

SANTA FE COUNTY, NEW MEXICO
RESOLUTION NO. 2006-40

ADOPTING THE SANTA FE COUNTY PUBLIC IMPROVEMENT DISTRICT POLICY AND APPLICATION PROCEDURES FOR THE EVALUATION AND APPROVAL OF APPLICATIONS FOR THE FORMATION OF PUBLIC IMPROVEMENT DISTRICTS IN SANTA FE COUNTY.

WHEREAS, the Public Improvement District Act, Sections 5-11-1 through 5-11-27, NMSA 1978, as amended (the "Act"), provides that owners of property proposed to be included in a public improvement district may submit a petition for the formation of the proposed district to the municipality or unincorporated area of a county in which the district is proposed to be located; and

WHEREAS, the Act provides that the owners of at least 25 percent of the real property by assessed valuation proposed to be included in a proposed public improvement district may petition the governing body of the municipality or county in which the district is proposed to be formed for the formation of a public improvement district; and

WHEREAS, the Act provides that, if the governing body fails to act on a petition for formation of a public improvement district within 90 days after receiving the petition, the petition shall be deemed granted; and

WHEREAS, pursuant to the Act, a public improvement district may be authorized to exercise broad powers in connection with the financing of public infrastructure and enhanced services, including the authority to impose district property taxes, special levies and other charges, to issue general obligation bonds, special levy bonds and revenue bonds to finance public infrastructure, to purchase, sell, dedicate and otherwise convey public infrastructure, and to enter into agreements necessary or convenient to the exercise of those powers; and

WHEREAS, pursuant to the Act, a public improvement district may be provided with such powers and may be subject to such limitations as a local governing body, such as the Board of County Commissioners of Santa Fe County, determines to be appropriate and necessary to carry out the specific purposes of the public improvement district, as formed by the local governing body; and

WHEREAS, the Board of County Commissioners intends to assure that the County will receive sufficient information in connection with a petition for formation of a public improvement district to enable the County to determine whether the interests of the owners of real property and residents within the proposed district and the citizens of the County will be served by the formation of a proposed public improvement district; and

SHERIFF CLERK RECORDED <03/17/2006>

WHEREAS, the Board of County Commissioners has promulgated the Santa Fe County Public Improvement District Policy and Application Procedures set forth below for the purposes of:

(i) providing for the protection of present and future property owners and residents by requiring a demonstration of tangible benefits to such persons through the formation and operation of the proposed public improvement district;

(ii) providing for the protection of prospective purchasers and investors in bonds issued by public improvement districts by requiring minimum value to lien standards, credit support, reserve funds, resale restrictions and other protective features; and

(iii) providing for the protection of prospective applicants and the County by:

(a) establishing the required information and contents of applications for the formation of public improvement districts, to enable applicants and the County to determine objectively when such applications are complete and ready to be evaluated by the County;

(b) establishing standards for the orderly, efficient and consistent evaluation of completed applications;

(c) conserving the resources, time and effort required of applicants and the County in the application process and the assembly of related information; and

(d) establishing a schedule of application fees intended to avoid net cost to the County in the evaluation of public improvement district applications and in the formation and operation of public improvement districts.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF SANTA FE COUNTY, NEW MEXICO:

Section 1. Adoption of Public Improvement District Policy and Application Guidelines. The Public Improvement District Policy and Application Guidelines attached to this Resolution as Exhibit "A" are hereby approved and adopted.

Section 2. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 3. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such

inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 4. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the County kept for that purpose, authenticated by the signatures of the Chairman and the Clerk of the County, and this Resolution shall be in full force and effect thereafter, in accordance with law.

PASSED, APPROVED AND ADOPTED THIS 14TH DAY OF MARCH, 2006.

