticated and recorded by the County Clerk.

PASSED, APPROVED AND ADOPTED ON THIS 13<sup>th</sup> DAY OF Sept, 2024.

SANTA FE COUNTY  
THE BOARD OF COUNTY COMMISSIONERS

By: Hank Hughes  
Hank Hughes, Chair

ATTEST:

Katharine E. Clark

Katharine E. Clark  
Santa Fe County Clerk



Approved as to Form:

Michael Nunez for  
Jeff Young  
Santa Fe County Attorney



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss BCC ORDINANCE  
PAGES: 28

I Hereby Certify That This Instrument Was Filed for  
Record On The 13TH Day Of September, 2024 at 01:59:06 PM  
And Was Duly Recorded as Instrument # 2041775  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Katharine E. Clark  
Deputy [Signature] County Clerk, Santa Fe, NM

**PROGRAM GUIDEBOOK:  
IMPROVEMENT SPECIAL ASSESSMENT  
PROGRAM**

**Santa Fe County, New Mexico**

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# **I. Introduction**

## **1. About Improvement Special Assessments**

Adelante Consulting, Inc. (the “Program Administrator”) administers an Improvement Special Assessment program (the “Improvement Special Assessment Program” or the “Program”) under Section 4-55D of the New Mexico Statutes Annotated (“NMSA”) (the “Improvement Special Assessment Act”). The Improvement Special Assessment Program allows owners of eligible commercial property to obtain long-term financing from private capital providers for certain eligible improvements. While the financing is repaid to the Capital Provider, the Improvement Special Assessment Act directs the County to place a voluntary special assessment and record a special assessment lien (the “Improvement Special Assessment Lien”) on the property. This approach to financing has been used by programs like the Improvement Special Assessment Program on thousands of properties in more than 31 states and the District of Columbia.

The New Mexico Legislature passed the Improvement Special Assessment Act enabling legislation, HB 228, in March 2023. This legislation allows counties to establish Improvement Special Assessment Programs. Improvement Special Assessments allow property owners to access financing for eligible energy efficiency, renewable energy, water conservation, and resiliency improvements for qualifying buildings. Improvements made to reduce lead in drinking water also qualify as eligible improvements.

Individual counties may now take action to opt into the statewide program. Creating a county Improvement Special Assessment Program is simple: One, a county adopts an ordinance and guidebook that govern how its Improvement Special Assessment Program works; and two, Adelante Consulting, Inc. (the Program Administrator) reviews the special assessment lien application for compliance with the Improvement Special Assessment state law, and then records the agreement that acknowledges the special assessment by the county.

In New Mexico, Improvement Special Assessment financing is available in four categories: energy efficiency, renewable energy, water conservation, and resiliency improvements. Improvements that reduce greenhouse gas emissions qualify, provided that the improvements also conserve energy or result in renewable energy improvements. A voluntary Improvement Special Assessment is secured by a special assessment lien on the property and paid back over time; tax liens and other government assessments remain superior to the Improvement Special Assessment lien. Like other assessments, Improvement Special Assessment financing is non-accelerating, which means only current or past due payments can be collected, while future payments are the responsibility of whomever owns the property at the time. The Improvement Special Assessment obligation transfers automatically to the next owner if the property is sold. In the event of default, only the payments in arrears are due. This arrangement spreads the cost of eligible improvements over the useful life of the measures.

The Program exists as a function of New Mexico’s Improvement Special Assessment legislation and the rules established by the County. No change in the Program or in New Mexico’s Improvement Special Assessment legislation will affect a property owner’s obligations to pay Improvement Special Assessments incurred under the Program prior to such changes.

## **2. NM Improvement Special Assessment Program Guidebook**

This Guidebook was developed to help counties launch Improvement Special Assessment programs. The Guidebook and form documents are available at no cost to counties to use and adopt. A major benefit to using a ready-made and legally reviewed program is that it allows counties, property owners, contractors, and capital

providers to follow a standard set of rules. This is critical in attracting the broadest capital investment to Improvement Special Assessment projects.

In this document you can find information about:

- Statutory and programmatic eligibility requirements for eligible properties and projects in New Mexico and Santa Fe County
- Process for applying for Improvement Special Assessment project approval

## II. Benefits of Improvement Special Assessments

Improvement Special Assessments offer benefits to building owners, developers, municipalities, mortgage holders, and building professionals.

