



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 18 Ordinance/Resolution# 11-123 Council District: 4
For Meeting of November 15, 2010
(Adoption Date)

TITLE: A RESOLUTION SUPPORTING AN AFFORDABLE HOUSING PROJECT ON A PARCEL PRESENTLY OWNED BY THE CITY OF LAS CRUCES IN DOWNTOWN LAS CRUCES AT 575 SOUTH ALAMEDA BOULEVARD. THE RESOLUTION AUTHORIZES THE DEVELOPMENT OF A PROPERTY LEASE OF THE CITY-OWNED PROPERTY FOR THE PURPOSE OF CONSTRUCTING AN AFFORDABLE HOUSING PROJECT IN ACCORDANCE WITH THE CITY'S AFFORDABLE HOUSING GENERAL OVERSIGHT ORDINANCE AND THE STATE'S AFFORDABLE HOUSING ACT ON THE SAME CITY-OWNED PARCEL. THE RESOLUTION FURTHER AUTHORIZES THE CITY STAFF TO DEVELOP AND SUBMIT A STATE OF NEW MEXICO AFFORDABLE HOUSING TAX CREDIT APPLICATION TO ASSIST THE CITY IN OFFSETTING COSTS ASSOCIATED WITH DEMOLITION OF THE EXISTING BUILDING AND PROVIDING THE PROPERTY TO THE AFFORDABLE HOUSING PROJECT DEVELOPER.

PURPOSE(S) OF ACTION: Authorize the use of the former City Office Center property for affordable housing, negotiate the terms of a lease for the future affordable housing project and development, and submission of a State of New Mexico Affordable Housing Tax Credit application to assist the City with offsetting some of its expenses.

Drafter and Staff Contact: David Dollahon		Department: Community Development		Phone: 528-3060	
Department	Signature	Phone	Department	Signature	Phone
Department Director		528-3067	Budget		541-2107
Facilities		541-2651	Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The City's 1999 Comprehensive Plan, the HUD-mandated 2006-2010 Consolidated Plan, the 2009 Affordable Housing Strategic Plan, and the overall City Strategic Plan all support the creation of affordable housing through available City resources. The current Downtown Master Plan also calls for mixed use, including housing, throughout downtown.

City staff received a request in late 2009 to lease the City-owned parcel at the northwest corner of Griggs Avenue and Water Street for creating affordable housing on that parcel. Through extended public input meetings and additional concerns raised by the general public and the adjacent property owners, the request for the affordable housing project was relocated to the site of the City Office Center at 575 S. Alameda (also City-owned property). The developers of the Affordable Housing Project, the Supportive Housing Coalition of New Mexico, and the Housing Authority of the City of Las Cruces were in favor of moving the project to the City Office Center site. This arrangement was approved under Resolution 10-159

on January 19, 2010, subject to the condition of the project securing financing by December 1, 2010. The financing for the project was not awarded to the developers, but they are willing to pursue funding this upcoming year for the same project. In order to facilitate the City's commitment to the project and the property, a new resolution is needed in order to extend the time and modify some of the conditions. The general terms of the agreement as outlined within the attached new resolution are:

- For a reduced lease rate of 45- to 99-years, the developers would accept and sign-off on an enforceable land use restriction that guarantees the property is used for affordable housing. This is a condition of the State's Affordable Housing Act which implements the exception to the Constitutional Anti-Donation clause, and the City's corresponding Affordable Housing General Oversight Ordinance (which is codified in Chapter 13 of the City's Municipal Code).
- Pay a rent payment of \$10 per year for the entire lease period, with the proceeds of the lease being deposited into the City's new Affordable Housing Trust Fund.

The project specifics, as proposed, are:

- 60-units of affordable rental homes,
- Will serve those households making between 30% and 60% of Area Median Income (AMI) – which qualifies the future tenants as "Low Income,"
- 15-units will be set-aside for formerly homeless individuals and/or families with special needs (i.e. disabilities),
- All units will be permanent housing and not temporary or transitional housing,
- Professionally managed and staffed on a full-time, around-the-clock basis, and
- Serve as a model for sustainable, green design intended with energy efficiency, reduced water usage and healthful indoor air quality. The developers are evaluating the option of pursuing LEED (Leadership in Energy and Environmental Design) Gold-certification status on the project.