COUNTY COMMISSION
SANTA FE COUNTY, NEW MEXICO

By [Signature]
Chairman

[SEAL]

ATTEST:

By Valerie Espinoza
Clerk



Approved as to form
Santa Fe County Attorney
By: [Signature]
Date: 3-14-06

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
BCC RESOLUTIONS
PAGES: 18

I Hereby Certify That This Instrument Was Filed for
Record On The 17TH Day Of March, A.D., 2006 at 12:59
And Was Duly Recorded as Instrument # **1424685**
Of The Records Of Santa Fe County



Deputy Marcella Palacios Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

BCC CLERK RECORDED <03/17/2006>

EXHIBIT A

**SANTA FE COUNTY, NEW MEXICO
PUBLIC IMPROVEMENT DISTRICT POLICY
AND APPLICATION PROCEDURES**

(SEE ATTACHED)

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SFC CLERK RECORDED -03/17/2006-

**SANTA FE COUNTY, NEW MEXICO
PUBLIC IMPROVEMENT DISTRICT POLICY
AND APPLICATION PROCEDURES**

The County of Santa Fe, New Mexico (the "County"), Public Improvement District Policy and Application Procedures (the "Policy") are intended to serve as guidelines for the purpose of considering and, as appropriate, approving the establishment of public improvement districts and the issuance of bonds of such districts pursuant to the Public Improvement District Act, Sections 5-11-1 through 5-11-27 NMSA 1978, as amended (the "Act"). The purpose of this Policy is to enable the Board of County Commissioners (the "BCC") to make a reasoned judgment concerning the terms and conditions upon which to approve the formation of a public improvement district (a "PID") and to provide procedures for the BCC to consider a PID Application ("Application"). The provisions of this Policy are in addition to the requirements of the Act, and are not intended to supersede the requirements of the Act that otherwise apply.

**ARTICLE 1
GENERAL**

Section 1.1 Basic Purposes. As provided in the Act, a PID may be used for the purpose of financing public infrastructure and/or providing enhanced services (as defined in the Act, services of a type or level that are not otherwise provided by the County) for the benefit of real property within the PID. The BCC may approve a single PID for the purpose of financing public infrastructure and providing enhanced services.

Section 1.2 Infrastructure Financing PID. An Infrastructure Financing PID should be utilized primarily in connection with the financing of infrastructure for development of residential projects, master planned communities or substantial commercial development and redevelopment. PIDs may also be utilized to provide an enhanced level of public infrastructure amenities and/or municipal services. To avoid inefficient use of the limited resources of the County, unless otherwise agreed by the BCC, a PID will not be approved to finance less than \$5,000,000 in infrastructure to serve land within the PID. The BCC approval of a PID shall be based on the demonstration by an applicant (the "Applicant"), to the reasonable satisfaction of the BCC, that the PID will provide benefit to the end-users of the PID-financed infrastructure or to the County which would not otherwise be available, which benefit may include, without limitation, additional amenities, services, increased quality of development or pricing benefits. Public improvements financed by a PID must conform to applicable County policies for development. Except as expressly approved by the BCC based upon its determination that County-owned utilities will not be adversely affected, "stand alone" utilities which compete directly or indirectly with County services shall not be financed through PIDs. Real property dedications and conveyances required by existing County

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policies for development, growth management and conservation shall remain in effect notwithstanding the establishment of a PID.

Section 1.3 Enhanced Services PID. An Enhanced Services PID may be approved by the BCC upon demonstration, to the satisfaction of the BCC, of the following: (i) the enhanced services are not provided by the County and are not anticipated to be provided within a reasonable period of time; (ii) the proposed plan for providing enhanced services through a PID is cost-effective for the present and future owners of land within the proposed PID and the County, taking into account both economic and legal factors; and (iii) the provision of enhanced services through the PID will not unreasonably compete or interfere with the provision of such services by other public entities with appropriate jurisdiction and authority to provide such services.

Section 1.4 Costs and Expenses; Reimbursement. Unless otherwise approved by the BCC, all costs and expenses incurred by the County in connection with (i) its review of an Application and (ii) the formation of a PID shall be paid by the Applicant through advance payments as provided in this Policy. Costs and expenses shall include the costs of services rendered by the PID Review Committee and services rendered by outside consultants who may be retained by the County including, but not limited to, bond counsel, financial advisers, engineers, appraisers, tax consultants and attorneys, at the rates normally charged by those consultants. If authorized by the PID, all or part of such costs may be reimbursed to the Applicant from a PID tax levy, PID assessments, PID revenues or PID bond proceeds, provided, that such reimbursement shall be in conformity with federal law, state law and this Policy. Except as otherwise directed or approved by the BCC, PIDs will construct or finance improvements on such terms and with such persons as the PID Board of Directors determines to be appropriate, in accordance with Section 5-11-10(D) of the Act as amended. Unless otherwise approved by the BCC, all costs of administration and operation of the PID and the operation and maintenance of public infrastructure in the PID which has not been dedicated to and accepted by the County, shall be the responsibility of the PID, the Applicant, applicable homeowners associations, or any combination of the foregoing.

