

## CP 6411 - Infrastructure Improvements for Workforce/Affordable Housing Term Sheet

### PROGRAM DESCRIPTION

**Goals:** The need for affordable housing has reached crisis proportions throughout the County. Families and businesses have all felt the repercussions of this challenge as young workers and our elderly have left Long Island for more affordable housing elsewhere. This issue did not develop overnight, nor can it be solved overnight. It will take all of us working together to find a multitude of solutions that help us keep our families together. The County's Department of Economic Development and Planning is working to increase the amount of affordable housing throughout Suffolk County by working with Municipalities, Not for Profit Organizations and Developers to construct and rehabilitate housing that is affordable to individuals whose income does not exceed 80% of the HUD-established area median income (AMI) for the Nassau-Suffolk Primary Metropolitan Statistical Area for rentals and 100% of the AMI for home ownership. This program provides gap funding to assist developers in balancing development costs.

**Eligible Use of Proceeds:** The Affordable and Workforce Housing Infrastructure Program encourages the development of affordable and workforce housing by contributing Infrastructure funding through the use of Capital Bond proceeds. The County partners with developers at early stages in the development process and will provide partial reimbursement to the developer for infrastructure costs when construction is completed to reduce the cost burden and allow developers to charge less for the rent or purchase price of newly constructed or rehabilitated units. Both owner-occupied and rental housing will be eligible to receive assistance. Preference will be given to projects of 10 or more units. Eligible infrastructure improvements include, but are not limited to roads, parking, sewers, water, sidewalks, street lighting and appurtenant landscaping within the development area.

Please note recent amendments to the Suffolk County housing opportunities programs. In order to receive any affordable/workforce housing funding offered by Suffolk County, the property must contain at least 5 I/DD units, at least 5 ground-floor or elevator accessible units set aside for individuals with disabilities, whose total is no more than 10% of the total development, whichever is less, and at least 5 veterans units, whose total is no more than 10% of the total development, whichever is less. Please refer to Suffolk County Local Laws 7 and 8 of 2023. Please also note that any projects over 34 units are required to have an on-site superintendent unit. It is the responsibility of the Borrower to review Section § A36-2 of the Suffolk County Administrative Code for all laws pertaining to affordable housing subsidies.

**Funding Awards** Awards can be up to \$35,000 per unit of affordable housing. Award funding is dependent on available County funding at the time of application receipt. The County reserves the right to make exceptions for projects that restrict units to those at or below 30% of Area Median Income (AMI) and/or where the need to create financial feasibility exists. Award amounts are also subject to funding limitations. All funding awards are subject to and must be approved by the Suffolk County Legislature.

### AFFORDABILITY REQUIREMENTS

**Eligible Tenants:** County funded rental units, must, at a minimum, be occupied by persons and families whose income does not exceed 80% of the HUD-established median income limits, adjusted by family size for the Nassau-Suffolk PMSA, with allowances for income limits set at 100% of the HUD established median income limits, adjusted by family size for the Nassau-Suffolk PMSA, for owner-occupied units. Projects accessing other government capital funds may have other, more restrictive, requirements around income levels.

Funded rental units shall have maximum rent equal to the HUD-established fair market rent adjusted for bedroom size for the Nassau-Suffolk PMSA or any municipality approved fair market rent standard, provided that the gross rent, as defined in 26 U.S.C. § 42(g)(2)(B), of said standard does not exceed 30% of the respective HUD-established area median income limit for the Nassau-Suffolk PMSA with adjustments for bedroom size not exceeding the HUD policy on occupancy standards under the Fair Housing Act. Funded rental units must meet or exceed the longest affordability period required by additional funding sources or tax credit agreements, with a percentage of the units being affordable to the occupant in perpetuity according to Suffolk County Code § A36-2(D)(2)(a).

**Tenant Occupancy:** Home ownership units that are not affordable in perpetuity must be owner-occupied and the principal residence of the occupant for at least 10 consecutive years. Units that are affordable in perpetuity must be owner-occupied as a principal residence in perpetuity. If an affordable unit contains an accessory apartment, the owner must occupy the principal portion of the unit and not the accessory apartment as their principal residence.

**Affordable Unit Distribution:** Affordable Units shall be evenly distributed throughout the development and shall not be clustered.