**For Building Owners and Developers:** One of the biggest barriers to converting potential projects to completed projects for efficiency and resiliency upgrades are the up-front cost of the types of measures identified in the statute as eligible improvements. Improvement Special Assessment financing typically requires little up-front investment, and eligible improvements may also increase property value. Energy efficiency measures also lower operating costs. In addition, Improvement Special Assessment financing has the following benefits:

- **Up to 100% long-term financing.** Many owners lack the capital to complete efficiency and resiliency improvements. All direct and indirect costs incidental to the eligible improvements can be wrapped into Improvement Special Assessment financing.
- **Transferrable upon sale.** Some owners may want to sell the building before the special assessment is repaid. The special assessment lien and special assessment are attached to the property and transfer to the new owner.
- **Cash flow benefits.** Improvement Special Assessment financing may be repaid over the useful life of the improvements.
- **Triple-net and Full-net leases may allow pass-through of assessment installments to tenants.** Under triple/full net leases, special assessment payments can be passed along to tenants, who also typically derive benefit from any energy savings through reduced operating costs.

**For Energy Auditors, Architects, Building Engineers, and Contractors:** More substantial efficiency and resiliency improvements are now more affordable with Improvement Special Assessment. Energy auditors, architects, engineers, and contractors can suggest special assessment financing as a way for their clients to implement needed energy or resiliency upgrades that might otherwise be unaffordable. Improvement Special Assessments are a powerful business growth catalyst for building professionals like energy auditors and contractors.

**For Counties:** Improvement Special Assessments are an economic development tool. By making it more affordable for building owners to make major improvements to their buildings, local building stock value is enhanced, and more jobs are created. Energy and resiliency upgrades create a more competitive environment for retaining and attracting new businesses by lowering energy costs and improving the structural soundness of buildings. Upgraded buildings can generate higher property tax payments for the county. Energy upgrades also typically reduce greenhouse gases and other pollutants, which facilitates adherence to county or state climate action plans or goals.

**For Existing Lien Holders:** Eligible improvements can enhance property value and improve a building's longevity. In addition, special assessment financing is non-accelerating, meaning only current or past due annual payments can be collected. Existing mortgage holders may see their collateral improved without substantial increase in credit risk. Improvement Special Assessment financing is not permitted without the consent of all existing lien holders on the property.

### **III. Improvement Special Assessment Financing Program Rules**

The purpose of this Program Guidebook is to provide standard guidelines for counties to use in establishing efficient and effective Improvement Special Assessment programs that are consistent from county-to-county across New Mexico.

This Program Guidebook (the "Guidebook") is prepared at the direction of the County, as required by the Improvement Special Assessment Act. The Guidebook is approved in connection with, and as an attachment to, the enabling ordinance for this program (the "Improvement Special Assessment Ordinance") dated \_\_\_\_\_. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the Improvement Special Assessment Ordinance.

The Guidebook establishes guidelines, eligibility, approval criteria, and an application form for the administration of the Improvement Special Assessment Program. The Improvement Special Assessment Program enables special assessment financing for commercial property owners ("Property Owners") to make certain energy efficiency, renewable energy, water conservation, and resiliency improvements (each, a "Qualified Improvement") as described in the Improvement Special Assessment Act and further clarified in this Guidebook.

Eligible Improvements, including all eligible costs that are to be financed as described in a project application (the "Project Application") approved by the Program, constitute an "Eligible Improvement." Property Owners may receive funding for their Eligible Improvements only from qualified private investors ("Capital Providers") pursuant to a separate special assessment financing agreement negotiated between the Property Owner and Capital Provider (a "Special Assessment Financing Agreement").

In these guidelines, a reader can find information about:

- Statutory and programmatic eligibility requirements for Improvement Special Assessment project financing in New Mexico, and
- The appropriate steps and forms needed for a County or Program Administrator to receive and process an Improvement Special Assessment project application.

#### **1. Establishment of Improvement Special Assessment Program Boundaries**

The County adopted Ordinance number \_\_\_\_\_ on \_\_\_\_\_, establishing the Improvement Special Assessment Program for all eligible properties within the boundaries of the County, but outside the limits of any municipality (the "Region"). In accordance with the Act, the Program may be available within the limits of a municipality if the municipality adopts a resolution or ordinance approving the application of the County's ordinance within the municipality.