Section 1.5 PID Boards of Directors; Delegated Authority. A PID will initially be governed by a five-member board of directors appointed by the BCC which shall be composed of two full-time employees of the County, two persons recommended by the Applicant with the approval of the BCC and a fifth member whom the Applicant may recommend or, in the absence of such recommendation, shall be selected by the BCC. The composition of the board of directors of a PID shall be subject to the final approval of the BCC, except as otherwise required by Section 5-11-9(C) of the Act. The BCC may, in accordance with law, delegate certain responsibilities of governance of a PID to public officials employed by the County. The day-to-day responsibilities of a PID will be performed by outside personnel pursuant to a development agreement pursuant to Section 5-11-10(A)(2) of the Act or other suitable agreement, or by the PID Review Committee. Each PID development agreement shall be in implementation of this Policy but may provide, at the discretion of the BCC or other authorized officer of the County delegated responsibility for executing the PID development agreement, for waiver of

specific provisions of this Policy. The membership of the governing body of a PID shall otherwise be governed by the Act.

Section 1.6 Self Supporting; No Impact on County. Unless otherwise approved by the BCC, a PID shall be self-supporting with regard to financing, operations and maintenance, and County funds will not be used for PID purposes. Notwithstanding anything contained in this Policy, neither the County's property, its full faith and credit nor its taxing power shall be pledged to the payment of any PID obligation or indebtedness. The amount and structure of debt of a PID should not have any direct negative material impact on the County's debt ratings with Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investor Services, Inc. or any other nationally recognized bond-rating agency service then rating the County's outstanding bonds.

Section 1.7 PID Development Agreement; Feasibility Reports. The amount, timing and form of financing to be used by a PID shall be determined by the PID board based upon a project feasibility report and established by agreement of the County, the PID and the Applicant through a PID development agreement pursuant to Section 5-11-10(A)(2) of the Act, the terms of which development agreement may be established by the resolution of the BCC approving the formation of the PID.

Section 1.8 Enhanced Services Agreement. A PID formed for the purpose, in whole or in part, of providing enhanced services, shall enter into an agreement with the County allocating the respective responsibilities of the County and the PID for the delivery of enhanced services within the PID (an "Enhanced Services Agreement"). An Enhanced Services Agreement may, without limitation, be included in the provisions of a PID development agreement or may be a joint powers agreement, memorandum of understanding or other form of intergovernmental agreement.

ARTICLE 2

PRE-APPLICATION MEETING WITH COUNTY STAFF

Section 2.1 PID Review Committee; Preliminary Tasks. The County PID Review Committee (the "Review Committee"), shall be composed of the County Manager, the County Finance Director, the County Public Works Director and the County Attorney, or the successors in function to those County officials, or the designees of such officials or successors. The Review Committee is authorized to obtain the input and recommendation of the County's bond counsel and financial advisor, and from other County personnel concerning the legal, financial, operational and administrative feasibility of the proposed PID financing and/or delivery of enhanced services and the sufficiency of the application and supporting documentation. Each PID Applicant shall meet with the Review Committee, which shall do the following:

(a) Make an initial determination of whether the proposed PID is consistent with the County's growth policies, land use and development policies, zoning and other applicable regulations;

(b) Make an initial determination of whether the Applicant's ownership interest, delegation of ownership rights or other legal control of the real property proposed to be included in the PID creates standing to submit an Application;

(c) Establish a proposed schedule for (i) the Applicant's submittal of an Application, (ii) PID Review Committee's review of the Application for completeness, (iii) County Commission meeting or meetings for its consideration of and action on the Application and (iv), addressing such other matters as the Review Committee determines should be addressed in connection with an application;

(d) Identify any related County approvals that will be required to permit the PID, if approved by the BCC, to construct (i) improvements proposed to be financed through the PID, and (ii) additional improvements contemplated in connection with the overall project of which the proposed PID is a part.

Section 2.2 Assistance and Recommendations to Applicants not Binding on Board of County Commissioners. The PID Review Committee shall assist Applicants in submitting completed Applications with detail and information required to enable meaningful consideration by the BCC. PID Review Committee assistance and recommendations to Applicants or to the BCC may be considered by but shall not be binding on the BCC.