In addition to the proposed Resolution supporting the project, it further authorizes the development of the long-term ground lease for the project in accordance with the Affordable Housing Act and the City's Affordable Housing General Oversight Ordinance. Per State law, the lease for the property, based on its value, must be approved by the City Council under a separate ordinance, which will be finalized after security of the project's funding by the developers.

A new condition of the proposed Resolution that differs from Resolution 10-159 is the addition of the authorization for the City staff to apply for State of New Mexico Affordable Housing Tax Credits. If awarded, the proceeds from the State Affordable Housing Tax Credits (AHTC) would be used for the City's contribution of the land (its value less the lease amount), and the remediation of contaminants and demolition of the existing building on the site. This authorization would allow for the City Manager and the City Attorney, in consultation with the Community Development, Facilities, and Finance Directors to determine whether to submit the State tax credit application solely or in partnership with another agency. The City Manager would be authorized to sign and submit the State tax credit application on the City's behalf.

As it relates to the State tax credit, it is only worth 50% of the value of the City's contribution. For example, if the value of the land was \$500,000 and the value of the demolition was \$750,000, then the City would only receive a tax credit allocation of \$625,000 (1/2 of \$500,000 and \$750,000 (or \$250,000 + \$375,000)). Tax credits are usually not \$1 for \$1 in value, especially when they are sold, which is the case for the City's application. The City would not be the direct beneficiary of the credit, given our status as a municipal corporation. However, if we're to receive the tax credit allocation, then the City could sell the credits to a person or corporation that has a tax liability to the State of New Mexico. Due to the current economic climate, it is anticipated that the City could sell the credits for \$0.70 to \$0.90 on the dollar, thus receiving a cash contribution of \$437,500 and \$562,500 toward the building's demolition. The remaining demolition costs would be required to be found elsewhere.

It is worth noting, that should the City be awarded and use the State tax credits to demolish the building, there is the potential prohibition of using the property for anything other than affordable housing or the City would be required to pay back the amount of the tax credits. The repayment, should the proposed project not receive funding, could come from the sale of the vacant property.

Further, City staff is aware that the developers are interested in applying for funds from the City's Home Investment Partnership (HOME) or the Community Development Block Grant (CDBG) Programs. The application process for receiving HOME and CDBG funds are a separate item and are to be acted upon separately. Nothing within the proposed Resolution would prevent the developers from applying and/or the City Council awarding those funds to the project.

SUPPORT INFORMATION:

1. Resolution
2. Attachment "B" – Joint letter from the Supportive Housing Coalition of New Mexico and the Housing Authority of the City of Las Cruces
3. Attachment "A" - State of New Mexico Affordable Housing Tax Credit – Notice of Funding Availability

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input type="checkbox"/>	See fund summary below
	No	<input checked="" type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input checked="" type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue?	Yes	<input type="checkbox"/>	
		<input checked="" type="checkbox"/>	Funds will be deposited into this fund:

		<u>Affordable Housing Trust Fund, whose number has yet to be determined in the amount of \$10 per year for at least 45 years.</u>
	No <input type="checkbox"/>	There is no new revenue generated by this action.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes", thus approving the Resolution, whereby the City dedicates to and supports the creation of affordable housing on the site of the former City Office Center. The Resolution further authorizes the creation of a future lease on the property, conditioned on the developers of the project securing funding by December 2011 and authorizes staff to pursue the State of New Mexico Affordable Housing Tax Credits for the land dedication and demolition of the existing building.
2. Vote "No"; thus denying the Resolution, whereby the City doesn't dedicates to or supports the creation of affordable housing on the site of the former City Office Center. This action would not authorize the creation of a future lease on the property, conditioned on the developers of the project securing funding by December 2011 nor authorizing staff to pursue the State of New Mexico Affordable Housing Tax Credits for the land dedication and demolition of the existing building.
3. Vote "Yes" with modifications. Modifications could include such changes in the Resolution as Council deems appropriate.
4. Vote to "Table" and direct staff accordingly.

