ORDINANCE NO. 1169

AN ORDINANCE AMENDING THE TOWN OF SILVER CITY CODE OF ORDINANCES BY ADDING A NEW CHAPTER 9, ESTABLISHING AN AFFORDABLE HOUSING PROGRAM PURSUANT TO THE AFFORDABLE HOUSING ACT; DEFINING TERMS; ESTABLISHING APPLICATION REQUIREMENTS AND REVIEW CRITERIA; AND ESTABLISHING PROCEDURES TO ADMINISTER AN AFFORDABLE HOUSING PROGRAM.

WHEREAS, the Town of Silver City (the "Town") is a municipal corporation duly organized and existing under the laws of the Territory and State of New Mexico (the "State"); and

WHEREAS, under an exception to the "anti-donation" clause as set forth in Article IX, § 14 of the New Mexico Constitution, the Town is not prohibited from (i) donating land it owns for the construction on it of affordable housing; (ii) donating an existing building owned by the Town for conversion or renovation into affordable housing; or (iii) providing or paying the costs of infrastructure necessary to support affordable housing projects; and

WHEREAS, the Affordable Housing Act, NMSA 1978 § 6-27-1 et seq. (the "Act") implements the provisions of Subsections E and F of Section 14 of Article 9 of the New Mexico Constitution; and

WHEREAS, the Town Council ("Council"), the governing body of the Town, desires to implement an affordable housing program for the Town; and

WHEREAS, the New Mexico Mortgage Finance Authority has reviewed and approved the form and terms of this Ordinance prior to final adoption hereof;

BE IT ORDAINED BY THE TOWN COUNCIL, OF THE TOWN OF SILVER CITY, NEW MEXICO:

Section 1. **SHORT TITLE.** This Chapter may be cited as the "Affordable Housing" ordinance.

Section 2. **PURPOSE.** This ordinance is adopted to implement the Town's Affordable Housing Program. In accordance with N.M. Const. art. IX, § 14, the Affordable Housing Act, NMSA 1978, § 6-27-1 et seq. (the "Act"), Rules, the purpose of the Affordable Housing Ordinance is to:

A. establish procedures to ensure that both State and local housing assistance grantees are Qualifying Grantees who meet the requirements of the Act and the Rules promulgated pursuant to the Act both at the time of the award and throughout the term of any grant or loan under the Program;

B. establish an application and award timetable for State housing assistance grants or loans to permit the selection of the Qualifying Grantee(s) by the Town;

C. create an evaluation process to determine:

(i) the financial and management stability of the Applicant;

(ii) the demonstrated commitment of the Applicant to the community;

(iii) a cost-benefit analysis of the project proposed by the Applicant;

(iv) the benefits to the community of a proposed project;

(v) the type or amount of assistance to be provided;

(vi) the scope of the Affordable Housing Project;

(vii) any substantive or matching contribution by the Applicant to the proposed project;

(viii) a performance schedule for the Qualifying Grantee with performance criteria; and

(ix) any other rules or procedures which the Town believes are necessary for a full review and evaluation of the Applicant and the Application or which the MFA believes is necessary for a full review of the Town's evaluation of the Applicant;

D. require long-term affordability of the Town's Affordable Housing Projects so that a project cannot be sold shortly after completion and taken out of the affordable housing market to ensure a quick profit for the Qualifying Grantee;

E. require that the Town enter into a contract with the Qualifying Grantee consistent with the Act, which contract shall include remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee and which contract shall be subject to the review of the MFA in its discretion;

F. require that any grant or loan for a Project must impose a contractual obligation on the Qualifying Grantee that the affordable housing units in any Project be occupied by Persons or Households of Very Low, Low, Moderate, or Middle Income;

G. provide for adequate security against the loss of public funds or property in

the event that the Qualifying Grantee abandons or otherwise fails to complete the Project; require review and approval of a housing grant project budget by the Town and/or the MFA before any expenditure of grant funds or transfer of granted property;

H. require that a condition of grant or loan approval be proof of compliance with all applicable State and local laws, rules and ordinances;

I. provide definitions for Very Low, Low, Moderate, or Middle Income and setting out requirements for verification of income levels; and

J. provide the Town with a valid Affordable Housing Program.

Section 3. GENERAL DEFINITIONS. The following words and terms shall have the following meanings.