ARTICLE 3 APPLICATION CONTENTS

An Application shall include the information and documentation described in this article, which shall apply to both Infrastructure Financing PIDs and Enhanced Services PIDs. The Review Committee shall have discretion to determine that an Application for a PID proposed solely to provide enhanced services need not include certain documentation related to infrastructure financing (e.g. description of infrastructure, construction schedule or operation and maintenance costs, market demand study, Applicant financial information), but may also require such documentation where conditions warrant (e.g in connection with an area in which new development is occurring or expected to occur).

Section 3.1 Legal Description; Qualified Electors' Consent. A description of the proposed PID, including a legal description of its boundaries, identity and addresses of all persons or entities with any interest in the property, and the names and addresses of any qualified electors located within the proposed boundaries. A current title report on the property and a certificate from the County Clerk shall be submitted as evidence of the names or persons with any interest in the land and qualified resident electors located within the proposed PID boundaries. The Application shall include evidence satisfactory to the County of the irrevocable consent of the number of property owners and qualified electors required by the Act for the creation of the PID.

Section 3.2 General Plan. A detailed description of the types of public infrastructure to be financed by the PID, including the estimated construction or

acquisition costs of the public infrastructure, projection of working capital needs, including adequate funds for repair and replacement of infrastructure, the annual operation and maintenance costs of the public infrastructure, the governmental approvals that will be required for both the public and private improvements to be constructed and operated, and a description of enhanced services and related taxes, special levies or other fees related to enhanced services, The description shall contain adequate information to establish financial parameters for the financing and/or operation of the PID as set forth in Article 5 of this Policy.

The BCC may condition its approval of an Application upon an independent verification, by the County's Financial Advisor, an engineering consultant or other expert satisfactory to the BCC, that the estimated or actual costs of the improvements to be financed by the PID are reasonable. The cost of such independent verification shall be paid by the Applicant.

Section 3.3 Preliminary Financing Plan and Schedule. For an infrastructure financing PID, an estimated project schedule for construction commencement and completion of (a) the public infrastructure and (b) the private development, which shall include a financing plan for the public infrastructure, including both capital and operating/maintenance costs for all undedicated improvements undertaken by the PID. The financing plan may include projections for a period covering (i) the expected term of existence of the PID, (ii) 30 years following the creation of a PID property tax or special levy, or (iii) the bond payment date of any Bonds issued by the PID, whichever shall be the longest. The financing plan should include (a) the estimated costs of improvements; (b) projected costs of maintenance after construction and (c) a preliminary description of the improvements to be owned and maintained by the County and the PID.

Section 3.4 Feasibility Study. A financial feasibility study prepared by an independent professional with appropriate expertise for the entire project (or such phases of the project that are expected to be constructed or acquired during the term of the development), covering both the public infrastructure and the private development. The feasibility study should include:

(a) An analysis of how the proposed debt financing, operation and maintenance costs, user charges and other PID costs will impact the ultimate end-users of the property; and

(b) Specifically projected property taxes, property tax rates, special levies, special assessments, fees, charges and other costs that would be imposed on property in the PID, and analysis of potential the impact that such taxes, levies and charges will have on the marketability of the private development; comparison of proposed tax rates and charges in adjoining and similar areas outside of the proposed district.

Section 3.5 Rate and Method of Apportionment of Special Levies. An Application proposing to impose special levies as a method of financing infrastructure of enhanced services shall include a proposed rate and method of apportionment of special

levies, which shall provide sufficient detail to enable the owner of each parcel within the proposed PID to determine the maximum annual special levy amount proposed to be imposed.

Section 3.6 Appraisal. To the extent applicable to a request for debt financing (e.g. in connection with Applications proposing special levy revenue bonds) the Applicant shall provide a current appraisal (the "MAI Appraisal") of the fair market value of the property within the proposed PID, including (i) the improvements to be financed by the PID and (ii) other improvements being constructed by the Applicant during the PID construction period, the completion of which is guaranteed by the Applicant. The MAI Appraisal shall be prepared by a person who is designated as a Member Appraisal Institute ("MAI") and a certified general real estate appraiser (an "MAI Appraiser"). The form and substance of the MAI Appraisal shall be acceptable to the County, in its discretion.

Section 3.7 Market Demand Study. If applicable, a market demand study for private development in the PID prepared or reviewed and concurred with by an independent consultant acceptable to the County. Such study shall include estimates of the revenue to be generated by the development and estimated market absorption of the development.

