

SAN MIGUEL COUNTY , NEW MEXICO
Resolution No. 05-08-08

**A RESOLUTION PROVIDING POLICIES AND PROCEDURES FOR THE
EVALUATION OF PROPOSED INDUSTRIAL REVENUE BOND PROJECTS BY SAN
MIGUEL COUNTY.**

Capitalized terms in the following preambles have the same definitions as set forth in Section 1, unless the context requires otherwise.

WHEREAS, the County Industrial Revenue Bond Act authorizes counties to acquire, own, lease or sell Projects for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate and expand in New Mexico; and

WHEREAS, the Act also authorizes counties to issue industrial revenue bonds to finance the acquisition and/or construction of Projects; and

WHEREAS, the County supports the use of industrial revenue bonds as a tool to induce manufacturing, industrial or commercial operations to locate in the County or expand existing operations in the County in accordance with the policies and procedures set forth in this resolution;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS THE GOVERNING BODY OF SAN MIGUEL COUNTY , NEW
MEXICO:**

Section 1. Definitions. As used in this Resolution:

A. “Act” means the County Industrial Revenue Bond Act, Sections 4-59-1 through 4-59-16, NMSA 1978, as amended;

B. "Applicant" means one or more persons or entities, or their successors, assigns or agents, who propose to acquire or construct a Project financed by the proceeds of Bonds;

C. "Board" means the Board of County Commissioners of San Miguel County ;

D. "Bond Counsel" means an attorney or firm of attorneys nationally recognized for expertise in the area of municipal bonds and the exemption of interest on municipal bonds from federal income taxation and listed in the most recent edition of the Bond Buyer's Municipal Marketplace;

E. "Bonds" means any bond, debenture, note, refunding or renewal bond or note, warrant or other security evidencing an obligation the proceeds of which, or a major portion thereof, are to be used in the trade or business carried on by someone other than the County and which are authorized to be issued by the County pursuant to the Act;

F. "County" means the County and body corporate and politic known as San Miguel County , New Mexico;

G. "County Review Counsel" means an attorney or firm of attorneys retained by the County to review Bond documents on behalf of the County;

H. "Inducement Resolution" means a resolution of the Board setting forth the good faith intent of the Board to issue Bonds upon the prior satisfaction of all applicable requirements of the County;

I. "Project" means a commercial or industrial facility, a facility owned and/or operated by a non-profit organization, or portions thereof which qualify as a Project under the Act.

Section 2. Application Process.

If an Applicant wishes to request that the County issue Bonds under the Act to finance a Project on behalf of the Applicant, the Applicant shall submit a written application, in the form of Exhibit A, to the County Executive Officer at least three weeks prior to the date of the Board meeting at which the Applicant would like its application considered. The Applicant must attach to the application the proposed form of Inducement Resolution which the Applicant is requesting that the County adopt at the meeting at which the application is considered. Concurrently with the filing of the application, the Applicant shall submit to the County Treasurer's office a non-refundable application fee of two thousand five hundred dollars.

The County will consider each financing request on a case by case basis after reviewing among other things: the nature of the proposed Project; the number and nature of jobs that will be produced by the Project; infrastructure needs; the nature of any credit enhancement that will support the payment of the Bonds; and the operating history of the Applicant. The County reserves the right to decline a financing request for any reason it deems appropriate. Any agreement by the County to proceed with a financing does not constitute a recommendation by the County regarding the credit-worthiness of the financing.

Section 3. Fees of Professionals.

Concurrently with the filing of the application, the Applicant also shall submit to the County Treasurer's office, a check payable to the County for five thousand dollars as a retainer for County Review Counsel. County Review Counsel shall bill the County on an hourly basis at the rate agreed upon between the County and County Review Counsel and the County shall use the retainer to pay the fees of County Review Counsel. If any portion of the retainer remains after the closing of the Bond issue, the County shall return any unspent portion of the retainer to

the Applicant without interest. If the retainer is used prior to the closing of the Bond issue, the Applicant shall submit to the County an additional retainer of three thousand dollars within five days of notification from the County. The County does not expect the fees of County Review Counsel to exceed the initial five thousand dollar retainer unless there are unusual delays in the financing or changes in the structure of the financing.

The Applicant shall reimburse the County for fees for professional services, including but not limited to the services of financial advisors and economists, incurred by the County in connection with the Bond financing.

The fees of County Review Counsel and other professionals shall be paid regardless of whether the Bond issue closes.

The Applicant shall be responsible for retaining and paying the Fees of Bond Counsel. The loyalty of Bond Counsel shall run to the Applicant.

Section 4. Payment in Lieu of Taxes.