#### **2. Administration of Program; Authorized Officials**

Adelante Consulting, Inc. is designated and authorized to review each Project Application to confirm that it is complete and contains no errors on its face. Adelante Consulting, Inc. will support the County to execute the Assessment Agreement, Notice of Special Assessment Lien, and Assignment of Notice of Special Assessment Lien documents. The County will record them with the real property records.

As part of Program operation, Adelante Consulting, Inc. (the Program Administrator) will:

- Accept Project Applications (refer to the Project Application Form) from Property Owners and Capital Providers for prospective Improvement Special Assessment projects.
- Review the Project Application to determine conformance with the Application Form (refer to the

Project Application Form).

- Approve/conditionally approve/deny the Project Application and communicate to the applicant.
- Support the County to execute the Assessment Agreement, Notice of Special Assessment Interest and Lien (“Notice of Assessment Interest”), and Assignment of Notice of Special Assessment Interest and Assessment Agreement (“Assignment”).
- Provide the County and involved Municipalities with semi-annual reports on projects in their jurisdiction.

### 3. Eligibility Requirements

Eligible Property means any privately-owned commercial, agricultural, industrial, or multi-family real property of five (5) or more dwelling units located within the boundaries of the Region (including properties owned by a not-for-profit organization).

Ground leases on Eligible Property are permitted, so long as all requirements of the Improvement Special Assessment Ordinance are met, including requiring the Property Owner to enter into an Assessment Agreement. On ground-leased property, therefore, the special assessment and Special Assessment Lien encumber the fee interest in the property, not the ground leasehold.

Property Owner means an owner of eligible property, which is the record owner of title to the Eligible Property. The Property Owner may be any type of business, corporation, individual, or non-profit organization.

Eligible Improvements means a permanent improvement affixed to the real property that must meet at least one of these criteria:

- Decrease energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption or allow for the reduction in demand or reduce greenhouse gas emissions (“Energy Efficiency Improvement”);
- Support the production of clean, renewable energy, including but not limited to a product, device, or interacting group of products or devices on the customer’s side of the meter that generates electricity, provides thermal energy, or regulates temperature (“Renewable Energy Improvement”);
- Decrease water consumption or demand and address safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking (“Water Conservation Improvement”); or
- Increase resilience, including but not limited to flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids (“Resiliency Improvement”).

Eligible Improvements include the following:

- The acquisition, construction (including new construction), lease, installation, or modification of a Qualified Improvement permanently affixed to an Eligible Property.
- For Renewable Energy Improvements, “permanently affixed” includes Eligible Improvements that are subject to a power purchase agreement or lease between the Property Owner/applicant and the owner of the subject renewable energy system, if the power purchase agreement or lease contains all of the following provisions:

- a) The Renewable Energy Improvement relates to a Renewable Resource, defined as follows: (a) water; (b) wind; (c) solar energy; (d) geothermal energy; (e) renewable natural gas; (f) renewable hydrogen; (g) wave, ocean, or tidal power; (h) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first-growth forests; or (i) biomass energy.
  - b) The term of the power purchase agreement or lease is at least as long as the term of the related Assessment Agreement.
  - c) The owner of the Renewable Energy Improvement agrees to install, maintain, and monitor the system for the entire term of the Assessment Agreement.
  - d) Neither the owner of the Renewable Energy Improvement, nor the Property Owner, nor any successors in interest are permitted to remove the system prior to completion of the full repayment of the Special Assessment and Special Assessment Lien.
  - e) After installation, the power purchase agreement or lease is paid, either partially or in full, using the funds from the Special Assessment financing.
  - f) The power purchase agreement or lease specifies the holder of the Special Assessment Lien is a third-party beneficiary of the power purchase agreement or lease until the Special Assessment Lien has been fully repaid.
- Eligible Improvements include the refinancing of existing properties that have had Eligible Improvements installed and completed for no more than three (3) years or thirty-six (36) months prior to the date of Project Application.
  - Examples of Eligible Improvements include, but are not limited to:
    - A like-for-like roof associated with installing a roof-mounted solar photovoltaic array;
    - Asbestos abatement associated with a boiler retrofit;
    - New pads to support new plant equipment, such as a new chiller;
    - Replacement of ductwork and terminal boxes related to a packaged rooftop unit replacement;
    - Relocation of equipment associated with the installation of energy-saving measures, such as relocating a packaged rooftop unit to serve redistributed loads within a building better;
    - Rerouting of a fire sprinkler system to accommodate a new HVAC system upgrade;
    - Electrical upgrades associated with a new solar photovoltaic system, energy efficiency, or suitable measures, and electric vehicle charging;
    - Any utility infrastructure cost associated with electrical upgrades;
    - Existing Carport structures that support a solar photovoltaic array;
    - Demolition of an existing parking lot and installation of a new parking lot to allow for the installation of a bore field associated with a new ground source heat pump system;
    - Resurface or repaving of parking lots if solar photovoltaic carports are specified for new builds or installed on retrofits;
    - General construction costs required for the suitable measure;
    - Renewable energy improvements that are part of a community solar garden;
    - High efficiency electric appliances such as heat pumps and heat pump water heaters.