Section 3.8 Applicant Financial Information. If applicable, a description of the applicant's professional experience and evidence demonstrating its financial capacity to undertake the development associated with the financing and construction of public infrastructure and private development. Such information may be accompanied by audited, reviewed or at minimum, compiled financial statements for the most recent three years, and a description of past projects and disclosure of any material litigation.

Section 3.9 Draft Disclosure. An initial draft form of disclosure to prospective PID landowners, which shall be subject to County review and approval, to be filed and recorded with the County Clerk at the time of each sale of real property within the PID, describing the anticipated and maximum tax, special levy, assessment, charge, and any other financial obligation that is anticipated to be imposed on real property within the PID.

Section 3.10 Operating Plan. A draft operating plan for the PID describing the operation and maintenance of the infrastructure and all other services in the PID, the estimated costs of the same, and whether operation and maintenance is proposed to be provided by the PID or the County.

Section 3.11 Compliance Certificate. A certificate describing any zoning or other development approvals that must be obtained in order to construct the improvements proposed to be financed by the PID, as well as any approvals required for the overall development of the real property which is to be served by the proposed PID.

Section 3.12 Draft PID Development Agreement/Enhanced Services Agreement. A draft PID development Agreement, including, where applicable,

provisions for enhanced services. Where a PID is proposed solely for the purpose of providing enhanced services, the application shall include an Enhanced Services Agreement.

Section 3.13 Other Information. Such other information as the County may reasonably require after its initial review of the Application, including preliminary legal opinions, further information regarding the relationship of the plan to the County's development objectives, additional proof of financial capability, business references, term sheets for financing and financial commitment letters. Following the Application conference, the County shall, within 15 days, provide as complete as practicable a list of additional information items needed.

ARTICLE 4 APPLICATION AND APPROVAL PROCESS

Section 4.1 Application Submission. Ten copies of an Application for the formation of a PID and the appropriate Application fee amount, as described below (the "Application Fee") shall be submitted to the County Manager: Application for PID proposed to issue bonds (whether or not enhanced services are also proposed)-- \$40,000; Application for PID proposed to provide only enhanced services-- \$20,000. The appropriate Application Fee amount must accompany the submission of the Application copies.

Section 4.2 Application Fees. The Application Fee shall be utilized by the County for initial Application review and project feasibility analysis, including the payment of the County's financial and legal advisors, at their customary rates. \$20,000 of the Application Fee shall be non-refundable. The balance of the Application Fee shall be used by the County in connection with its review of the Application. If the Applicant withdraws its Application prior to the County's completion of its Application review, the County shall remit the unused portion, if any, of the Application Fee (but not the nonrefundable \$20,000 portion) to the Applicant. Upon the Applicant's request, the County will provide an accounting of expenditures of funds advanced in excess of \$20,000. Any unused portion of advances shall be refunded to the Applicant at such time as the County determines that all costs and expenses have been paid. The County and its financial and legal advisors shall use reasonable efforts to determine whether any features of a PID proposed in an Application appear not to be feasible, and to advise the Applicant early in the review process to avoid unnecessary additional costs of review.

Section 4.3 Post-Application Conference. After the Application Fee has been submitted, the County Manager will arrange a conference with the PID Review Committee for the purpose of reviewing the Application and determining whether the Application is complete.

If, following the Application conference or any other time during the Application process, the PID Review Committee requests additional information, the Applicant shall provide any and all supplemental information requested, in accordance with the provisions of Section 3.11 of this Policy.

Section 4.4 PID Review Committee Report. After analysis of an Application as supplemented, the PID Review Committee will prepare a report including recommendations relating to the PID, an analysis of the impact of the formation of the PID, and its effects on the County. The report may provide a recommended disposition of the Application and any additional requirements that are recommended in connection with the Applicant and/or the PID. Recommendations of the Review Committee are advisory and are not binding on the BCC.

If all costs billed to or incurred by the County have been paid by the Applicant by a date at least 14 days prior to the date of the meeting of the BCC at which the appropriate resolution(s) approving the Application is to be introduced, and if the Application meets the qualifications provided herein, the Application, along with any report and recommendations by the PID Review Committee, will be forwarded to the BCC, along with drafts of the appropriate implementing resolution(s).