Based upon the information submitted by the Applicant, County staff shall determine the value of property, if any, constituting the Project which will be exempt from taxation as a result of the financing and the estimated amount of taxes to the County, the school district and the college district, if the Project is located within the boundaries of the college district, that would be otherwise collected with respect to such property in the first full year after completion of the Project if the Project were not exempt. Unless otherwise determined by the Board, the Applicant shall be required to pay, as a condition of obtaining the Bond financing, payments in lieu of taxes, commencing in the first full year after completion of the Project, equal to the taxes that would otherwise have been paid to the County for operational purposes, to the school district and to the college district, if the Project is located within the boundaries of the college district, in

such year. The payments in lieu of taxes shall automatically increase every five years by a percentage equal to the lesser of the percentage increase in the assessed value of the exempt project site and improvements during the previous five years, or five percent. In addition, if there is an expansion of the buildings and improvements which are exempt from taxation, the amount of the payment in lieu of taxes allocable to the buildings and improvements shall automatically increase by a percentage equal to the percentage increase in the square footage of the buildings and improvements. County staff will notify the Applicant at least one week prior to the date of consideration of the Inducement Resolution of the amount of the payment in lieu of taxes.

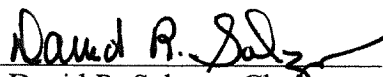
Section 5. Document Review. All resolutions, ordinances, financing agreements, closing documents and other documents relating to the County and relating to the Bonds and the issuance thereof, including any documents submitted to the State Board of Finance as an application for volume cap related to the Bonds, shall be submitted to the County Attorney and County Review Counsel at least three weeks prior to any required action on such documents or execution of the documents by County officials, as applicable. The Bond documents must reflect the payment in lieu of taxes as determined by the County.

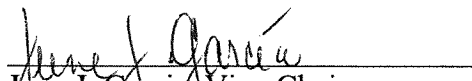
Section 6. Status of Bonds. The principal and interest of the Bonds approved by the Board shall be payable solely out of the revenue derived from the financing, sale, or leasing of the Project with respect to which the Bonds are issued or from a guarantee agreement or agreements or a credit enhancement device or devices upon which the guarantor or obligator is other than the County. The Bonds shall never constitute a debt or indebtedness of the County within the meaning of any provision or limitation of the New Mexico Constitution or statutes of


the State of New Mexico and the Bonds shall not constitute nor give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers.

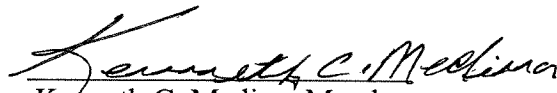
Section 7. Severability Clause. If any section, subsection, sentence, clause, word or phrase of this resolution is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution. The Board hereby declares that it would have passed this resolution and such section, subsection, clause, word or phrase thereof irrespective of any one or more sections, subsections, sentences, words or phrases being declared unconstitutional or otherwise invalid.

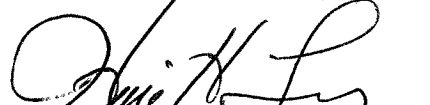
MOVED, SECONDED AND ADOPTED this 13th day of May, 2008 by the **BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, NEW MEXICO.**

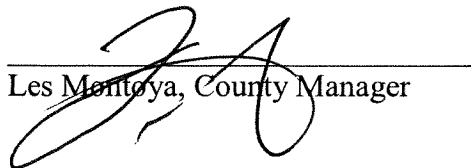

David R. Salazar, Chairman


June J. Garcia, Vice-Chair


Albert J. Padilla, Member


Kenneth C. Medina, Member


Hugh H. Ley, Member


Les Montoya, County Manager

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


Paul Maez
San Miguel County Clerk

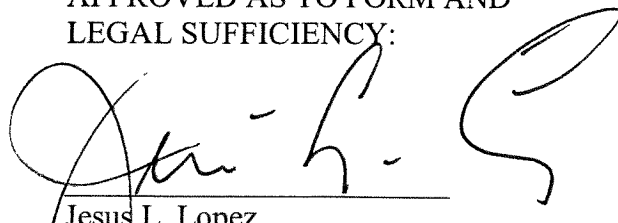

Jesus L. Lopez
San Miguel County Attorney

EXHIBIT A

**SAN MIGUEL COUNTY, NEW MEXICO
APPLICATION FOR INDUSTRIAL REVENUE BOND FINANCING**

Name of Company and any Parent Company or Subsidiary: _____

Address of County and/or Parent or Subsidiary Company Headquarters:

Name of Contact: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

Is the Company: _____ For Profit _____ Non-Profit

Describe the proposed Project (nature of business, proposed facilities, etc.):

Identify any product associated with the proposed Project and describe the method of processing the product. _____

Where will the proposed Project be located? _____

What is the present use, condition and assessed value of the proposed Project site?

What is the estimated value of the proposed Project site after completion of the Project?

What is the proposed construction schedule? _____

What is the budget for the proposed Project/Bonds?

