Curry County

Board of County Commissioners

Ordinance No. 2013-06

AN ORDINANCE ADOPTING AN INDUSTRIAL REVENUE BOND POLICY PURSUANT TO THE COUNTY INDUSTRIAL REVENUE BOND ACT, ESTABLISHING APPLICATION REQUIREMENTS AND PROCEDURES, AUTHORIZING THE COUNTY MANAGER TO ENGAGE PROFESSIONALS TO EVALUATE AND ADVISE ON MATTERS RELATED TO THE ISSUANCE OF BONDS AND UNDERLYING LEASE AGREEMENTS WITH PRIVATE COMPANIES, AUTHORIZING INCENTIVE PAYMENTS, ESTABLISHING A FRAMEWORK UNDER WHICH THE BOARD OF COUNTY COMMISSIONERS RECEIVE, CONSIDER AND ACT UPON APPLICATIONS FOR INDUSTRIAL REVENUE BONDS, AND AUTHORIZING THE COMMISSION TO PLEDGE INCENTIVE PAYMENTS IN REGARDS TO ANY INDUSTRIAL REVENUE BOND.

WHEREAS, the County of Curry is a political subdivision of the State of New Mexico and existing under the laws of the State of New Mexico (the "State"); and

WHEREAS, the County Industrial Revenue Bond Act (the "Act") **(Sections 4-59-1 through 4-59-16, NMSA 1978)** 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 or expand in this state;

WHEREAS, counties may be able to promote the local health and general welfare by inducing nonprofit corporations engaged in health care services and 501(c)(3) corporations to locate, relocate, modernize or expand in this state and by inducing mass transit or other transportation activities, industrial parks, office headquarters and research and development activities to locate or expand in this state;

WHEREAS, each project shall be self-liquidating; that Curry County itself is not authorized to operate any manufacturing, industrial or commercial enterprise or any nonprofit corporation engaged in health care services or any 501(c)(3) corporation or industrial parks, office headquarters or research and development facilities;

WHEREAS, the Board of County Commissioners recognize the need to establish a well-founded policy to set forth the parameters for issuing bonds, to provide guidance to decision-makers regarding the purposes for which bonds may be issued, the type and amounts of bonds permitted, the timing methods of sales that may be used, and structural features that should be considered; and

WHEREAS, the Board of County Commissioners under this ordinance will establish a framework and application process to manage industrial revenue bond requests made to it so that the County may (1) ensure high-quality economic development decisions, (2) impose order and consistency in the decision making process, (3) provide all disclosures required by law to promote transparency and (4) ensure decisions are viewed positively by County Commissioners, by the community, by the investment community, and by the property taxing agencies.

THEREFORE, BE IT ORDAINED BY THE CURRY COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Short title.

This ordinance may be cited as the "Industrial Revenue Bond Policy".

Section 2. Purpose.

An ordinance establishing policies and procedures for evaluating proposals to finance projects with industrial revenue bonds and for providing the board of commissioners with information on the merits of such projects.

Section 3. Definitions.

As used in this ordinance:

Applicant means one or more persons or entities, or their successors, assigns or agents, who propose to acquire or construct a project financed by or proposed to be financed by the proceeds of revenue bonds.

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.

County means the County of Curry, New Mexico.

Board means the board of county commissioners.

Incentive payments means any revenues received by the county from the applicant, including, but not limited to, payments in lieu of taxes, supplemental rents, grants, donations or other contributions, and guaranties.

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 land use and development requirements of the county, other than the issuance of a building permit.

Notice of intent means a form of notice of intent to adopt an ordinance providing for the issuance of revenue bonds to be published in accordance with applicable law upon approval by the board.

Project plan means the plan describing a project, which shall include:

1) A general description and location of the project;
2) Conceptual site plans for the project and a map locating the project area;
3) The number and type of new jobs to be created by the project;
4) The estimated percentage of these jobs that will be filled by persons who are residents of the county;
5) Identification of any technology or special processes associated with the project and a description of the methods of processing the product;
6) Any relocation of individuals of businesses that will likely occur as a result of the project;
7) The estimated value of the project site after completion of the project;
8) The maximum amount of the bonds to be issued for the project;
9) The proposed construction schedule;
10) Information documenting the feasibility of the proposed project including information establishing the ability of the project to generate revenues to render the project self-liquidating;
11) An analysis of how the project will influence competition in the type of commerce or industry already existing within the county and its environs;

12) The effect of the project on existing industry and commerce in the county including during and after the construction period;

13) The amount of private investment in the project in addition to bond financing;

14) The total dollar amount of the proposed improvements included as part of the project;

15) A statement of plans for project management during construction and operation;

16) Resumes showing the experience of the development entity or principals, and the experience of the architect, contractor, and leasing agent, if relevant; and

17) Other matters as may be relevant to the project or requested by the county manager.