REFERENCE INFORMATION

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution 10-159
2. Chapter 13, Housing – Las Cruces Municipal Code, 1997, as amended

RESOLUTION NO. 11-123

A RESOLUTION SUPPORTING AN AFFORDABLE HOUSING PROJECT ON A PARCEL PRESENTLY OWNED BY THE CITY OF LAS CRUCES IN DOWNTOWN LAS CRUCES AT 575 SOUTH ALAMEDA BOULEVARD. THE RESOLUTION AUTHORIZES THE DEVELOPMENT OF A PROPERTY LEASE OF THE CITY-OWNED PROPERTY FOR THE PURPOSE OF CONSTRUCTING AN AFFORDABLE HOUSING PROJECT IN ACCORDANCE WITH THE CITY'S AFFORDABLE HOUSING GENERAL OVERSIGHT ORDINANCE AND THE STATE'S AFFORDABLE HOUSING ACT ON THE SAME CITY-OWNED PARCEL. THE RESOLUTION FURTHER AUTHORIZES THE CITY STAFF TO DEVELOP AND SUBMIT A STATE OF NEW MEXICO AFFORDABLE HOUSING TAX CREDIT APPLICATION TO ASSIST THE CITY IN OFFSETTING COSTS ASSOCIATED WITH DEMOLITION OF THE EXISTING BUILDING AND PROVIDING THE PROPERTY TO THE AFFORDABLE HOUSING PROJECT DEVELOPER.

The City Council is informed that:

WHEREAS, a goal of the 1999 City of Las Cruces Comprehensive Plan is to create various types of housing, including affordable housing, throughout the community; and

WHEREAS, the HUD-mandated 2006-2010 Consolidated Plan for the City of Las Cruces indicates that there is a need of more than 3,600 affordable rental housing units for families and individuals making less than \$15,000 per year; and

WHEREAS, the 2006-2010 Consolidated Plan for the City of Las Cruces indicates that there are 5,400 renting households who are cost burdened (i.e. the household pays more than 30% of their income for housing expenses); and

WHEREAS, 8% or 988 of all rental units in Las Cruces, based on the 2000 Census, have households that are living in overcrowded conditions; and

WHEREAS, the City of Las Cruces has adopted the 2009 Affordable Housing Strategic Plan that calls for the City to undertake efforts to increase the supply of affordable rental housing units from 15% to 20% over the next five years and encourage the creation of a land bank and housing trust fund to assist with the creation of affordable housing units of all types within the City of Las Cruces; and

WHEREAS, the State of New Mexico created an exception to the Anti-Donation Clause of the State Constitution that allows the state and communities to provide for the creation of affordable housing, including providing land for the construction of such housing; and

WHEREAS, the City of Las Cruces has adopted the Affordable Housing General Oversight Ordinance, which has been incorporated into Chapter 13 of the Las Cruces Municipal Code, 1997, as amended, in order to comply with the Anti-Donation Clause exception and the State's Affordable Housing Act and corresponding rules; and

WHEREAS, the City of Las Cruces had received a request to provide a City-owned parcel at 575 South Alameda Boulevard, on the property formerly known as the City Office Center at the southeast corner of Alameda Boulevard and Lohman Avenue, to a partnership of the Supportive Housing Coalition of New Mexico and the Housing Authority of the City of Las Cruces to create 60-units of affordable housing under a reduced rate, long-term lease; and

WHEREAS, the City Council adopted Resolution 10-159 in January 2010 supporting the effort, conditioned upon the Supportive Housing Coalition and the Housing Authority securing financing for the project by December 1, 2010, which did not happen.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City of Las Cruces hereby supports the creation of an affordable housing project on a parcel presently owned by the City of Las Cruces at 575 South Alameda Boulevard to be undertaken by the Supportive Housing Coalition of New Mexico and/or the Housing Authority of the City of Las Cruces or their development affiliate to develop affordable rental housing on the property pursuant to the City's Affordable Housing General Oversight Ordinance.

(II)

THAT the City Council hereby authorizes the City Manager to negotiate a lease between the City and the Supportive Housing Coalition of New Mexico and/or the Housing Authority of the City of Las Cruces or their development affiliate.

(III)

THAT the lease must be in accordance with City procedures, the City's Affordable Housing General Oversight Ordinance, and must provide a deed restriction or other similar instrument that restricts the use of the property to affordable housing.