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

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

C. "Affordable Housing" means residential housing primarily for Persons or Households of Very Low, Low, Moderate, and Middle Income earning up to 120% of the Area Median Income. For purposes of this definition, the word "families" shall mean a group of persons consisting of, but not limited to, the head of a household; his or her spouse, if any; and children, if any, who are allowable as personal exemptions for Federal income tax purposes. For purposes of this definition, Very Low Income shall mean Persons or Households earning up to 30% of the Area Median Income; Low Income shall mean Persons or Households earning up to 50% of the Area Median Income; Moderate Income shall mean Persons or Households earning up to 80% of the Area Median Income; Middle Income shall mean Persons or Households earning up to 120% of the Area Median Income.

D. "Affordable Housing Funds" shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under the Act for payment of the costs of Infrastructure for Affordable Housing under an Affordable Housing Plan.

E. "Affordable Housing Plan" or "Plan" shall mean a plan pursuant to an Affordable Housing Program that contemplates one or more Affordable Housing Projects, which may be developed in one or more phases.

F. "Affordable Housing Program" or "Program" shall mean any programs the Town and/or the MFA established pursuant to the Act.

G. "Affordable Housing Project" or "Project" shall mean any work or undertaking, whether new construction, acquisition of existing Residential Housing, remodeling, improvement, Rehabilitation or conversion, which may be undertaken in one or more phases, as part of an Affordable Housing Plan, as approved by the Town and/or the MFA for the primary purposes as allowed by the Act.

H. "Affordability Period" shall mean:

(1) if the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds that have been awarded, loaned, donated, or otherwise conveyed to the Qualifying Grantee is from $1 to $14,999, then the Affordability Period shall be not less than five (5) years.

(2) if the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from $15,000 up to and including $39,999, then the Affordability Period shall be not less than ten (10) years.

(3) if the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from $40,000 up to and including $99,999, then the Affordability Period shall be not less than fifteen (15) years.

(4) if the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is greater than $100,000, then the Affordability Period shall be not less than twenty (20) years.

I. “Applicant” shall mean, subject to further qualifications in Section 4(B), an individual, a governmental housing agency, regional housing authority, a for-profit organization, including a corporation, limited liability company, partnership, joint venture, syndicate, or association or a nonprofit organization meeting the appropriate criteria of the Town and/or the MFA.

J. "Application" shall mean an application to participate in one or more Affordable Housing Programs or Affordable Housing Plans under the Act submitted by an Applicant to the Town and/or the MFA.

K. "Builder" shall mean an individual or entity licensed as a general contractor to

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

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

M. "Congregate Housing Facility" shall mean Residential Housing designed for occupancy by more than four Persons or Households of Very Low, Low, Moderate, or Middle Income living independently of each other. The facility may contain group dining, recreational, health care or other communal living facilities and each unit in a Congregate Housing Facility shall contain at least its own living, sleeping, and bathing facilities.

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

O. "Household" shall mean one or more persons occupying a housing unit.

P. "Housing Assistance Grant" means the donation by the Town of:

(1) land for construction of a Project;

(2) an existing building for conversion or renovation as Affordable Housing, or

(3) the cost of Infrastructure necessary to support Affordable Housing.

Q. "Infrastructure" shall mean Infrastructure Improvements and Infrastructure "Infrastructure Improvement" includes, but is not limited to:

(1) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(3) water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) areas for motor vehicle use for travel, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for travel, ingress, egress and parking;

(6) parks, recreational facilities and open space areas for the use of residents for entertainment, assembly and recreation;

(7) landscaping, including earthworks, structures, plants, trees and related water delivery systems;

(8) electrical transmission and distribution facilities;

(9) natural gas distribution facilities;

(10) lighting systems;

(11) cable or other telecommunications lines and related equipment;

(12) traffic control systems and devices, including signals, controls, markings and signs;

(13) inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and

(14) heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements, that are affixed to real property.

R. "Infrastructure Purpose" shall mean:

(1) planning, designing, engineering, constructing, acquiring or installing of Infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the Infrastructure, provided the Town may determine it appropriate to reduce or waive building permit fees, sewer and water hook-up fees and other fees with respect to an Affordable Housing Project for which Affordable Housing Funds and/or Housing Assistance Grants are awarded, loaned, donated or otherwise distributed under the Act;

(2) acquiring, converting, renovating or improving existing facilities for Infrastructure, including facilities owned, leased or installed by the owner;

(3) acquiring interests in real property or water rights for Infrastructure, including interests of the owner; and

(4) incurring expenses incident to, and reasonably necessary, to carry out the purposes specified in this subsection.