<b>Reporting Requirements:</b>	The Fee Owner shall be required to provide the Director with a report no later than December 31 <sup>st</sup> of each year commencing as of the date of the executed contract with the County.
<b>Regulatory Agreement:</b>	It is intended and agreed that the agreements, covenants and restrictions herein shall be covenants and restrictions running with the land and that they shall be, in any event, and without regard to technical classification or designation, legal or otherwise, binding for the benefit and in favor of, and enforceable by the County to the fullest extent permitted by law and equity. Such covenants shall inure to the benefit of the County its successors and assigns, and shall bind and be enforceable against Grantor, and its successors and assigns. The agreements, covenants and restrictions contained herein shall survive any foreclosure, lease termination or other enforcement proceedings.
<b>DEVELOPMENT TEAM REQUIREMENTS</b>	
<b>Eligible Applicants:</b>	The applicant must be a single-asset, sole-purpose entity. For-profit, limited dividend, and not-for-profit borrowers are eligible. The sponsor and principal participants in the project must not be in default under any existing mortgage financing and must meet all Suffolk County credit review criteria. If a for-profit developer is utilized, then the amount of profit realized by the Developer must conform to New York State Affordable Housing Corporation guidelines or any successor thereto. The Developer shall certify to the County that said guidelines have been adhered to or that it is exempt from said restriction on or prior to the Funding Closing Date.
<b>FIRST MORTGAGE LOAN TERMS</b>	
<b>Repayment Obligations</b>	<p>Mortgage can be secured by a note with the following obligations:</p> <ul style="list-style-type: none"> <li>-All of the terms and conditions of the Development Agreement by and among the County of Suffolk, Town, and Industrial Agency, as applicable.</li> <li>-There will be annual payments due (“Installment Payments”) commencing on the first of May after the note and mortgage are executed. Such required installment payments shall be in an amount not less than .5% of the principal.</li> <li>-Only the Installment Payments shall be due and payable to the County unless and until there has been a breach, which is not cured prior to the expiration of any applicable notice and cure periods, of any of the terms, conditions, covenants and/or restrictions set forth herein, and/or in the Development Agreement, the Mortgage or the Covenants and Restrictions.</li> <li>-All remaining principal due on the Note shall be due and payable on the future date negotiated between the developer and County, no less than 30 years from the date the note and mortgage are executed (“Maturity Date”).</li> <li>-Provided there is no Event of Default, no prepayment of this Note shall be permitted.</li> </ul> <p>The Note and Mortgage may be subordinated to bank financing or other sources as reasonably acceptable to the County, with repayment in an amount, together with all payments made to date, no greater than the original amount of the loan, due at the end of the affordability period unless directed otherwise by the Legislature.</p>

<b>REVIEWS AND APPROVALS</b>	
<b>Environmental:</b>	<p>The Fee Owner agrees to demolish and remove, at its sole cost and expense, any and all buildings, structures, cesspools, septic tanks and fuel tanks located on the Development Area. In the event that any remediation work to the Development Area is required by law, the Developer and/or Fee Owner shall complete same at its sole cost and expense.</p> <p>The demolition and removal of any and all buildings, structures, cesspools, septic tanks and fuel tanks at the Development Area and remediation work, if any, including, but not limited to, the proper disposal of any debris, solid wastes, pollutants, hazardous materials and/or soil will be performed by the Fee Owner in accordance with all applicable Federal, State and County laws and local ordinances.</p> <p>The Developer and the Fee Owner covenant and agree that they will defend, indemnify, and hold harmless the County, and any of its respective officers, agents, employees, and their successors and assigns, against any and all damages, claims, losses, liabilities and expenses, including, without limitation, responsibility for reasonable legal, consulting, engineering and other costs and expenses which may arise out of any action, suit, claim, or proceeding seeking money damages, injunctive or compulsive relief, remedial action, or other remedy by reason of (1) a violation or non-compliance with any environmental law; or (2) the disposal, discharge or release of solid wastes, pollutants, hazardous materials and/or soil; or (3) its acts or omissions or negligence in the performance of the aforementioned demolition, removal and remediation work, if any. The provisions of this Paragraph shall survive the delivery of any instrument of conveyance, satisfaction or completion pursuant to this Agreement.</p> <p>Construction shall be in accordance with all applicable laws, codes, rules and regulations, including, without limitation, the Suffolk County Sewer Code (Chapter 740 of the Laws of Suffolk County), the Suffolk County Sanitary Code (Chapter 760 of the Laws of Suffolk County) and the rules and regulations of the New York State Department of Environmental Conservation and the United States Environmental Protection.</p> <p>Prior to seeking Legislative Approval, Developer must provide evidence of a State Environmental Quality Review Act coordinated review and Negative Declaration issued by the Lead Agency.</p>
<b>Scope of Work:</b>	<p>Any new housing development or dwelling unit that is to be designed and/or constructed with the assistance of the County of Suffolk shall comply with the design and construction requirements set forth in section A36-3 of Article XXXVI of the Suffolk County Administrative Code</p> <p>Suffolk County reserves the right to reject projects that have per unit development costs that exceed reasonable costs for the development of units according to the experience of the agency in financing projects in Suffolk County, the applicable region.</p>
<b>Residential Design Guidelines</b>	<p>The Developer shall submit any site plans and design plans (including elevations) to the Department, along with their application, for review, comment and approval as to design quality. In the event that construction of the Housing Development begins prior to the review, comment and approval as to design quality by the Department, the County may withdraw support and/or funding commitments and any funding already awarded shall be required to be re-paid to the County. To access the County's design guidelines please reach out to Stephanie Rosen (contact info at the bottom of this sheet).</p>
<b>Subsidy Layering Review:</b>	<p>Suffolk County requires that a Subsidy Layering Review (SLR) be conducted for all projects receiving funding from the County, including federal funds it administers, such as HOME Investment Partnership Program (HOME), as well as general funds and funds made available through bonding. Such layering review is done for purposes of assuring that the funds are used as a means of filling capital gaps. The layering analysis will also review the reasonableness of the development budget and the operating budget and determine whether conventional debt and equity, as well as other sources of funding, have been maximized such that without the proposed funds from Suffolk County the development would be financially challenged and not able to proceed.</p>
<b>Legislative Review:</b>	<p>All projects are subject to approval by the Suffolk County Legislature.</p>
<b>CONSTRUCTION CLOSING</b>	