(IV)

THAT the lease may only occur provided that the Supportive Housing Coalition of New Mexico and/or the Housing Authority of the City of Las Cruces or their development affiliate are awarded Low Income Housing Tax Credits by the New Mexico Mortgage Finance Authority and the Supportive Housing Coalition of New Mexico and/or the Housing Authority of the City of Las Cruces or their development affiliate demonstrate that it has all other funding necessary to develop the project but only if the Tax Credits are awarded and all necessary funding is secured or committed to the project by December 1, 2011.

(V)

THAT the terms of the negotiated lease shall be for a period not to exceed 99 years but not less than 45 years, and for a rate of ten dollars (\$10) per year for the entire lease period. The City shall dedicate those funds generated from the lease payment to its Affordable Housing Trust Fund or its future successor or assigns.

(VI)

THAT the negotiated lease, which shall be approved by the City Council by an ordinance separate from this Resolution must be fully executed, along with any other requirements of this Resolution, on or before the closing of the construction financing.

(VII)

THAT the City, at its sole discretion, may subordinate this lease to any note or mortgage for construction and permanent financing provided such subordination is in the best interest of the City and the subordination is submitted and completed in writing.

(VIII)

THAT the City staff is hereby authorized to develop and submit the necessary information and application related to a State of New Mexico Affordable Housing Tax Credit application through the New Mexico Mortgage Finance Authority to help offset the cost of remediation and demolition of the current building on the property, and the City Manager is authorized to sign the application on the City's behalf. The City staff may determine that the application may be submitted separately or jointly through another party, whichever is in the City's best interest, and the City Manager and City Attorney, in discussion with staff from the Community Development, Facilities, and Finance Departments, are authorized to make this determination.

(IX)

THAT all bylaws, orders, actions, and resolutions or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This shall not be construed to revive any bylaw, order, action, resolution, or part thereof, heretofore repealed.

(X)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2010.

APPROVED

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:



City Attorney



October 19, 2010

Mr. Robert Garza, PE
 Assistant City Manager
 200 N. Church St.
 Las Cruces, New Mexico 88001

Re: Downtown Workforce Housing Demonstration Project

Dear Mr. Garza:

Please consider this a written letter of intent to partner with the City of Las Cruces and the Housing Authority of the City of Las Cruces to develop a demonstration housing project on the city-owned City Office Center site at the corners of Lohman and Alameda. We propose to use this project to demonstrate best practices in the development, design, financing and management of housing in an urban infill, transit oriented setting.

We request that the City provide site control of the above property to the Supportive Housing Coalition of New Mexico and the Housing Authority of the City of Las Cruces in the form of an executed long term leasehold or an executed option agreement for a long term leasehold as soon as reasonably possible and no later than January 30, 2011, in order to meet technical threshold for the financing application.

The long term leasehold would require payment of no more than \$10 per year in exchange for enforceable use restrictions ensuring that the property and project will be used for the intended purpose of providing affordable housing for the duration of the term.

The Supportive Housing Coalition of New Mexico will take the lead role making application to the New Mexico Mortgage Finance Authority for Low Income Housing Tax Credits by February 1, 2011, securing an investor, packaging additional financing as necessary and developing the project, with the assistance of the Housing Authority of the City of Las Cruces;

The Housing Authority of the City of Las Cruces will take the lead on self-managing the property once constructed or selecting a third party property management company as needed, referring and placing applicants, making available project and/or tenant based vouchers if feasible and coordinating with local agencies to provide a range of supportive services, with the assistance of the Supportive Housing Coalition of New Mexico.

The development will consist of the following general elements:

- Based on the site characteristics and the investment environment, we are proposing a total of 60 rental homes.

- The project will consist of mixed-income households – from 30% of the area median income and below to households up to 60% of area median income. This mix will enable the project to serve persons on fixed incomes as well as low income workers, such as those in the hotel, retail, food-service, clerical and custodian sectors who work in the downtown core. These income ranges reflect those making approximately \$10.00 or less an hour.
- Twenty five percent of the units (15) will be set-aside to formerly homeless and special needs individuals.
- The units will be “permanent” housing -- they will not be time-limited or transitional. All residents will have lease agreements and enjoy the full rights and obligations of tenancy.
- We will work closely with the City of Las Cruces, the Downtown Las Cruces Partnership, neighborhood representatives and other stakeholders prior to making application.
- The property will be professionally managed and staffed 24/7.
- The project will serve as a model for sustainable, green design to reduce energy requirements, reduce water usage and maintain healthful indoor air quality. The design will include elements such as water catchment and we will pursue a LEED Gold designation.

