

SOAR (Suffolk Opportunities for Affordable Rentals)

Term Sheet

PROGRAM DESCRIPTION	
Goals:	<p>Suffolk County Executive Steve Bellone allocated \$10 million in capital funding in the 2022-2024 Capital Plan to subsidize wastewater infrastructure (onsite Sewage Treatment Plants or connection to an existing Sewage Treatment District) to develop new inclusive, affordable, non-certified housing opportunities for individuals with intellectual and developmental disabilities. The program encourages a variety of projects that are responsive to the particular needs of a location and populations within Suffolk County.</p> <p>According to the New York Housing Resource Center, there are more than 25,000 adults in Suffolk County with intellectual or developmental disabilities (I/DD) and 63% of them live with family caregivers and of those, 25% of the caregivers over the age of 60. The program seeks to address the predicament for many families who are concerned with what happens to their child once they are deceased.</p>
Eligible Use of Proceeds:	<p>Funding can be used to cover rehabilitation of wastewater infrastructure at existing affordable multi-family rental housing or to connect to existing public sewers or construction of an individual sewage treatment plant. Funding can also be used for infrastructure improvements, including but not limited to, roads, parking, sewers, water, sidewalks, street lighting and appurtenant landscaping within the development area in the following instances:</p> <p>New Construction: New construction of multi-family rental housing, including the creation of new units through the adaptive reuse of existing non-residential structures.</p> <p>Preservation: Preservation and rehabilitation of existing affordable multifamily rental housing. Housing that was initially financed through federal and/or state programs, such as Federal Section 8, Section 236, Section 202, Public Housing, or Low Income Housing Tax Credit (LIHTC) programs, USDA Rural Development and other similar programs are eligible.</p>
Funding Awards	<p>Awards range between \$35,000-\$50,000/unit for LIHTC projects and \$50,000-\$75,000/unit for non-LIHTC projects, contingent upon third-party review by the National Development Council, approval by the County Sewer Infrastructure Committee (if applicable), and the County Legislature. The County reserves the right to make exception in instances in which the financial need to create financial feasibility exceeds \$75,000/unit or funding limitations necessitate awards less than \$35,000/unit. These subsidy ranges are only available for I/DD units.</p> <p>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 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.</p>
Eligible Tenants:	<p>The Office of People with Developmental Disabilities is responsible for determining whether an individual is eligible for services based on the definition of “Developmental Disability” established through the New York Mental Hygiene Law §1.03(22); a tenant must be determined eligible for services by OPWDD and be at least eighteen (18) years old.</p> <p>A tenant of the OPWDD unit can also reside with a Live in Caregiver. Live-in Caregivers (“LIC”), as defined by OPWDD, shall be permitted as a care provider who resides in the same household as the individual and provides as-needed support to address the individual’s physical, social, or emotional needs in order for the individual to live safely in his or her own home. The LIC may not be related to the individual by blood or marriage. The LIC cannot be someone who has control or authority over decisions regarding the individual’s resources.</p> <p>Depending upon the funding source, for example a LIHTC program, an OPWDD support letter may be required to allow for the units to be designated as having preferential tenancy for I/DD individuals. It is advised that applicants who are also planning to apply to LIHTC programs contact NYS OPWDD to ensure they meet requirements to receive a support letter for their application.</p>

AFFORDABILITY REQUIREMENTS	
Rent Limits:	<p>At no time will the rent per Inclusion Unit exceed 30% of 80% of HUD-established area median income limit, for the Nassau/Suffolk PMSA, with adjustments for family size as follows:</p> <p>(i) for studio or efficiency units, apartments having no separate bedrooms, the designated family size shall be a 1-person family; and</p> <p>(ii) for units containing at least one-bedroom, the designated family size shall be equal to 1.5 persons times the number of bedrooms.</p> <p>Any rent increases shall be made in accordance with the Low Income Housing Tax Credit requirements (if applicable) and must also comply with the requirements of any other project funding sources, such as the subsidy limits of OPWDD's Housing Subsidy Program, Section 8, or Empire State Supportive Housing Initiative (ESSHI) rules.</p> <p>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 Administrative Code § A36-2(D)(2)(a).</p>
Preventing Undue Hardship	<p>At the time of lease, if the proposed tenant of an Inclusion Units is unable to provide a deposit, first and/or last month rent, said tenant shall have the option to be exempt from the requirement to provide a deposit, first and/or last month rent if the lease term is at least twelve (12) months. If the tenant of an Inclusion Unit opts to be exempt from the requirement to provide a deposit, first and/or last month rent and the lease term is at least twelve (12) months, the monthly rent may include an additional fee equal to 10% of the monthly net rent for the first ten months, as long as the increase in rent falls below the OPWDD subsidy and affordability guidelines. These funds will be held in escrow, in an interest-bearing account in the Support Agency's name for the purposes of the individual.</p>
Maximum Income Limits:	<p>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.</p>
Tenant Occupancy:	<p>All Inclusion Units must be tenant occupied and remain the principal residence of the tenant.</p>
Inclusive Unit Distribution:	<p>Inclusion Units shall be evenly distributed throughout the development and shall not be clustered.</p>
Vacant Units:	<p>If an Inclusion Unit is vacated, the Fee Owner must notify the Suffolk County Director of Affordable Housing (the "Director") within thirty (30) days in accordance with Section 515 of the Development Agreement. The Inclusion Unit must be filled with another qualified individual or individuals and the Director must be notified as such, in accordance with Section 515 of the Development Agreement. If an Inclusive Unit is vacated and the OPWDD provider working with the Fee Owner is unable to locate an eligible tenant, OPWDD may issue a waiver to rent the unit to a non-eligible tenant. A waiver shall only be issued for good cause shown and shall require the Fee Owner to restrict the nextvacant unit of the same bedroom size; and (ii) marketed to individuals earning at or below 80% of the HUD-established area median income, to be restricted as an alternative Inclusion Unit. The Director shall have sixty (60) days to review and respond to the request for waiver, and such waiver shall not be unreasonably withheld.</p>
Reporting Requirements:	<p>The Fee Owner shall be required to provide the Director with a report no later than December 31st of each year commencing as of the date of the executed contract with the County. Such report shall include OPWDD's Quality Assurance Expectations Checklist for each Inclusion Unit as well as an up to date list of designated Inclusion Units, which shall include but not be limited to, for each Inclusion Unit: (1) the unit number, (2) the bedroom size, and (3) the initial occupancy date.</p>
Regulatory Agreement:	<p>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.</p> <p>Units funded through this program shall be affordable for a minimum of 30 years, with the possibility of a longer term of affordability at the discretion of the Director or as a result of requirements by other funding sources.</p>