Section 4.5 Preliminary Approval. An Applicant may request preliminary, non-binding approval of its PID Application by the BCC (a "Preliminary Approval").

(a) A request for Preliminary Approval will be considered following payment of the Initial Application Fee and information as follows:

- (i) A description of the proposed PID boundaries;
- (ii) A description of the improvements to be constructed by the Applicant;
- (iii) The estimated construction costs of the improvements and anticipated completion time;
- (iv) A description, by category, of improvements and related costs to be financed by the PID;
- (v) The estimated issuance amount of PID bonds;
- (vi) The total annual special levy amount (i.e. estimated aggregate annual debt service on bonds); and
- (vii) The maximum annual PID property tax or, in the case of a special levy, the allocation method and maximum special levy per dwelling unit (single family residences) or per acre (multi-family and commercial), and method by which the levy will be allocated from a bulk tract to finished lots.

(b) The PID Review Committee report will advise the BCC whether Preliminary Approval is recommended, not recommended, or that no recommendation is made.

Section 4.6 Additional Fees. An Applicant that has received Preliminary Approval may be required to make such additional advances as the PID Review

Committee determines are necessary to pay the costs of reviewing the Applicant's request for formal approval of the formation of the PID. However, an Applicant may be required to submit an additional Application Fee if, in the PID Review Committee's determination, the Application for formal approval of a PID departs substantially from the parameters set forth in the Application for Preliminary Approval.

Section 4.7 Formation Schedule; PID Development Agreement and/or Enhanced Services Agreement. The Applicant and the PID Review Committee shall coordinate a schedule of events for formation of the PID and shall negotiate a PID development agreement and/or Enhanced Services Agreement between the County and the Applicant to be entered into in connection with formation of the PID, incorporating the recommendations of the PID Review Committee PID Review Committee relating to such PID, and any other restrictions, provisions and agreements required by the County.

Section 4.8 Approval of PID Formation and PID Financing/Enhanced Services. The BCC may consider the granting of formal approval to the formation of the PID based on the terms of the PID Development Agreement and/or Enhanced Services Agreement, which may be approved prior to or concurrently with the approval of the formation of the PID. The BCC may include in its approval of the formation of the PID the issuance of one or more series of PID bonds, and/or the provision of specified enhanced services subject to the terms and conditions of the PID Development Agreement and/or Enhanced Services Agreement. The BCC's approval of PID formation and issuance of bonds shall be conditioned on the requirement that the PID shall utilize bond counsel retained by the County and underwriters and/or other consultants selected by or otherwise approved by the County based on experience, familiarity with the County and, in the case of underwriters, capital position. PID Development Agreements and Enhanced Services Agreements shall not be amended without the express written approval of the BCC.

ARTICLE 5 PID OPERATIONS AND DEBT FINANCING

Section 5.1 PID Administration Expense Fee. In addition to the amounts set forth in Article 4, upon formation of a PID the Applicant shall deposit with the PID a nonrefundable administrative expense fee in the amount of \$10,000. The administrative expense fee shall be applied by the PID to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation and maintenance of the PID or its public improvements. From time to time, upon depletion of the administrative expense fee, the PID may request, and the Applicant shall promptly deposit with the PID, additional amounts deemed by the PID to be reasonably necessary for the purposes contemplated in this Section 5.1. Nothing in this Section 5.1 shall preclude the reimbursement of such expenses from PID taxes, levies, charges or bond proceeds, as permitted by the Act.

Section 5.2 Administration, Operation and Maintenance Change. For the PID to be self-supporting for its administrative, operation and maintenance expenses, and to finance services in addition to those provided by the County, the BCC may condition its

approval of a PID on the PID's imposition of an ad valorem property tax not to exceed \$3.00 per \$1,000, not as tax or charge of the County, but in accordance with the provisions of Section 5-11-23 of the Act, as amended, upon the PID taxable property, for the administration, operation and maintenance of infrastructure which is not owned or otherwise maintained by the County; provided that, to the extent permitted by law the PID shall be entitled to charge such rates, fees and charges to property owners as are necessary to address any shortfall in the expense required to operate and maintain PID improvements, and that such rates, fees and charges shall be established in the PID Development Agreement. The BCC will evaluate whether a proposed operating levy or special levy is reasonably necessary to carry out the purposes of the proposed PID and will serve the interests of the County or the affected property owners or residents within the PID. Nothing in this section shall be construed as limiting the authority of a PID to impose a special levy or other PID charges for administration, operation and maintenance expenses to the extent permitted under the Act and determined to be feasible and beneficial by the BCC.