We believe that affordable housing is the literal and figurative foundation upon which all of the other quality of life issues people care about are built. The experience of other cities demonstrates that successful downtown revitalization efforts first require a mix of dense, high-quality residential development for mixed income populations. With the City's help, this project will address the affordable housing needs of working people and assist downtown employers attract and retain employees. By partnering with us, the City will enable a site that is now underutilized as a vacant building to serve as a model for sustainable design.

Furthermore, we expect this project to bring in much-needed capital to downtown, create development and construction related jobs and to spur economic development and neighborhood revitalization more generally. The City would also benefit from the additional gross receipts taxes generated by this new activity.

Past Coalition projects have won numerous awards and been featured in local and national web-based and print media and we anticipate that this project will generate significant positive attention as well. We think this project would be a real feather in the cap for us and the City and we are eager to move forward together.

Specific requests:

1. That the City provide us or our legal affiliates evidence of site control prior to January 30th in order to be eligible to apply for Low Income Housing Tax Credits;
2. That the City do so for consideration of \$10.00 or less to allow us to evidence local support and thereby increase our competitive application scoring for both Low Income Housing Tax Credits and the Federal Home Loan Bank of Dallas Affordable Housing Program;

3. That the City take all necessary steps to demolish the existing COC building prior to November 15, 2011; and
4. That the City assist us in our neighborhood outreach efforts by inviting stakeholders and co-hosting no fewer than two meetings prior to the application deadline.

Thank you very much for your consideration of this request for a public private partnership. Please let us know what additional information you need and how you would like to proceed.

Sincerely,

Handwritten signatures of Mark Allison and Thomas Hassell.

Mark Allison
Executive Director
Supportive Housing Coalition of New Mexico

Thomas Hassell
Executive Director
Housing Authority of the City of Las Cruces

Cc: The Honorable Mayor Kenneth Miyagishima

City Councilor Nathan Small

New Mexico Affordable Housing Tax Credit Program Notice of Funding Availability

Approved by the MFA Board of Directors April 21, 2010
Effective July 1, 2010

Background and Purpose

The New Mexico Affordable Housing Tax Credit Program, also referred to herein as the State Tax Credit Program, was created by approval of the Affordable Housing Tax Credit Act by the Legislature of the State of New Mexico in March 2005 and signed into law by Governor Bill Richardson in April 2005. The State Tax Credit Program provides tax credits to individuals, businesses and local governments that provide donations to Affordable Housing Projects approved by the New Mexico Mortgage Finance Authority ("MFA"). The state offers credits on income taxes, gross receipts taxes and compensating taxes (excluding local option gross receipts tax imposed by a municipality or county, or the government gross receipts tax) to any eligible individual, business, and local or tribal government that donate land, buildings, materials, cash or services for an affordable housing project approved by MFA or for a trust fund administered by MFA. The credit is equal to 50% of the value of the donation. MFA is a governmental instrumentality separate and apart from the state, created by the New Mexico Mortgage Finance Authority Act for the purpose of financing affordable housing for low and moderate income New Mexico residents. MFA is responsible for adopting rules for the approval, issuance and administration of the investment vouchers.

The purpose of this Notice of Funding Availability (NOFA) is to solicit applications from qualified sponsors for Affordable Housing Projects in accordance with the State Tax Credit Program. Sponsors whose projects are designated as eligible affordable housing projects under the State Tax Credit Program will receive a reservation of available tax credits for a given program year. This reservation will enable the project sponsor to solicit donations to pay for eligible costs for the Affordable Housing Project. Upon acceptance of evidence of donations and valuation and satisfaction of readiness and other program requirements for the project, MFA will issue investment vouchers to the donor.