USE OF FUNDS

Acquisition of Land:	\$ _____
Construction of Buildings:	\$ _____
Equipment:	\$ _____
Capitalized Interest:	\$ _____
Debt Service Reserve Fund:	\$ _____
Issuance Costs:	\$ _____
Credit Enhancement Costs:	\$ _____
Contingency:	\$ _____
TOTAL:	\$ _____

SOURCES OF FUNDS

Maximum amount to be financed with Bonds: \$ _____

Equity: \$ _____

Other Sources of Funds (Please Identify) \$ _____

Please attach documents supporting the feasibility of the proposed Project including information establishing the ability of the Project to generate revenues to render the Project self-liquidating.

When are the Bonds proposed to be issued? _____

How many permanent new jobs will be created: _____ full time equivalents?

What percentage of these jobs are estimated to be filled by persons who are residents of the County?

Identify each general job category, the number of jobs in each category and the salary range and education requirement of each category:

<u>Job Category</u>	<u>Number of Jobs</u>	<u>Salary Range</u>	<u>Education Requirement</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

How many jobs will be lost at other Company locations in the County because of the proposed Project? _____

How many jobs will be lost at other Company locations in New Mexico because of the proposed Project? _____

How much water usage will the proposed Project require? _____

What new infrastructure is required for the proposed Project? _____

Will the proposed Project compete with existing businesses or development? _____ Yes _____ No

If Yes, explain the nature of the competition and analyze how the proposed Project will influence existing commerce and industry in the County both during and after the construction period.

Please provide resumes showing the experience of the Applicant in projects of the type proposed.

Is the Company going to pay for the infrastructure? _____ Yes _____ No

Will the Bond structure require the County to own the Project? _____ Yes _____ No

Has a Phase I or Phase II Environmental Audit been performed with respect to the Project Site? _____ Yes _____ No

If Yes, please attach a copy of the audit. If No, will one be performed? _____ Yes _____ No

Please attach audited financial statements for the Company for the past three years.

Please describe any credit enhancement for the Bonds:

Please identify Bond Counsel by name and address and phone number:

Please identify Company counsel by name, address and phone number:

Please identify the Underwriter purchasing the Bonds by name, address and phone number:

Please identify the credit enhancer, if any, by name, address and phone number:

Please identify the Trustee by name, address and phone number:

Will the Bonds require volume cap? _____ Yes _____ No

Will the Bonds be "Bank-Qualified"? _____ Yes _____ No

Please attach a timetable for the issuance of the Bonds in the form of Exhibit B, the form of the proposed Inducement Resolution and a non-refundable application fee of \$2,500.

In addition to the information required by this Application, the County may request additional information which the County deems relevant to the Project.

ACKNOWLEDGMENT OF RECEIPT AND VERIFICATION

The undersigned acknowledges receipt of the Application from San Miguel County and agrees to the terms and conditions for the issuance of Bonds as described in Resolution No. _____. The undersigned certifies the above to be true and correct to the best of his knowledge, under penalty of perjury.

(Name)

(Date)

(Title)

(Name of Company)

(Telephone)

(Fax)

STATE OF NEW MEXICO)
)
SAN MIGUEL COUNTY)

SUBSCRIBED and sworn to before me this ____ day of _____,
20__, by _____.

Notary Public

My Commission Expires:

WHEN COMPLETE, PLEASE SUBMIT THIS APPLICATION TO:

San Miguel County
Attention: County Manager
518 Valencia St., Suite 100
Las Vegas, NM 87701

Required attachments:

3 years of Audited Financial Statements
Environmental Audits (if done)
Feasibility Study
Appropriate Resumes
Timetable in Form of Exhibit B
Form of Inducement Resolution
Additional Information Required by County, if any

Required Deposits to
County Treasurer:

Non-refundable Application Fee
County Review Counsel Retainer

**EXHIBIT B
TIMETABLE**

<u>Date</u>	<u>Activity</u>
<hr/>	Company Submits Application
<i>(must be at least 3 weeks prior to Inducement Resolution)</i>	
<hr/>	County Notifies Company of Payment in Lieu of Taxes
<i>(1 week prior to Inducement Resolution)</i>	
<hr/>	County Considers Inducement Resolution
<hr/>	Distribution of Volume Cap Application Materials by Bond Counsel
<hr/>	Distribution of Bond Document Drafts by Bond Counsel (including ordinance)
<i>(must be at least 3 weeks prior to consideration of bond ordinance)</i>	
<hr/>	County Commission Consents to Publication of Intent to Adopt Ordinance
<hr/>	Publication of Notice of Intent to Adopt Ordinance by Bond Counsel
<i>(must be at least 2 weeks prior to adoption of ordinance)</i>	
<hr/>	Publication of TEFRA Notice by Bond Counsel
<i>(must be at least 14 days prior to adoption of ordinance)</i>	
<hr/>	Deadline for comments on documents
<hr/>	Consideration of Ordinance by County Commission
<hr/>	Publication by Bond Counsel of Notice of Adoption of Ordinance
<hr/>	Sale Resolution (Optional)
<hr/>	Distribution of Closing Documents
<i>(must be at least 3 weeks prior to closing)</i>	
<hr/>	Closing Date
<i>(must be at least 30 days after publication)</i>	