Section 5.3 General Obligation Bonds. General Obligation Bonds of the PID will be payable from an ad valorem tax, unlimited as to rate or amount, on taxable property located within the PID designated by the general plan for the PID as subject to the PID property tax, as required by the Act.

(a) In a feasibility report, an Application for general obligation bonds shall describe the following:

(i) The current direct and overlapping tax and assessment burden on the taxable property that is proposed to be taxed and the fair market value and assessed valuation of the taxable property as shown on the most recent assessment roll;

(ii) The projected amount and timing of PID general obligation bonds to be used;

(iii) The projected market absorption of the development within the PID;

(iv) The effect of the PID bond issuance on PID tax rates, calculated as of the beginning, midway through and at the end of the market absorption period or based on the phasing of the project to be financed, as applicable;

(v) An estimate of the Applicant's construction costs associated with the public improvements, in excess of the estimated PID funded costs of the project;

(vi) The necessity of the Applicant and the PID entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the Applicant;

(b) The Application shall describe the projected tax rate for debt service, annual PID administration and operations, and enhanced services, if applicable,

set forth in the feasibility report shall be established in the PID Development Agreement, and may include provisions which (i) limit the maximum tax rate that will be imposed by the PID for the payment of debt service on PID bonds, (ii) require a contribution agreement or other suitable arrangement with the Applicant for the payment of debt service in the event of a shortfall in revenue from the PID tax revenues projected in connection with, and at the time of, PID formation, or (iii) establish, to the County's satisfaction, other protection for homeowners or other end-users of the property located in the PID against excessive tax rates if PID indebtedness exceeds PID tax revenues available to pay debt service in any particular year.

Section 5.4. Special Levy Bonds. Special Levy Bond shall be secured by a first lien (co-equal to the lien for general taxes and prior special assessments) on the property benefited in the manner contemplated by Section 5-11-20(G) NMSA 1978.

(a) Applicants for special levy bonds shall describe in each project feasibility report the following:

(i) The current direct and overlapping tax, assessment burdens and special levy on real property to comprise the PID and the full cash value and assessed valuation of that property as shown on the most recent assessment roll.

(ii) The projected amount and timing of the PID special levy bonds to be issued.

(iii) The projected market absorption of development on the PID.

(iv) The projected special levy burden to be placed on the assessed parcels and the anticipated method of assessment.

(v) An estimate of the Applicant's construction cost associated with the public improvements in excess of the estimated PID funded costs of the project.

(vi) The necessity of the Applicant and the PID entering into a contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the Applicant.

(b) The value to lien ratio, after the issuance of the bonds and construction of the improvements to be financed by the PID, will be at least three to one, based on a MAI appraisal;

(c) At the time the PID is formed, the maximum allowable rate of special levy for residential property shall not cause the total tax and assessment obligation for such property, including projected ad valorem taxes, special levies and special assessments, to exceed 1.99% of the anticipated market value of residential property as determined by an MAI Appraisal updated to the date of the Application. The 1.99% shall include all known and authorized, but unissued debt and any other anticipated fees or assessments which may be imposed by the County or special district

on a property within the PID, i.e., special assessment districts, including the proposed maximum special levy, except service charges for utilities and refuse.

Section 5.5 Revenue Bonds. Revenue Bonds shall be payable from a PID revenue source authorized by the Act.

(a) An Applicant for revenue bonds shall describe in each project feasibility report, the following:

(i) The current fee structure for comparable services or otherwise incurred by persons who would be responsible for paying the proposed rates, fees, and charges.

(ii) The revenue source from which bonds will be payable. The County reserves the right to require the Applicant to produce such independently prepared feasibility studies or reports as it deems necessary to confirm the amount and availability of revenues.

(iii) The projected market absorption of development within the PID.

(iv) The projected amount and timing of PID revenue bonds to be issued.

(v) The financial impact of the proposed rates, fees, and charges on prospective residents or other users of such rates, fees and charges.

(vi) An estimate of the Applicant's construction cost associated with the public improvements in excess of the estimated PID funded costs of the project.

(vii) The necessity of the Applicant and the PID entering into an appropriate contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the Applicant.