MFA may also issue investment vouchers to donors who donate directly to a trust fund administered by MFA. MFA created the New Mexico Affordable Housing Charitable Trust in November 2007 and received IRS approval of tax exempt status under section 501(c)(3) of the Internal Revenue Code in June 2008. For donations made directly to the New Mexico Affordable Housing Charitable Trust administered by MFA, investment vouchers will be issued to donors upon receipt of the donation and review and approval of documentation. Those vouchers are issued outside of the process outlined in this NOFA.

Contact Person

Applicants are encouraged to direct questions regarding this NOFA to:

Dan Foster
New Mexico Mortgage Finance Authority
344 4th Street SW
Albuquerque, NM 87102
Phone: (505) 843-6880 or toll-free statewide (800) 444-6880
Fax: (505) 243-3289
E-mail: dfoster@housingnm.org

Application Submission and Due Date

MFA awards New Mexico Affordable Housing Tax Credit reservations on a first-come first served basis according to the Project Selection Criteria outline below. To be considered, complete applications must be received at the MFA office. Applications will NOT be accepted via facsimile or electronically. Only one complete, original hard copy is required. The required forms will be provided electronically and may be downloaded from MFA's web site at www.housingnm.org/developer/. All applications shall be marked "New Mexico Affordable Housing Tax Credit Program Application" in readily visible print. On receipt, MFA will date and time stamp the cover. All applications must include an application fee of \$200. If an application is successful in receiving a reservation, an additional fee of \$500 is due within 30 days of notification.

Applications may be delivered by U.S. mail, by courier service, or by hand to the following address:

New Mexico Mortgage Finance Authority
344 4th Street SW
Albuquerque, NM 87102
(505) 843-6880
Attn: Housing Tax Credit Program Manager

Complete applications will meet the following standards:

1. Bear the original signature of the applicant.
2. Include the application form, application checklist, and all mandatory items listed on the application checklist at the time it is submitted.
3. Include the application fee.
4. All applications must be self-contained.

Failure to provide or complete any element of the application may result in rejection of the application. MFA may request additional information as deemed necessary for a fair and accurate evaluation; MFA, however, is under no obligation to seek further information or clarification to complete its review of the application. The applicant will bear full responsibility for submitting its application in accordance with the requirements of this Notice.

Program Summary

MFA will make available investment vouchers in the following amounts for eligible Affordable Housing Projects approved by MFA through the application process described herein and for donations made directly to a trust fund administered by MFA.

Amount available

Beginning on January 1, 2008 and during each subsequent calendar year, MFA may issue or approve investment vouchers for an amount each calendar year equal to \$1.85 (adjusted annually) multiplied by the state population.

Eligible Applicants

Eligible applicants include non-profit or for-profit developers, governmental and tribal instrumentalities. Applicants must be legally able to do business in New Mexico. Non profit applicants must be able to demonstrate compliance with the New Mexico Charitable Solicitations Act.

Eligible Projects

Affordable Housing Projects include MFA approved single-family homebuyer projects, multifamily rental projects, as well as transitional housing and emergency shelters. Activities may include land and building acquisition, construction, remodeling, improvement, rehabilitation, conversion or weatherization. Downpayment and closing cost assistance is an eligible activity related to the acquisition of single-family housing. Funding of operating expenses is not an eligible activity under the New Mexico Affordable Housing Tax Credit Program.

Eligible Donations and Investment Vouchers

Donations may include land, buildings, materials, cash (and cash equivalents) or services. Evidence that the donation has been secured and the value of donation (other than cash) satisfactory to MFA will be required prior to issuing an investment voucher to the donor. Donations received by a project sponsor in exchange for tax credits may be used to fund land and building acquisition (including downpayment and closing cost assistance for the acquisition of single family housing), construction, remodeling, improvement, rehabilitation, conversion or weatherization throughout the state. The minimum permitted donation to an Affordable Housing Project is \$200; the maximum donation to an Affordable Housing Project which will be eligible for an investment voucher is \$1,000,000. Donors will receive an investment voucher for the lesser of: 1) 50% of the value of their donations or 2) the amount requested. Investment vouchers issued on behalf of a given project can not exceed the amount reserved for a project.

Investment vouchers will be issued by MFA only after securing evidence of the donation irrevocably and unconditionally contributed, expended or devoted, and for donations applied directly to a project, and evidence of the project meeting certain readiness requirements including, but not limited to:

- 1) Site control,
- 2) Securing other financing commitments, and
- 3) Recording of a Land Use Restriction Agreement.