**Capital Provider** may be any of the following:

- a corporation, partnership, or other legal entity that provides proof that it is currently registered as a Improvement Special Assessment Capital Provider in two different states with C-PACE programs;
- a federal or state-chartered bank or credit union; or

- a private entity, whose principal place of business is located in New Mexico, provided it is licensed or permitted to do business within the state and can produce its most recent audited financial statement or regulatory business filing.

**Qualifying costs** that can be Improvement Special Assessment financed include:

- Materials and labor necessary for installation or modification of a Qualified Improvement;
- Permit fees;
- Inspection fees;
- Financing or origination fees;
- Program application and administrative fees;
- Project development, architectural and engineering fees;
- Third-party review fees, including verification review fees;
- Capitalized interest;
- Interest reserves;
- Escrow for prepaid property taxes and insurance;
- 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.

#### **4. Application Process**

The New Mexico Improvement Special Assessment Act reduces the administrative burden on participating counties as much as possible. Thus, Adelante Consulting, Inc. will review the Project Application for proof of compliance with the requirements of the statute. All applicants are encouraged to review the Project Application Form to ensure that the information the Program Administrator will rely upon to verify compliance with the statute are present in the completed Application.

The process of obtaining financing under the Program starts when a Property Owner approaches a Capital Provider. The Capital Provider will work with the Property Owner to collect due diligence items. Once all the items have been received, reviewed, and approved by the Capital Provider, the parties should settle on the Special Assessment Financing terms.

The general flow of the Improvement Special Assessment application process will be as follows:

- (1) The Property Owner and the Capital Provider prepare the Project Application, consisting of the Project Application Form and all supporting documents. Applicants are encouraged to review the Project Application Form to confirm that the types of information that the Program Administrator will rely upon to verify compliance with the Improvement Special Assessment Act and Improvement Special Assessment Ordinance are present in the completed Project Application.
- (2) Adelante Consulting, Inc. (the Program Administrator) will have 10 business days to review and approve the Project Application. If the Program Administrator has received an unusually high number of applications, or if review is delayed because of a *force majeure* event, the Program Administrator may notify the applicant that the application review and approval will be delayed by no more than 10 additional business days.
- (3) The application review process is confined to confirming that the Project Application is complete, and all attachments conform to these guidelines. ***Program Administrator approval does not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Eligible Improvements.*** Adelante Consulting, Inc. (the Program Administrator) will review the Project Application for proof of compliance with the requirements of the Improvement Special Assessment Act and Improvement Special

Assessment Ordinance. Incomplete Project Applications will be returned to the applicant, and the Program Administrator will notify the applicant about which items were not provided or are insufficient or inaccurate on their face. If the Project Application and supporting documents comply with the Project Application Form, the Project Application will be approved, and the approval communicated in writing to the applicant.

- (4) The Project Application may be conditionally approved if the application is complete but the attachment regarding consent of all lienholders on the property is not yet available. Conditional approval will be treated the same as an approval, with exceptions noted below.
- (5) Once the application is approved, the Capital Provider will draft the following Closing Documents: The Assessment Agreement, the Notice of Special Assessment Interest and Special Assessment Lien, and the Assignment of the Notice of Special Assessment and Assessment Agreement. At or before closing, at the request of the applicant, the designated and authorized official will execute the Closing Documents.
- (6) If the Project Application received conditional approval, the Closing Documents executed by the Program Administrator may not be released from escrow unless and until all lien holder consents have been received and executed in accordance with the Improvement Special Assessment Act and Improvement Special Assessment Ordinance.
- (7) At closing, the County will record the Assessment Agreement, the Notice of Special Assessment Interest and Special Assessment Lien, and the Assignment of the Notice of Special Assessment Interest and Special Assessment Lien. At the election of the applicant, the County may delegate the recording of the Closing Documents to the applicant or their designee(s).
- (8) Upon confirmation of recordation, the Capital Provider will disburse funds in accordance with the Special Assessment Financing Agreement.
- (9) The Capital Provider will send the Property Owner a separate bill to collect the Special Assessment installment amounts, as outlined in the Assessment Agreement and in accordance with the Special Assessment Financing Agreement.
- (10) The Property Owner begins making assessment payments per the Assessment Agreement and in accordance with the Special Assessment Financing Agreement