Section 5.6 Suitability. The County intends that the PID only have the power to sell the proposed bonds to suitable investors. If the proposed bond issue is not rated (either on its own merits or by the use of appropriate credit enhancement) in one of the three highest rating categories used by Standard & Poor's Corporation, Moody's Investors Services, Inc., Fitch Investors Services, Inc. or any other nationally recognized bond-rating agency service, then the bonds shall have minimum denominations of \$100,000 and be available for purchase and restricted with respect to resale to "Qualified Institutional Buyers" (as such term is defined in Rule 144A of the Securities and Exchange Commission) or to "accredited investors" (as such term is defined in Rule 501 of Regulation D of the Rules Governing the Limited Offering and Sale Securities without Registration under the Securities Act of 1933). It is the intention of the County to have investor suitability achieved through the rating requirements set forth in the preceding sentence or the establishment of large minimum denominations (e.g. not less than \$100,000) and, if the County determines it is appropriate, covenants limiting secondary

market sales of PID bonds through registered broker-dealers. Notwithstanding the restrictions pertaining to public sales and private placements of bonds set forth in this Article 5, the restrictions may be modified or relaxed if other financing structures or features are presented which, in the sole discretion of the BCC, provide other means to address investor suitability concerns. The minimum denomination requirements set forth above for PID bonds which are initially issued without rating shall not continue to apply if the PID subsequently obtains a rating in one of the three highest rating categories as provided in this Section.

Section 5.7 Contribution. The BCC may condition approval of PID formation on additional financing requirements, including, without limitation, the deposit of cash or a letter of credit (or similar credit facility) as security for completion of the infrastructure to be provided by the Applicant apart from PID infrastructure.

Section 5.8 Debt Service Reserve Funds. If allowed by law (including any applicable federal laws relating to the tax exempt status of the bonds), all bond issues may include a debt service reserve fund in an amount acceptable to the PID Board.

Section 5.9 Environment Site Assessments. Unless otherwise provided to the County, the PID and the County will require an independent environmental report or assessment of any real property which will be dedicated to or otherwise owned, leased or operated by the County or the PID and a proposed form or indemnity agreement with respect to all environmental law liability.

Section 5.10 Refinancing and Refunding Bonds. Refinancings and refundings of bonds issued on behalf of a PID will be considered utilizing the same criteria set forth in Article 5 of this Policy and shall be subject to the review and approval of the BCC or its designee. Refinancings and refundings will be expected to either (i) generate interest rate or net present value savings; (ii) restructure payment of principal, (iii) reimburse the Applicant for actual costs expended for public improvements contemplated to be part of the proposed Project, or (iv) eliminate burdensome covenants.

Section 5.11 Cost of Change. An Applicant shall be responsible for all additional costs and expenses incurred in any special levy or property tax modifications resulting from changes to the development not anticipated in the Application.

ARTICLE 6
MISCELLANEOUS

Section 6.1 Discretion and Waiver. Based upon the recommendations of the PID Review Committee and/or financing and legal advisors retained by the County, the BCC may approve PID Applications which do not meet the foregoing criteria if the BCC, in its discretion, determines that the particular features of the proposed PID, the interests of future owners of property within the PID, the likelihood that the PID's projects and purposes will be successfully completed, and mechanisms protecting against default on bonds all warrant that the foregoing criteria need not be applied. In making that determination, the BCC may consider an opinion of an underwriter with a reputation satisfactory to the BCC, that the particular features of the PID, the proposed projects and the bonds proposed to be issued can be successfully marketed and that the plan of finance is feasible. Nothing in this Section 6.1 or in this Policy shall be construed as permitting a waiver of any other County ordinance, resolution, policy or other requirement existing apart from this Policy

Section 6.2 Indemnity. The Applicant (or such other third party acceptable to the County and the PID), shall indemnify the County and the PID and their agents and employees and shall hold the County and the PID and their agents, officers and employees harmless for, from and against any and all liabilities, claims, costs and expenses, including attorneys' fees, arising from or related to the formation, operation, administration of the PID, the offer and sale of PID bonds, the levying by the PID of any tax, assessment, special levy or charge and the construction, operation and maintenance of public infrastructure financed or owned by the PID, or the provision of enhanced services by the PID.

Section 6.3 Amendment. All amendments to this Policy shall have a prospective effect only and shall not in any way effect or otherwise modify the approval of a preexisting PID.