Alternately, when donations are made to fund a downpayment assistance program for Affordable Housing Projects the voucher will be issued to the donor after securing evidence of the donation irrevocably and unconditionally contributed to the sponsor and upon the sponsor entering into a written binding agreement with MFA. This agreement will govern the use of such funds only for eligible homebuyers, eligible Affordable Housing Projects, and outline compliance and reporting requirements.

Unit Set Asides and Compliance Period

The program will not have minimum set-aside requirements; the tax credit reservation, however, will be sized based on the number of units that are designated affordable. The housing cost for the affordable unit should be within the guidelines described below.

- **Single Family:** Mortgage payments for the purchase or rehabilitation of owner occupied housing as a percentage of the incomes of eligible and targeted households must not exceed acceptable industry standards for secondary market financing. Mortgage payments include principal, interest, taxes, and insurance (PITI).
- **Multifamily:** Rent rates must be no greater than 30 percent of the maximum eligible household target income for the assisted unit. Gross rent includes the cost of all utilities except telephone and cable television. Should the occupant pay any utilities directly, the gross rental rate will be reduced by a utility allowance.

The set-aside requirements will be enforced with a Land Use Restriction Agreement (or an acceptable alternative) for a minimum period of 5 years for Single Family Housing and 10 years for Multifamily Housing. The Affordability Period for downpayment assistance is defined as follows: If the amount of the donation that is being used for a unit is below \$5,000, it shall be considered impractical for MFA to impose an Affordability Period. If the amount of the donation that is being used for a unit is from \$5,000 to \$14,999, then the Affordability Period shall be not less than five (5) years. If the amount of the donation that is being used for a unit is from \$15,000 to \$40,000, then the Affordability Period shall be not less than ten (10) years. If the amount of the donation that is being used for a unit is greater than \$40,000 then the Affordability Period shall be not less than thirty (30) years. The project sponsor, in its sole 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 project sponsor may enter into with any beneficiary of the donation. Affordability shall be achieved by the recapture of assistance upon resale, refinance or transfer of ownership within the applicable Affordability Period. All recaptured funds shall be earmarked for affordable housing purposes only.

The owner of a multifamily project will be required to certify annually compliance with use requirements. The project sponsor and the single family owner occupant will provide certification at initial sale/occupancy. Any transfer of ownership would require notification to MFA. Subsequent owners must also provide certifications to MFA as outlined above. MFA will retain the right to audit records and inspect properties. Any project sponsors that our found to be in non-compliance will be ineligible for future program participation.

Project Selection Criteria

Applications will be scored according to the following criteria:

1. The degree to which the applicant has leveraged other public or private sector resources appropriate for the proposed type of affordable housing project or activity. Applicants are expected access other resources that are available for the type of housing project proposed. Up to 20 points will be awarded to applicant projects that demonstrate other planned or committed financing sources.
Maximum Points Awarded: 20

2. The degree to which the applicant has demonstrated the need and market for the proposed Affordable Housing Project or activity. Up to 30 points will be awarded to applicant projects that demonstrate market demand through means such as market studies, appraisals, redevelopment plans, community support, surveys and prospect lists. In addition points may be awarded to applicant projects that demonstrate the ability to maintain long term affordability.
Maximum Points Awarded: 30

3. The degree to which the applicant has demonstrated readiness to proceed. Up to 40 points will be awarded to applicant projects that are ready to begin implementation immediately with any environmental review requirements completed, any site control secured, planning design and permitting complete, any availability of utilities, other resources firmly committed, and identification of donors/donations and all other related upfront issues resolved.
Maximum Points Awarded: 40

4. Strength and experience of the sponsor, development team and management entity. Up to 10 points will be awarded to applicant projects that have a development team with the capacity to complete the project as proposed in a timely and efficient manner.
Maximum Points Awarded: 10

Additional points will be awarded to projects which meet the following investment priorities:

5. Projects which will produce affordable homeownership units.
Maximum Points Awarded: 10

6. Projects serving the lowest income households appropriate for the type of affordable housing project or activity. For example, appropriate income levels of households served by a transitional housing project may be at or below 30% of the area median, whereas appropriate income levels for a homeownership project may be at or below 80% of the area median. Appropriateness may also vary due to the average gross median income for a given area.
Maximum Points Awarded: 10

Projects will be ranked according to their scores and reservations will be made to projects, unless they are eliminated under subsequent processing, starting with the highest scoring projects until all available investment vouchers are reserved.