Section 4. Review and analysis of proposed project.

The applicant shall make a request to issue bonds for a project by filing with the county manager an inducement resolution or notice of intent, seven copies of the project plan and the fees and deposit required by this ordinance. The county manager shall review all bond projects to determine that proposed project plans are complete. Within thirty (30) days of receiving the project plan, the county manager, or his designee, may in accordance with applicable procurement requirements, contract with an independent consultant to prepare an economic and fiscal analysis of the proposed project. This analysis shall evaluate the proposed project according to the "project criteria" promulgated by the county manager.

Section 5. Board consideration of project plans.

(a) Upon receipt of the completed analysis, the county manager shall submit to the board for discussion during the next regularly scheduled meeting of the board (1) the project plan, (2) the completed analysis, and (3) the notice of intent to adopt a county industrial revenue bond ordinance. In order to permit public comments on the proposed plan the board shall defer final action on the plan until a subsequent regularly scheduled commission meeting.

(b) Any person wishing to comment on the proposed plan may do so by submitting written comments to the board with a copy to the county manger at least fourteen (14) days before the regular meeting during which the board is scheduled to take final action on the proposed plan.

(c) The board's final action to approve, conditionally approve, or to disapprove a project plan and inducement resolution or revenue bond ordinance shall take into consideration the county's development plans and policies and the promotion of the health, safety, security and general welfare of the citizens of the county and the State of New Mexico.

Section 6. County attorney review.

All resolutions, notices of intent, and ordinances, financing agreements, closing documents and other documents relating to the county and relating to the bonds and issuance thereof shall be submitted to the county attorney and the county's bond counsel, in sufficient time for review by such attorneys prior to the board taking any required action on such documents or execution of the documents by the county officials, as applicable.

The county's bond counsel shall review all appropriate resolutions, ordinances, trust indentures or other necessary documents relating to the bonds and the issuance thereof.

Section 7. Rules.

The county manager and county attorney may establish such rules, not inconsistent with the county ordinance, as the county manager and county attorney may deem necessary to carry out the requirements of this ordinance.

Section 8. 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 project for which the bonds are issued, from any guarantee agreement or agreements, insurance, surety or a credit enhancement upon which the guarantor or obligor is other than the county. The bonds shall never constitute a debt or indebtedness of the county within the meaning of any provision of limitation of the New Mexico Constitution, statutes of the State of New Mexico or any county ordinance, and such 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 9. Fees and deposit.

(a) In addition to any other fees imposed pursuant to ordinance or resolution, the applicant shall pay the county (1) a fee equal to one tenth of one percent of the face amount of the bonds to be issued to compensate the county for its reasonable administrative expenses incurred in the approval of the project and issuance of the bonds provided that the fee shall not be less than $10,000.00, and (2) a deposit of $10,000.00 to be applied against the payment of costs associated with obtaining the analysis required by this ordinance and for any attorney fees associated with processing the request. If the cost for conducting an analysis of the project exceeds this deposit, the applicant shall pay the county, before the analysis is initiated, any additional amount that is necessary to conduct the analysis and pay any attorney fees associated with processing the request.

(b) In addition to the fees and deposits set forth in this section, the applicant shall pay all attorney's fees and expenses of the county's bond counsel and county attorney whether or not the bonds are issued.

(c) The county shall not have the power to pay out of its general funds or otherwise contribute any part of the costs of acquiring a project, and shall not have the power to use land, already owned by the county or in which the county has an equity, for construction of a project or any part of it, unless the county is fully reimbursed for the value of the land as may be determined by a current appraisal or unless the county leases the land at an annual rental fee of not less than five percent of the appraised value. The entire cost of acquiring any project must be paid out of the proceeds from the sale of bonds issued under the authority of the Act. This shall not be construed to prevent a county from accepting donations of property to be used as a part of any project or money to be used for defraying any part of the cost of any project.

Section 10. Economic development benefits.

(a) The project must create or retain jobs within the County and provide taxable property improvements within the County. The county manager or county attorney may establish rules to define the terms and conditions for exemption of taxes, in accordance with state law.

(b) The maximum term for period of exemption will be for no longer than 20 years.

(c) Property within a tax-increment financing district does not qualify; and special assessments levied by any subdivision do not qualify for property tax exemptions.

Section 11. Performance agreement and claw back provisions.