DEVELOPMENT TEAM REQUIREMENTS	
Eligible Applicants:	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 developer fee realized by the Developer must conform to New York State Affordable Housing Corporation guidelines and LIHTC guidelines (if applicable) 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.
Support Agency:	On or prior to the Funding Closing Date, the Fee Owner shall submit to the County, a copy of the Housing/Services Agreement between the Support Agency and the Fee Owner. The selected OPWDD support agency (the "Support Agency") as a partner with the Parties shall identify individuals with developmental disabilities who can be appropriately served in an integrated supported housing residential setting, and who are eligible for services through OPWDD based on the definition of developmental disability; prospective tenants can be individuals served by the Support Agency for their non-housing supports and services or by other OPWDD approved providers. The New York State Office of People with Disabilities is responsible for determining whether an individual is eligible for services based on the definition of "Developmental Disability" established though the New York Mental Hygiene Law §1.03(22). Any marketing and tenant selection shall be in compliance with the Fair Housing Act. If other governmental funding sources are included in the project (e.g., HCR and/or OPWDD funding), additional requirements may apply as identified in the relevant funding applications, policy documents, regulations, or laws.
FIRST MORTGAGE LOAN TERMS	
Construction Loan Amount:	Proceeds of the funds are made available at permanent financing.
Repayment Obligations	<p>Mortgage can be secured by a note with the following obligations:</p> <ul style="list-style-type: none"> -All of the terms and conditions of the Development Agreement by and among the County of Suffolk, Town, and Industrial Agency, as applicable. -There will be annual payments due ("Installment Payments") commencing on the first of May after the note and mortgage are executed. Payment terms shall be negotiated between the developer and the County prior to the note and mortgage execution. -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. -All remaining principal and interest due on the Note shall be due and payable on the future date negotiated between the developer and County ("Maturity Date"). -There shall be an interest rate of 1% per annum charged on the outstanding principal balance of this Note, or 1/8 of 1.00% over bond yield, whichever is lower. If there is an Event of Default under the terms of the Note and/or Mortgage contemplated herein, an interest rate of 6% shall be applied to the unpaid principle. -Provided there is no Event of Default, no prepayment of this Note shall be permitted.
EQUAL OPPORTUNITY GOALS	
Affirmative Fair Housing Marketing Plan:	<p>The Support Agency, as a partner, with the Developer, shall identify individuals with developmental disabilities who can be appropriately served in an integrated supported housing residential setting, and who are eligible for services through OPWDD based on the definition of developmental disability; prospective tenants can be individuals served by the Support Agency for their non-housing supports and services or by other OPWDD approved providers. The New York State Office of People with Disabilities is responsible for determining whether an individual is eligible for services based on the definition of "Developmental Disability" established though the New York Mental Hygiene Law §1.03(22).</p> <p>Any marketing and tenant selection shall be in compliance with the Fair Housing Act. If an Inclusion Unit becomes vacant, the Support Agency or Fee Owner will identify a qualified replacement tenant that is eligible for support services through OPWDD. The Support Agency shall assist with the process of transferring rental subsidies to the appropriate authority and work in collaboration with the Fee Owner to resolve any tenancy issues.</p> <p>For more information on marketing requirements, please see Suffolk County Resolution No. 976-2022</p>

REVIEWS AND APPROVALS	
Environmental:	<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>
Scope of Work:	<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>
Residential Design Guidelines	<p>The Developer shall submit any site plans and design plans (including elevations) to the Department, along with their subsidy application, for review, comment and approval as to design quality. Department staff will provide initial comments within 30 days of receipt of full design documents. The Department may provide a support letter and/or funding commitment prior to final design approval, however in the event that construction of the Housing Development begins prior to final design quality approval 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>
Subsidy Layering Review:	<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>
Sewer Infrastructure Committee Review:	<p>All projects requesting funding for changes or upgrades to Sewer Infrastructure are subject to approval by the Suffolk County Sewer Infrastructure Committee.</p>
Legislative Review:	<p>All projects are subject to approval by the Suffolk County Legislature.</p>

<p>Conditions Precedent:</p>	<p>Initially, the Fee Owner will pay for the infrastructure costs and the County will pay the Infrastructure Subsidy to the FeeOwner 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>CONTACT INFORMATION</p>	
<p>Pre-Application Technical Assistance:</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>