Staff Analysis and Application Processing

Design Review

Each project will be subject to a design review. All properties must meet applicable state and local building codes, and handicapped accessibility requirements, as well as any applicable requirements from federal funding sources. In addition all projects must comply with MFA Design Standards.

Development Team Review

Debarment from MFA programs, HUD or other federal programs, bankruptcy, criminal indictments or convictions, poor performance on prior MFA or HUD financed projects by or on the part of any proposed sponsor or development team member or owner or principal may result in rejection of an application by MFA.

The project sponsor will be evaluated for their capacity to complete the proposed project. Staff will review the qualifications of each development team member to determine capacity to perform in the role proposed. Considerations may include related experience, financial capacity, performance history, references, management, staff, and administrative procedures, among others. An application may be rejected or substitutions requested if the development team or any member thereof is unsuitable as determined by MFA.

Feasibility Analysis

Staff will underwrite the projects completely to ensure soundness, and will apply industry practice in assessing each project proposed. Factors considered in this analysis will include: market need, target market, target set-asides, unit mix and design, development and operating costs, adequacy of reserves, scope of work, terms and availability of other sources of financing, ability to repay debt, and housing cost to tenant/owner. Developer and builder fees will be expected to be at reasonable levels, and may be adjusted by MFA. MFA may also make reservations contingent on specific modifications to the project that MFA in its sound judgment considers necessary to enhance the feasibility or safety of the project. Underwriting for downpayment and closing cost assistance provided by sponsors of single family affordable housing may be delegated to qualified sponsors, upon review and approval of the sponsor for such activity based on the sponsor's organizational and financial capacity.

Reservation Amount

After evaluation of all the factors describe above, MFA will determine the reservation amount based on the amount of donations necessary to fill any remaining and necessary funding gap.

Award Limits

No project will receive an award in excess of 25% of the annual available amount for the year the reservation is made, unless there are too few eligible projects requesting a reservation. At MFA's discretion, exceptions to this limit may be made to ensure maximum distribution and/or effective utilization of the investment vouchers.

Notification and Subsequent Requirements

Upon successful review of an application, MFA will issue a reservation letter to an applicant of a qualified affordable housing project. The reservation letter authorizes the sponsor to solicit donations that would be eligible for tax credits up to the credit amount authorized by the reservation letter. The project sponsor is responsible for providing evidence of all eligible donations and satisfactory valuation documentation. Upon receipt and review of the donation documents, and only after the project has met all other readiness requirements as outlined in the reservation letter, MFA will issue investment vouchers to the donors. MFA shall notify Taxation and Revenue within 20 days of the issuance of a voucher. If a donor conveys all or a fraction of the certificate to an eligible individual or business, the donor shall provide notification to MFA and Taxation and Revenue within 10 days of such transfer.

Appeals Process

Any applicant who is aggrieved in connection with this NOFA or the award of a reservation pursuant to this NOFA may protest to MFA. The protest must be written and addressed to the Contact Person. Appeal requests must be specific to the decision being appealed, and must include an appeal processing fee of \$500. The protest must be delivered to MFA within fifteen (15) calendar days after the notice of reservation or rejection. Upon the timely filing of a protest, the Contact Person shall give notice of the protest to all applicants who appear to have a reasonable prospect of being affected by the outcome of the protest. The applicants receiving notice may file responses to the protest within seven (7) calendar days of notice of protest. A committee made up of MFA Board of Directors shall review the protest and responses to the protest and shall make a recommendation to the Board of Directors regarding the disposition of the protest.

The Board of Directors shall make a final determination regarding the disposition of the protest. Applicants or their representatives shall not communicate with MFA Board of Directors or staff members regarding any proposal under consideration, except when specifically permitted to present testimony to the committee of the Board of Directors. A proposal will be deemed ineligible if the applicant or any person or entity acting on behalf of applicant attempts to influence members of the Board of Directors or staff during any portion of the review process, or does not follow the prescribed Application and Protest process.