(a) Bond documents for projects seeking tax exemptions submitted to the County for approval will include a performance agreement. This agreement will include all requirements and representations regarding the jobs, wages and other economic development impacts of the project being financed. Failure to meet any of the requirements or representations under which bonds were issued may be considered a technical default and result in a re-payment of tax exemption incentives by the Borrower to the County unless it is determined by County that failure was due to circumstances beyond the control of the business. The County will include this performance agreement, also known as *claw backs*, in the Bond Purchase Agreement or other appropriate document.

(b) If the project ceases operation within five years of bond issuance, claw backs provide for a pro-rata repayment of the abated taxes, depending upon the amount of time elapsed from date of issuance to date of closure of the project. Claw back provisions may be adjusted to account for the unique circumstances of a particular issue. The County will determine whether unique circumstances exist with respect to claw backs and will make such recommendations when the project is recommended for approval.

Section 12. County indemnification.

All industrial revenue bond issues must provide for indemnification of the County, its consultants, contractors, advisors and employees. Compliance with the indemnification requirements of the County is essential to securing the Board of County Commissioners approval of the proposed bond financing, and the County will not participate in a bond financing if its indemnification requirements are not met. The County will not take any responsibility for due diligence investigations or disclosure, and the County's Issuer's Counsel specifically disclaims any responsibility for such disclosure in its opinion.

Section 13. Notice.

(a) Prior to adopting an ordinance issuing county industrial revenue bonds, the county manager shall give notice to the county assessor and any entity located within the county authorized to levy taxes on property in the county of its intent to consider the matter. The county assessor and entities authorized to levy taxes shall be notified by certified mail, return receipt requested, or other means which can verify delivery of the notice, at least thirty calendar days prior to the meeting at which final action is to be taken so that comments can be transmitted to the county. The notice shall include the amount, the purpose and the time period of the proposed industrial revenue bonds.

(b) The county assessor and entities authorized to levy taxes shall be able to forward their comments and any concerns to the board of county commissioners, but there is no approval required from the county assessor or entities authorized to levy taxes and they do not have veto over the proposed county industrial revenue bond issuance.

(c) The county manager shall notify the board of county commissioners, the county assessor and any entity levying taxes on property in the county when an industrial revenue bond has matured, expired or been replaced by a refunding bond.

Section 14. Use of Incentive Payments.

Incentive payments may be used for general operations of the County or for debt service payments for bonds secured with incentive payment revenues, for which the Board of County Commissioners may decide.

Section 15. Authorization to pledge incentive payments.

(a) In addition to any other law authorizing the county to issue revenue bonds or refunding revenue bonds, the county may issue revenue bonds or revenue refunding bonds pursuant to the powers granted to counties in NMSA 1978, §4-37-1, as amended, to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants.

(b) Incentive payment revenue bonds or revenue refunding bonds may be issued by the county for the exercise of any essential governmental function.

(c) The county may pledge irrevocably any or all of the revenues from incentive payments for payment of principal, premium, if any, and interest due in connection with, and other expenses related to incentive payment revenue bonds or revenue refunding bonds.

(d) At a regular or special meeting called for the purpose of issuing incentive payment revenue bonds or revenue refunding bonds, the board may adopt an ordinance that:

(1) Declares the necessity for issuing incentive payment revenue bonds or revenue refunding bonds;

(2) Authorizes the issuance of incentive payment revenue bonds or revenue refunding bonds by an affirmative vote of a majority of all the members of the board; and

(3) Designates the incentive payments pledged. Any revenue in excess of the amount necessary to meet all annual principal and interest payments and other requirements incident to repayment of the incentive payment revenue bonds or revenue refunding bonds may be transferred to any other fund of the county.

Section 16. Sunset date; date of issue.

(a) The inducement resolution or notice of intent shall set a final date for issuance of the proposed bonds, which shall not be longer than two years from the date of the inducement or notice of intent. The "sunset date" may be extended by the adoption of a new inducement resolution or notice of intent if the applicant presents a revised project schedule with supporting evidence acceptable to the board that the extension is justified for good cause and necessary for project completion.

(b) The inducement resolution or notice of intent shall state the year in which the bonds will be issued and the bonds shall not be issued in a year other than that stated in this ordinance except upon approval by the board.

Section 17.

All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, or resolution, or part thereof, heretofore repealed.

Section 18. Effective Date.

This ordinance shall become effective thirty (30) days after adoption by the Curry County Commission.

PASSED, ADOPTED AND APPROVED on this 5 day of Nov., 2013.

BOARD OF COMMISSIONERS OF
CURRY COUNTY

Frank Blackburn, Chairman

APPROVED AS TO FORM:

Stephen E. Doorr
Date: 11/5/13

ATTEST:

Rosalie Riley, Clerk
Date: 11-5-13