

SANTA FE COUNTY

RESOLUTION NO. 2013-86

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

WHEREAS, the County Improvement District Act, Sections 4-55A-1 through 4-55A-43, NMSA 1978 (the "Act"), provides a mechanism for funding the construction, acquisition, repair or maintenance of improvements through the imposition of an assessment on property owners whose properties are benefitted by the improvements;

WHEREAS, the Act provides that the owners of at least 66.67 percent of the real property by assessed valuation proposed to be included in a county improvement district may petition the governing body of a county in which the district would be formed for the formation of a county improvement district;

WHEREAS, pursuant to the Act, a county improvement district may be authorized to exercise broad powers in connection with the financing of public infrastructure, 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;

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

WHEREAS, the BCC recognizes the need to establish policies and procedures governing the petition method creation of county improvement districts within the County 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 affected property owners through the formation and operation of the proposed county improvement district;

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(ii) providing for the protection of prospective purchasers and investors in bonds issued by county 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 county 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 county improvement district applications and in the formation and operation of county improvement districts;

WHEREAS, Resolution 2006-40, approved on March 14, 2006, establishes a policy for the formation and implementation of Public Improvement Districts, another type of special assessment district available to the County, enabled by the Public Improvement District Act, Sections 5-11-1 through 5-1127, NMSA 1978; and

WHEREAS, the BCC desires to have, in addition to the Public Improvement District, another financial tool for providing public infrastructure to the residents of Santa Fe County.

NOW THEREFORE, be it resolved by the Board of County Commissioners of Santa Fe County as follows:

1. The Petition Method County Improvement District Policy and Application Guidelines attached to this Resolution as Exhibit "A" are hereby approved and adopted.
2. 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.
3. All 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 resolution or ordinance, or part thereof, heretofore repealed.

APPROVED, ADOPTED AND PASSED this 10th day of September 2013.

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BOARD OF COUNTY COMMISSIONERS

Kathy Holian
Kathy Holian, Chairman

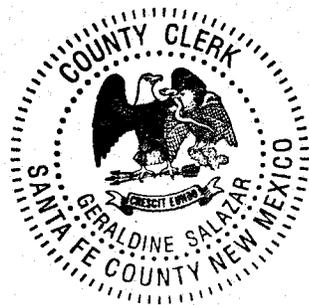
Attest:

Geraldine Salazar
Geraldine Salazar, County Clerk 9/10/2013



Approved as to Form:

Stephen C. Ross
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
BCC RESOLUTIONS
PAGES: 13
I Hereby Certify That This Instrument Was Filed for
Record On The 11TH Day Of September, 2013 at 03:17:11 PM
And Was Duly Recorded as Instrument # 1717780
Of The Records Of Santa Fe County
Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy Maxella [Signature] County Clerk, Santa Fe, NM

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EXHIBIT A.
**PETITION METHOD COUNTY IMPROVEMENT DISTRICT POLICY AND
APPLICATION PROCEDURES**

The County of Santa Fe, New Mexico (the "County"), Petition Method County Improvement District Policy and Application Procedures (the "Policy") is intended to serve as a guideline for the purpose of considering and, as appropriate, approving the establishment of county improvement districts requested by the petition method, and financing of such districts pursuant to the County Improvement District Act, Sections 4-55A-1 through 4-55A-43, 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 county improvement district (a "CID") and to provide procedures for the BCC to consider a CID Petition Method 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. A CID may be used in order to construct, acquire, repair or maintain in one or more locations public infrastructure or other capital improvements, including land served by any project and any right of way, easement, or privilege appurtenant or related thereto for the benefit of real property within the CID if the BCC determines that it is necessary for the public safety, health or welfare.

Section 1.2 CID. A CID should be utilized primarily in connection with the financing of public infrastructure to bring the level of service in existing communities to current County standards. The range of projects identified in Section 4-55A-4 and 4.1 of the Act are legitimate types of projects for a CID. The BCC approval of a CID shall be based on the demonstration by the petitioners (the "Applicant"), to the reasonable satisfaction of the BCC, that the CID will provide benefit to the end-users of the CID-financed public 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 CID 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 CIDs. Real property dedications and conveyances required by existing County policies for development, growth management and conservation shall remain in effect notwithstanding the establishment of a CID.