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

T. "MFA Act" shall mean the Mortgage Finance Authority Act, enacted as Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (being Sections 58-18-1 through 58-18-27, inclusive, N.M.S.A. (1978), as amended).

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

V. "Mortgage Lender" shall mean any bank or trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union, building and loan association and any other lending institution; provided that the mortgage lender maintains an office in the State of New Mexico and is authorized to make mortgage loans in the State and is approved by the Town and/or the MFA and either the Federal Housing Authority, Veterans' Affairs, Federal National Mortgage Association (now known as Fannie Mae), or Federal Home Loan Mortgage Corporation.

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

X. "Multiple Family Housing Project" shall mean Residential Housing that is designed for occupancy by more than four Persons or Households living independently of each other or living in a Congregate Housing Facility, at least sixty percent (60%) of whom are Persons or Households of Very Low, Low, Moderate, or Middle Income, including without limitation Persons or Households of Very Low, Low, Moderate, or Middle Income who are elderly and handicapped as determined by the Town and/or the MFA, provided that the percentage of Persons or Households of Very Low, Low, Moderate, or Middle Income shall be at least the minimum, if any, required by federal tax law.

Y. "Multi-Family Housing Program" shall mean a program involving a Congregate Housing Facility, a Multiple Family Housing Project or a Transitional Housing Facility.

Z. "Ordinance" shall mean this Ordinance No. 1169.

AA. "Policies and Procedures" shall mean Policies and Procedures of the

MFA, including but not limited to, Mortgage Loan purchasing, selling, servicing and reservation procedures, which the MFA may update and revise from time to time as the MFA deems appropriate.

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

CC. "Qualifying Grantee" means:

(1) an individual who is qualified to receive assistance pursuant to the Act and is approved by the Town; and

(2) a governmental housing agency, regional housing authority, corporation, a limited liability company, partnership, joint venture, syndicate, association or a nonprofit organization that:

(a) is organized under State or local laws and can provide proof of such organization;

(b) if a non-profit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(c) is approved by the Town.

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

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

FF. "Residential Housing" shall mean any Building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more Households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential Housing"

includes congregate housing, manufactured homes and housing intended to provide or providing transitional or temporary housing for homeless persons.

GG. "Residential Use" shall mean that the structure or the portion of the structure to benefit from the Affordable Housing Funds or Housing Assistance Grant is designed primarily for use as the principal residence of the occupant or occupants and shall exclude vacation or recreational homes.

HH. "RFP" shall mean any request for proposal made by the Town.

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

JJ. "State" shall mean the State of New Mexico.

KK. "Town" shall mean the Town of Silver City, New Mexico, a New Mexico municipal corporation.

LL. "Transitional Housing Facility" shall mean residential housing that is designed for temporary or transitional occupancy by Persons or Households of Very Low, Low, Moderate, or Middle Income or special needs.

Section 4. GENERAL REQUIREMENTS. The following requirements shall apply to all Housing Assistance Grants and/or Affordable Housing Funds awarded, loaned or otherwise distributed by the Town under the Act to a Qualifying Grantee.

A. Request for Proposals. The Town, in its discretion, may issue one or more RFPs to solicit applications from Applicants or shall otherwise identify a Qualifying Grantee for the use of any Affordable Housing Funds or Housing Assistance Grants to be awarded, loaned, donated or otherwise distributed under the Act.

B. Applicant Eligibility. The following Applicants are eligible under the Act to apply for Affordable Housing Funds or a Housing Assistance Grant to provide housing or related services to Persons or Households of Very Low, Low, Moderate, or Middle Income in their community:

(1) all individuals who are qualified to receive assistance pursuant to the Act, the Rules, and this Ordinance that are approved by the Town;

(2) all regional housing authorities and any governmental housing agencies;

(3) all for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate or association;

(4) all non-profit organizations meeting the following requirements:

(a) a primary mission of the nonprofit organization must be to provide housing or housing-related services to Persons or Households of Very Low, Low, Moderate, or Middle Income; and

(b) the non-profit organization must have received its 501(c)(3) designation prior to submitting an Application;

(c) have no part of its net earnings benefit any member, founder, contributor, or individual;

(d) be registered with the new Mexico Attorney General's Office.

(5) all non-individual Applicants must

(a) be organized under State or local laws and provide proof of such organization and be approved by the Town;

(b) have a functioning accounting system that is operated in accordance with generally accepted accounting principles or have an entity designated that will maintain such an accounting system consistent with generally accepted accounting principles;

(c) have among its purposes significant activities related to providing housing or services to Persons or Households Very Low, Low, Moderate, or Middle Income; and

(d) have no significant outstanding or unresolved monitoring findings from the Town, the MFA, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from the Town, the MFA, or auditor stating that the findings are in the process of being resolved.