<p><b>Conditions Precedent:</b></p>	<p>Initially, the Fee Owner will pay for the construction costs and the County will pay the Construction Subsidy to the Fee Owner only upon the following:</p> <p>A. The Completion of Construction in accordance with all applicable laws, codes, rules and regulations, including, without limitation, the Suffolk County Sewer Code (Chapter 740 of the Laws of Suffolk County), the Suffolk County Sanitary Code (Chapter 760 of the Laws of Suffolk County) and the rules and regulations of the New York State Department of Environmental Conservation and the United States Environmental Protection Agency; and</p> <p>B. Submission to the County of an Affidavit of the Developer and Fee Owner setting forth their compliance with the terms of this Agreement; and</p> <p>C. Presentment of paid invoices for the amount of the Sewer Improvement Subsidy requested hereunder; and</p> <p>D. Receipt of evidence of release of liens of all contractors, subcontractors, laborers, materialmen and any other person retained in connection with the construction of the Housing Development or arrangements reasonably satisfactory to the County for the disposition or bonding thereof.</p> <p>G. Prior to marketing any units, the Co-Developers shall submit to the County, for its records, a marketing and tenant selection plan in accordance with the Development Agreement.</p> <p>H. The Beneficial Owner shall have entered into a Management Agreement for the management, compliance and administration of the Affordable Housing Development and shall have provided the County with evidence of same.</p> <p>I. If Applicable the Low-Income Housing Credit Regulatory Agreement (the "LIHTC Regulatory Agreement") by and among New York State Division of Housing and Community Renewal ("DHCR"), the Beneficial Owner and the Fee Owner shall have been executed or DHCR shall have agreed to execute the LIHTC Regulatory Agreement after closing, and shall have provided the County with evidence of same, as applicable.</p> <p>J. On or prior to the date hereof, the County shall have been provided with a policy of title insurance, insuring the Mortgage, the Covenants and Restrictions, and the Easement. The Mortgage and the Easement only shall be subordinate to the Superior Mortgages. The Covenants and Restrictions shall survive any enforcement of the Permitted Liens including the Superior Mortgages.</p> <p>K. The Parties shall be duly organized, validly existing and in good standing in the State of New York and the County will have been provided with evidence of same.</p> <p>L. To ensure the construction of the Affordable Housing Development in accordance with this Agreement, the Development Plan and all other documents executed and/or delivered in connection therewith, the Parties shall have caused the County to be provided with a Guaranty of Completion, in form and substance reasonably satisfactory to the County, duly executed and delivered by Developer</p>
<p><b>CONTACT INFORMATION</b></p>	
<p><b>Pre-Application Technical Assistance:</b></p>	<p>Stephanie Rosen, Director of Community Development and Affordable Housing, Suffolk County Department of Economic Development and Planning - Stephanie.Rosen@SuffolkCountyNY.gov; (631) 853-4831</p>