## 5. Application Documents

The Project Application must be submitted with the following documents appended:

- Project Application Form
- Lienholder(s) Consent
- Certificate of Eligible Improvements

- (1) For Renewable Energy Improvements or Energy Efficiency Improvements on an existing building: A certification stating that (a) the proposed Eligible Improvements will result either in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water; or (b) the subject property as a whole prior to the installation of the Eligible Improvements does not conform to the meeting the current



building energy or water code for the County, but will do so after the Eligible Improvements are installed.

The certification must be performed by a licensed professional engineer or an individual or firm accredited by one of the following:

- American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
  - Building Energy Assessment Professional (BEAP)
  - Building Energy Modeling Professional (BEMP)
  - Operations & Performance Management Professional Certification (OPMP)
  - High-Performance Building Design Professional Certification (HBDP)
- North American Board of Certified Energy Practitioners (NABCEP)
  - PV Installation Professional (PVIP)
  - PV Design Specialist (PVDS)
- Association of Energy Engineers (AEE)
  - Certified Energy Manager (CEM)
  - Certified Measurement and Verification Professional (CMVP)
  - Certified Energy Auditor (CEA)
- Building Performance Institute
  - Energy Auditor
- Investor Confidence Project
  - ICP Quality Assurance Assessor

Other professional qualifications may be accepted by the Program Administrator at its discretion.

- (2) For Renewable Energy Improvements that are solar photovoltaics, a North American Board of Certified Energy Practitioners (NABCEP) PV Installation Professional (PVIP), or PV design specialist (PVDS) certification is acceptable, or a licensed Electrical Engineer, Building Energy Assessment Professional (BEAP), Building Energy Modeling Professional (BEMP), Certified Energy Manager (CEM), Certified Measurement and Verification Professional (CMVP), or Certified Energy Auditor (CEA). Other professional qualifications may be accepted by the Program Administrator at its discretion.
- (3) For lead reduction in water improvements, a Water Quality Association Professional Certification.
- (4) For Resilience Improvements on an existing building: Certification by a licensed professional engineer, or a North American Board of Certified Energy Practitioners (NABCEP) PVIP Installation Professional stating that the Qualified Improvements will result in improved resilience, including but not limited to flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.
- (5) For new construction:
  - (A) Relating to energy or water efficiency, certification by a North American Board of Certified Energy Practitioners (NABCEP) PVIP Installation Professional, or a licensed professional engineer stating that each proposed Eligible Improvement will enable the subject property to exceed the energy efficiency, water efficiency, or renewable energy code requirements.

(B) Relating to resilience, certification by a licensed professional Civil Engineer that the proposed Eligible Improvements will enable the subject property to exceed the resiliency requirements of the current building code.

- (6) For all Eligible Improvements, the licensed engineer, individual or firm providing the certification of eligibility of the Eligible Improvements must attest that the proposed term of the financing does not exceed the weighted average effective useful life of the proposed Eligible Improvements and that the Eligible Improvements are permanently affixed, as described in this Guidebook.

The application shall also include:

- (7) 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 (Adelante Consulting, Inc);
  - (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

Prior to the County entering into a special assessment agreement, it shall receive the Program Administrator's certification that the proposed eligible improvements, eligible property and property owner qualify for financing pursuant to the program.

## 6. Closing Documents

The following documents require the signature of the County and shall be part of the closing of any Improvement Special Assessment transaction. Each document must be substantially similar in substance to the forms provided, although it is expected that Property Owners and Capital Providers will negotiate variations tailored to their specific projects.

- Assessment Agreement (form on the program website)
- Notice of Special Assessment Interest and Improvement Special Assessment Lien (form on the program website)
- Certificate of Assignment of Notice of Special Assessment Lien (form on the program website)

## 7. Interest Rates

Interest rates are negotiated in a Special Assessment Financing Agreement between the Property Owner and the Capital Provider. A County or a Program Administrator has no role in reviewing, setting, or opining on such interest rates or other aspects of the Special Assessment Financing Agreement. Market forces – such as competition, the intended use of the property, potential risk – will affect the terms negotiated by the Property Owners and Capital Providers.