C. Applications.

(1) Process for Applying. Applicants wishing to apply for a Housing Assistance Grant, including the use of any Affordable Housing Funds, or to participate in any Affordable Housing Program are required to submit to the Town the following (as applicable):

(a) one original Application, together with all required schedules, documents, or such other information which may be required by the Town or in any RFP which may have been issued by the Town;

(b) a proposal describing the nature and scope of the Affordable Housing Project proposed by the Applicant and for which the Applicant is applying for funds or

a grant under the Act, and which describes the type and/or amount of assistance which the Applicant proposes to provide to Persons or Households of Very Low, Low, Moderate, or Middle Income;

(c) executive summary and project narrative(s) that address the evaluation criteria set forth in any RFP issued by the Town for the Affordable Housing Funds or the Housing Assistance Grant for which the Applicant is applying;

(d) a proposed budget for the Affordable Housing Project for which the Applicant is applying for Affordable Housing Funds or for a Housing Assistance Grant;

(e) current independent financial audit;

(f) if the Applicant is a non-profit organization:

(i) proof of 501(c)(3) tax status;

(ii) documentation that confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;

(g) if an Applicant is a legal entity, including a non-profit organization:

(i) a current annual budget for the Applicant, including all sources and uses of funds not just those related to relevant programs and/or a current annual budget only for the program for which the Applicant is applying for a Housing Assistance Grant, or as otherwise may be required by the Town and/or the MFA in its discretion;

(ii) an approved mission statement that the Applicant has among its purposes significant activities related to providing housing or housing-related Services to Persons or Households of Very Low, Low, Moderate, or Middle Income;

(iii) a list of members of the Applicant's current board of directors or other governing body, including designated homeless participation, where required by the Town;

(iv) evidence (or a certification as may be allowed by the Town) that the Applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principals, or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principals;

(v) evidence that the Applicant has no significant outstanding

or unresolved monitoring findings from the Town, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the Town, the MFA, or its most recent independent financial audit, it has a certified letter from the Town, the MFA, or the auditor stating that the findings are in the process of being resolved;

(vi) an organizational chart, including job titles and qualifications for the Applicant's employees or as otherwise may be required by the Town and/or the MFA in its discretion. Job descriptions may be submitted as appropriate;

(vii) documentation that the Applicant is duly organized under State or local law and certification that the Applicant is in good standing with any State authorities, including the Public Regulation Commission and the Secretary of State;

(h) information as may be required by the Town in order for it to determine the financial and management stability of the Applicant;

(i) information as may be required by the Town in order for it to determine the demonstrated commitment of the Applicant to the community;

(j) a completed cost-benefit analysis of the Affordable Housing Project proposed by the Applicant. Any cost-benefit analysis must include documentation that clearly evidences that there is or will be a direct benefit from the project proposed by the Applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act;

(k) information to the Town supporting the benefits to the community of the Affordable Housing Project proposed by the Applicant;

(1) proof of substantive or matching funds or contributions and/or in-kind donations to the proposed Affordable Housing Project in connection with the Application for funds under the Act. Nothing contained herein shall prevent or preclude an Applicant from matching or using local, private, or federal funds in connection with a specific Housing Assistance Grant or a grant of Affordable Housing Funds under the Act;

(m) any certifications or other proof which it may require in order for the Town to confirm that the Applicant is in compliance with all applicable federal, State and local laws, rules and ordinances;

(n) a verification signed by the Applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the

Applicant's information, knowledge, and belief;

(o) certifications as may be required by the Town and signed by chief executive officer, board president, mayor or other authorized official of the Applicant, provided that the Town at its discretion may waive any of the foregoing requirements if not deemed applicable;

(p) a housing grant project budget;

(q) evidence of the need for the contribution of public funds and that the contribution will reduce the housing costs to Persons or Households of Very Low, Low, Moderate, and Middle Income earning up to 120% of Area Median Income

(2) Additional Requirements for Multi-Family Housing Projects. Applicants who are submitting Applications in connection with a Multi-Family Housing Program, the Applicant must also submit to the Town following additional information:

(a) a verified certificate that, among other things:

(i) identifies every Multi-Family Housing Program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such Applicant has been or is a principal;

(ii) except as shown on such certificate, states that:

(A) no mortgage on a project listed on such certificate has ever been in default, assigned to the Federal Government or foreclosed, nor has any mortgage relief by the mortgagee been given;

(B) there has not been a suspension or termination of payments under any HUD assistance contract in which the Applicant has had a legal or beneficial interest;

(C) such Applicant has not been suspended, debarred or otherwise restricted by any department or agency of the Federal Government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and

(D) the Applicant has not defaulted on an obligation covered by a surety or performance bond.

(E) If such Applicant cannot certify to each of the

above, such Applicant shall submit a signed statement to explain the facts and circumstances that such Applicant believes will explain the lack of certification. The Town may then determine if such Applicant is or is not qualified.

(b) the experience of the Applicant in developing, financing and managing Multiple-Family Housing Projects; and

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

(3) Additional Requirements for Mortgage Lenders. If the Applicant is a Mortgage Lender, the Town shall consider, among other things:

(a) the financial condition of the Applicant;

(b) the terms and conditions of any loans to be made;

(c) the aggregate principal balances of any loans to be made to each Applicant compared with the aggregate principal balances of the loans to be made to all other Applicants;

(d) The Town's assessment of the ability of the Applicant or its designated servicer to act as originator and servicer of Mortgage Loans for any Multi-Family Housing Programs or other programs to be financed; and

(e) previous participation by the Applicant in the MFA's programs and HUD, Federal Housing Authority, or Rural Housing Service programs.

(4) Submission Procedure.

(a) Time, Place and Method of Submission Delivery.

(i) If the Town has issued an RFP, all Applications must be received by the Town no later than the deadline set forth in the RFP; otherwise, all Applications must be received by the Town by the deadline the Town has established in connection with the respective award or grant. So that any Qualifying Grantees may be selected prior to January of the year in which any Housing Assistance Grant would be made, the Town shall issue any RFP's, solicit any Applications, or otherwise identify any Qualifying Grantees no later than October 15 of any year in order to allow sufficient time for prospective applicants to respond to any such RFP, solicitation, or otherwise, and further to allow the MFA not less than forty-five (45) days in which to review any such

Applications or otherwise determine or confirm that an Applicant is a Qualifying Grantee under the Act and consistent with the Rules.

(ii) Applications shall be submitted by Applicants to the Town in the form required by the Town and shall contain all information which is required by this Ordinance and any RFP which may have been issued.

(b) Additional Factors. The Application procedures shall take into consideration:

(i) timely completion and submission to the Town of an Application or other appropriate response to any solicitation by the Town;

(ii) timely submission of all other information and documentation related to the program required by the Town as set forth in this Ordinance or as set forth in the Rules;

(iii) timely payment of any fees required to be paid to the Town at the time of submission of the Application; and

(iv) compliance with program eligibility requirements as set forth in the Act, the Rules and this Ordinance.

(c) Submission Format.

(i) Town forms or MFA forms (if available) must be used when provided and no substitutions will be accepted; however attachments may be provided as necessary.

(ii) An Applicant's failure to provide or complete any element of an Application, including all requirements of the Town or as may be listed on any RFP, may result in the rejection of the Application prior to review.

(iii) Illegible information, information inconsistent with other information provided in the application, and/or incomplete forms will be treated as missing information and evaluated accordingly.

(iv) The Town and the MFA reserve the right to request further information from any Applicant so long as the request is done fairly and does not provide any Applicant an undue advantage over another Applicant.

(v) The Town in its discretion may cancel any RFP or reject any or all proposals in whole or part submitted by any Applicant.

(vi) Neither the Town nor the MFA shall be responsible for any expenses incurred by an Applicant in preparing and submitting an Application. However, the Town or the MFA, as applicable, may establish and collect fees from Applicants who file Applications. Notice that fees will be charged and the amount of any such fees shall be included by the Town or the MFA, as applicable, in any RFP or otherwise shall be advertised as part of the Application solicitation process.