## 8. Billing and Collection of Assessments

Billing, collection, and enforcement of delinquent Improvement Special Assessment Liens or Improvement Special Assessment financing installment payments, including foreclosure, are the responsibility of the Capital Provider.

## 9. Enforcement of Improvement Special Assessment Lien

The Improvement Special Assessment Special Assessment Lien may be enforced by the Capital Provider one year from the date of delinquency in the same manner as the collection of real estate mortgages, by prosecution of foreclosure proceedings under New Mexico common law and sale under foreclosure under NMSA 1978, Sections 39-5-1 *et seq.* Prior to the enforcement of any delinquency, the Capital Provider must provide written notification to all lien holders on the property.

By accepting Special Assessment Lien, the Capital Provider, or its assignee, as applicable, agrees to assume responsibility for prosecution of said action of foreclosure pursuant to New Mexico law, independent of and without assistance or consent from the prosecuting attorney, in accordance with the terms of the Special Assessment Financing Agreement.

## 10. Program Fee

Adelante Consulting, Inc. (the Program Administrator), as compensation for time and costs incurred in the establishment of the Improvement Special Assessment Program, including the Improvement Special Assessment Ordinance, this Guidebook, the draft documents, as well as for reviewing a Project Application for completeness and executing the Assessment Agreement, Special Assessment Lien, and Assignment, is entitled to a fee as outlined in the table below. The Property Owner must pay this fee directly to Adelante Consulting, Inc. (the Program Administrator) at the closing of the transaction between the Property Owner and the Capital Provider, and such payment is a condition precedent to recording by the County.

Based on the above description, Adelante Consulting Inc. (the Program Administrator) will be entitled to the following administrative fee, dependent on the total project costs.

Total Project Costs	Fee Structure	Adelante Fee
\$2,499,999 and under	Percentage	1%
\$2,500,000 and above	Flat fee	\$25,000

## 11. Term of a Special Assessment; Calculation of Useful Life of Eligible Improvements

The term of a Special Assessment may not exceed the useful life of the Eligible Improvement or if more than one Eligible Improvement is included in the Qualified Project, weighted average life of all Eligible Improvements. In no case shall the term of the financing exceed thirty years.

## **12. Form of Closing Documents**

The Program has adopted form Closing Documents: The Assessment Agreements, Notice of Special Assessment Interest and Special Assessment Lien, and Assignment of Notice of Special Assessments Interest and Assessment Agreement. A Property Owner and Capital Provider may adapt the forms to the needs of their particular transaction but must not modify or omit any material substantive terms contained in the forms.

## **13. Written Consent from Lienholder(s) Required**

Before entering into an Assessment Agreement with the County, the Capital Provider must obtain, and the Project Applications must show proof of, written consent for the placement of the special assessment and Special Assessment Lien from any holder of a lien, mortgage, or security interest in the real property.

For qualifying multifamily projects (residential projects of five or more dwelling units), the Capital Provider must obtain written consent from any holder of affordable housing covenants, restrictions, or regulatory agreements encumbering the real property as a condition precedent to the participation in the Program by the property.

If the consents are executed at closing, the signatures of the County to the Closing Documents will be held in escrow and will not be released until the consents are obtained. After closing, at the election of the Program Administrator, an amended Project Application with the consents attached must be sent to the Program Administrator. Capital Providers are responsible for providing their own form of consent that conforms to the Improvement Special Assessment Ordinance and Improvement Special Assessment Act.

## **14. County Has No Liability or Financial Responsibility**

Neither the County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Program. The County shall not pledge, offer, or encumber its full faith and credit for any lien amount under the Improvement Special Assessment program. No public funds may be used to repay any Improvement Special Assessment financing obligation.

## **15. Program Reporting**

Adelante Consulting, Inc. (the Program Administrator) will prepare a report for the County no less than semi-annually with the following information regarding the loan portfolio of C-PACE financings completed within the County:

- 1) Types and amounts of eligible improvements financed;
- 2) Locations of projects;
- 3) Number of loans outstanding;
- 4) Overall aggregate dollar amount outstanding under such loans;
- 5) Average initial Loan Amount;
- 6) Number of loans with delinquent assessment payments; and
- 7) Number of loans foreclosed upon to date and the number of pending foreclosures