(5) Review by the Town. On receipt of an Application, the Town shall:

(a) determine whether the Application submitted by the Applicant is complete and responsive;

(b) determine whether the Applicant is a Qualifying Grantee as defined herein and in the Act;

(c) review and analyze whether the Applicant has shown a demonstrated need for activities to promote and provide affordable housing and related services to Persons or Households of Very Low, Low, Moderate, and Medium Income;

(d) determine whether the Applicant has demonstrated experience related to providing housing or services to Persons or Households of Very Low, Low, Moderate, or Middle Income, as well as experience and/or the capacity to administer the Affordable Housing Program or Project for which the Applicant has applied;

(e) determine whether the Applicant's proposal provides a plan for coordinating with other service providers in the community; whether the Applicant's plan addresses how Persons or Households of Low Very Low, Low, Moderate, or Middle Income in need of housing and/or housing related supportive services can receive supportive services and referrals to federal, State and local resources; and, whether the Applicant's plan addresses outreach efforts to reach the population to be served as identified by the Town in any RFP or otherwise;

(f) determine whether the Applicant has support from Public Service Agencies, or such other support as may be required by the Town and/or the MFA in its discretion, for its proposed services in the community;

(g) ascertain the amount of any matching funds or in-kind services specific to the program that may be utilized by the Applicant in connection with

the program;

(h) ascertain whether any local, private, or federal funds will be used by the Applicant in connection with the specific grant for which the Applicant is applying;

(i) ascertain whether the Applicant has and can demonstrate the capability to manage the implementation of the Program for which the Applicant is applying;

(j) if Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other Program funds, confirm that the Applicant had no outstanding findings or matters of non-compliance with program requirements from the Town or the MFA, as applicable or if it has any such findings, it has a certified letter from the Town, the MFA, or auditor stating that the findings are in the process of being resolved;

(k) if Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other Program funds, confirm that the Applicant reasonably committed and expended the funds under the prior Program and/or met anticipated production levels as set forth in any contract with the Town or the MFA, as applicable, for those prior Program funds;

(l) evaluate the Applicant's proposal in part based upon the Applicant's current financial audit;

(m) evaluate the Applicant's proposed budget for the Project for which the Applicant is applying for Affordable Housing Funds and approve the proposed budget before recognizing the applicant as a Qualifying Grantee and thus before making any contribution to the Applicant receipt of an Application from a Builder, the Town will analyze the Builder's ability to construct and sell sufficient Residential Housing units to Persons or Households of Very Low, Low, Moderate, or Middle Income within the time or times as may be required by the Town.

(n) consider other factors it deems appropriate to ensure a reasonable geographic allocation for all Affordable Housing Programs.

(6) Certification by the Town to the MFA. The Town shall certify an Application to the MFA in writing upon:

(a) completion of its review of the Application;

(b) determination that the Application is complete;

(c) determination that the requirements of the Act, the Rules and this Ordinance have been satisfied; and

(d) determination that the Applicant is a Qualifying Grantee.

(7) Notification of Acceptance. The Town, upon completion of its review of the Application and an evaluation of the criteria for approval of the Application as set forth in this Ordinance and in any RFP issued by the Town and upon its determination that the Applicant is a Qualifying Grantee, shall notify each Applicant, by written notice, of the approval or disapproval of its Application. Upon approval of its Application, the Applicant shall be considered approved to participate in the Affordable Housing Program. The Town's determination of any Application shall be conclusive.

D. Additional Requirements. Upon acceptance, the following additional requirements shall apply to any Applicant, who is a Qualifying Grantee:

(1) Contractual Requirements. The Qualifying Grantee shall enter into one or more contracts with the Town, which contract(s) shall be consistent with the Act and subject to the review of the MFA, in its discretion, and which contract(s) shall include remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee.

(2) Security Provisions; Collateral Requirements. In accordance with the Act, the Rules and this Ordinance, the Town shall require the Qualifying Grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the Qualifying Grantee abandons or fails to complete the Affordable Housing Project, and which shall further provide, as may be permitted by law, for the recovery of any attorneys' fees and costs which the Town and/or the MFA may incur in enforcing the provisions of this Ordinance, the Rules, the Act and/or any agreement entered into by the Town and the Qualifying Grantee, and which documents may include, but are not limited to the following: note, Mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the Town may require in order to allow for any funds which the Qualifying Grantee may receive under a Housing Assistance Grant or Affordable Housing Funds to be adequately secured and to allow the Town and the MFA to ensure that such funds shall be utilized by the Qualifying Grantee in accordance with the Act, the Rules and this Ordinance.

(3) Performance Schedule and Criteria. The Qualifying Grantee shall be

required to abide by a reasonable performance schedule and performance criteria that the Town, in its discretion, may establish.

(4) Examination of Books and Records. The Qualifying Grantee shall submit to and the Town shall cause to be made such examinations of the books and records of each Qualifying Grantee as the Town and/or the MFA deems necessary or appropriate to determine the Qualifying Grantee's compliance with the terms of the Act, the Rules, this Ordinance and any contracts between the Qualifying Grantee and the Town. The Town and/or the MFA may require each Qualifying Grantee to pay the costs of any such examination.

(5) Infrastructure Cost Reimbursement Contracts.

(a) Cost Reimbursements. Payment to a Qualifying Grantee under cost reimbursable contract provisions shall be made upon the Town's receipt from the Qualifying Grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the Qualifying Grantee and the Town.

(b) Cost Reimbursements for Units of Service. Payment under any unit cost contract provisions shall be made upon the Town's receipt from the Qualifying Grantee of a certified and documented invoice showing the number of units of service provided during the billing period.

(c) Rate at which Costs Incurred. Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the Qualifying Grantee at an approximate level rate during the term of any agreement between the Qualifying Grantee and the Town. If the Town determines that the Qualifying Grantee is under spending or overspending, then the Town may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.

(d) Invoices. Qualifying Grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the Town. Failure to submit invoices within twenty (20) days of the close of the month for which payment is sought may result in the non-availability of funds for reimbursement.

(e) No Dual Application of Costs. The Qualifying Grantee shall certify that any direct or indirect costs claimed by the Qualifying Grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the Qualifying Grantee and which has not been approved by the Town in advance, in writing.

(f) Prohibition of Substitution of Funds. Any Affordable Housing Funds or other amounts received by Qualifying Grantee may not be used by Qualifying Grantee to replace other amounts made available or designated by the State or local governments through appropriations for use for the purposes of the Act.

(g) Cost Allocation. The Qualifying Grantee shall clearly identify and distribute all costs incurred pertaining to the Affordable Housing Project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the Town.

(6) Additional Information. Qualifying Grantees shall provide the Town with any and all information which the Town reasonably may require in order for it to confirm that the Qualifying Grantees continue to satisfy the requirements of the Act, the Rules and this Ordinance throughout the term of any contract and/or any Affordability Period or otherwise as may be required by the Town or the MFA in its discretion. At a minimum, on an annual basis, the Town shall certify to the MFA in writing that to the best of its knowledge the Qualifying Grantee is in compliance with applicable provisions of the Act, the Rules and this Ordinance.

E. Affordable Housing Requirements. All Affordable Housing Funds or Housing Assistance Grants awarded under the Act are to be used by Qualifying Grantees for the benefit of Persons or Households of Very Low, Low, Moderate, and Middle Income earning up to 120% of Area Median Income subject to the provisions of the Act and with particular regard to their housing related needs.

(1) Single Family Property. Qualifying Grantees shall agree that they shall maintain any single-family property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, as Affordable Housing for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, which ever is longer.

(2) Multi-Family Property.

(a) Single Apartment within a Multi-Family Property. Qualifying

Grantees shall agree that, if any single apartments are to be rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from Affordable Housing Funds, those apartments shall be leased to Persons or Households of Very Low, Low, Moderate, or Middle Income at the time of any such award. Qualifying Grantees, who are the landlords and/or owners of such properties, shall further agree to contribute at least sixty percent (60%) of the cost of the rehabilitation, weatherization, conversion, lease, repair, and/or construction. Qualifying Grantees also shall agree that the Persons or Households of Very Low, Low, Moderate, or Middle Income, who are tenants of those apartments, shall be allowed to remain tenants for so long as there are no uncured defaults by those tenants under their respective leases and provided that there is no just cause for the landlord to terminate any lease agreement with those tenants.

(b) Multiple Apartments. Qualifying Grantees shall agree that, if multiple apartments or an entire multi-family property are to be acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, they shall maintain not less than sixty percent (60%) of the housing units as Affordable Housing for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, which ever is longer.

(3) Non-Residential Property. Qualifying Grantees shall agree that they shall maintain any non-residential property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, as a facility which provides housing related-services to Persons or Households of Very Low, Low, Moderate, or Middle Income for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, which ever is longer.

(4) Housing Assistance Grant Affordability Requirements. Qualifying Grantees shall agree that they shall maintain any land or buildings received as a Housing

Assistance Grant either as single-family or multi-family Affordable Housing in accordance with Sections 4(E)(I) and (2) or as a facility which provides housing related-services to Persons or Households of Very Low, Low, Moderate, or Middle Income in accordance with Section 4(E)(3) (as applicable) for the duration of the Affordability Period. Qualifying Grantees shall agree that they shall maintain any land or buildings for which they have received the costs of Infrastructure as a Housing Assistance Grant either as single-family or multi-family Affordable Housing or as a facility which provides housing related-services to Persons or Households of Very Low, Low, Moderate, or Middle Income (as applicable) for the duration of the Affordability Period. In calculating the Affordability Period for Housing Assistance Grants of either land or buildings, the fair market value of the land or buildings or the costs of Infrastructure at the time of the donation by the State or Town shall apply.

(5) Affordability Period. If a home constructed with a Housing Assistance Grant is sold within the Affordability Period, it must be resold to Persons or Households of Very Low, Low, Moderate, or Middle Income. These Persons or Households may be pre-qualified in order to hasten the resale process. In addition, the Town or a third-party entity acting as the Town's managing agent will have the first right of refusal if the home is sold within the Affordability Period. The Town, in its discretion, may increase the Affordability Period in any contract, note, Mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the Town may enter into with any Qualifying Grantee or beneficiary of the Affordable Housing Funds or of the Housing Assistance Grant. See definition of Affordability Period in Section 3H. of this Ordinance Consent to Jurisdiction. Each Qualifying Grantee shall consent to the jurisdiction of the courts of the State over any proceeding to enforce compliance with the terms of the Act, the Rules and this ordinance and any agreement between the Qualifying Grantee and the Town and/or the MFA.

F. Recertification Procedures.

(1) The Qualifying Grantee must meet the requirements of the Act, the Rules and this Ordinance both at the time of any award and throughout the term of any grant and contract related thereto.

(2) The Town may establish procedures for recertifying Qualifying Grantees from time to time.

(3) Qualifying Grantees that fail to satisfy the requirements for Recertification

shall cease to be eligible and shall be denied further participation in Affordable Housing programs until the requirements of the Town and the MFA are satisfied.

H. Compliance with the Law. Qualifying Grantee shall provide the Town with any certifications or other proof that it may require in order for the Town and the MFA to confirm that the Qualifying Grantee and the Qualifying Grantee's proposed Project are in compliance with all applicable federal, State and local laws, rules and ordinances.

I. Town Program Requirements.

(1) The Town is authorized to make Housing Assistance Programs under the Act, including, but not limited to, a program concerning the donation of land, a program concerning the donation of buildings, a program subsidizing infrastructure costs, and an affordable housing assistance fund. Upon determination that the Town will undertake a Housing Assistance Program, including the use of any Affordable Housing Funds, the Town shall provide the MFA with the following:

(a) documentation that confirms that the Town has an existing valid Affordable Housing Plan;

(b) a copy of the proposed ordinance which provides for the authorization of the Housing Assistance Program;

(2) The MFA shall act to approve the proposed Housing Assistance Program authorized by the Town within forty-five (45) days of its receipt of the documentation required above in this Section 4 I (1).

Section 5. **DISCRIMINATION PROHIBITED.** The development, construction, occupancy and operation of an Affordable Housing Program or an Affordable Housing Project financed or assisted under the Act shall be undertaken in a manner consistent with principles of non-discrimination and equal opportunity, and the Town shall require compliance by all Qualifying Grantees with all applicable federal and State laws and regulations relating to affirmative action, non-discrimination and equal opportunity.

Section 6. **ADMINISTRATION**. The Town shall administer any Affordable Housing programs in accordance with provisions of the Act, the Rules, this Ordinance, any applicable state and federal laws and regulations as each of which may be amended or supplemented from time to time. The Town in establishing, funding and administering the Affordable Housing Programs and by making, executing, delivering and performing any award,

contract, grant or any other activity or transaction contemplated by the Act, shall not violate any provision of law, rule or regulation or any decree, writ, order, injunction, judgment, determination or award and will not contravene the provisions of or otherwise cause a default under any of its agreements, indentures, or other instruments to which it may be bound. Any proposed amendment to the Ordinance and/or the regulations shall be submitted to the MFA for review.

Section 7. TERMINATION. The Council may repeal this Ordinance and terminate the Town's Affordable Housing Program and any or all contracts undertaken in its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the contract. If an ordinance or a contract is repealed or terminated, all contract provisions of the contract regarding termination shall be satisfied.

Section 8. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 9. SEVERABILITY. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 10. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be recorded in the ordinance book of the Town, kept for that purpose, and shall be there authenticated by the signature of the Mayor or Mayor Pro Tern and attested to by the Town Manager or Town Clerk. This Ordinance shall be in full force and effect five (5) days after publication in accordance with Section 3-17-5 NMSA, 1978.

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PASSED, APPROVED, AND ADOPTED on this 11th day of January, 2011.

(Seal) /s/_____

James R. Marshall, Mayor

Attest:

/s/_____

Ann L. Mackie, Town Clerk