Section 1.3 Costs and Expenses; Reimbursement. Unless otherwise approved by the BCC or elsewhere specified in this Policy, all costs and expenses incurred by the County in connection with (i) its review of an Application, (ii) acquisition of professional services to support the

application review and preliminary hearing, and (iii) the formation of a CID shall ultimately be borne by the Applicant as provided in this Policy. Costs and expenses shall include the costs of services rendered by the CID 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. Unless otherwise specified by the BCC, if the CID is created, all such costs shall be included in the final amount of the cost of the improvements. Title to all improvements provided by the CID shall be vested in the County.

Section 1.4 Self-Supporting; Financing; No Impact on County. Unless otherwise approved by the BCC, the first resort for CID financing shall be County capital reserves which shall be reimbursed over time by the assessments imposed upon each tract or parcel of benefitting land. The amount and structure of any debt of a CID 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. The amount, timing, and form of financing to be used by a CID shall be determined by the BCC following receipt of a recommendation regarding same from the Review Committee described in Article 2.

ARTICLE 2 APPLICATION AND APPROVAL PROCESS

Section 2.1 Petition; CID Review Committee. Whenever the owners of sixty-six and two-thirds percent or more of the total assessed valuation of the property which is proposed for inclusion in a CID exclusive of any land owned by the United States or the state of New Mexico, petition the BCC in writing to create an improvement district and construct the improvement described in the petition in accordance with Section 4-55A-10(A) of the Act, the BCC may reject the petition or convene by resolution the County CID Review Committee (the "Review Committee"), which 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 input and recommendations from other County personnel concerning the legal, financial, operational, and administrative feasibility of the proposed CID financing and the sufficiency of the application and supporting documentation, and otherwise to procure any professional services necessary to provide information for review of the application and to be provided at the preliminary hearing as required by Section 4-55A-10(C) of the Act. The petition shall be accompanied by a Preliminary Application, and shall be initially submitted to the County Public Works Department.

Section 2.2 Preliminary Application. Together with the petition, the Applicant shall submit a Preliminary Application, which shall contain:

(i) A description of the CID including a 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 CID boundaries;

(ii) A general description of the improvements;

(iii) The estimated construction costs of the improvements and anticipated completion time; and

(iv) Identification of the spokesperson or spokespeople for the Applicant.

Section 2.3 Report by Public Works Department. Upon receipt of the petition and the complete preliminary application, the Director of the Public Works Department shall prepare a report for submission to the BCC requesting a determination as to whether to form the Review Committee and move the application and petition forward or reject same. The report shall include a discussion of the contents of the petition, preliminary application and the estimated costs which the County would incur in evaluating the proposed CID.

Section 2.4 If the BCC elects to form the Review Committee, that Committee shall be convened in accordance with Section 2.1 above. The Review Committee shall evaluate the petition and preliminary application and shall meet with the CID Applicant to do the following:

(a) Determine whether the petition and preliminary application is complete, valid, and in conformance with Section 4-55A-10A of the Act.

(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 CID creates standing to submit an Application;

(c) Make an initial determination of whether the proposed CID is consistent with the County's growth policies, land use and development policies, zoning, and other applicable plans, policies, and regulations and is contained on or could be proposed for inclusion on the County's Capital Improvement Plan;

(d) Establish a proposed schedule for (i) the Applicant's resubmittal of the complete and valid petition and preliminary application, if necessary; (ii) preparation and compilation of the Final Application; (iii) Review Committee's compilation of its report; (iv) County Commission meetings and hearings necessary for the consideration of and action on the Application; and (v), addressing such other matters as the Review Committee determines should be addressed in connection with an application;

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

Section 2.5 Final Application. Applicant shall submit a Final Application for consideration by the BCC at the preliminary hearing, which the BCC shall consider in conjunction with the recommendations of the Review Committee. The Final Application shall contain:

- a) Preliminary Application;
- b) Detailed description of the improvements;
- c) Detailed estimate of the cost of the improvements;
- d) Detailed description of costs incurred by the Review Committee;
- e) Description of each property to be assessed or against which an improvement district property tax is to be imposed;
- f) the estimated amount of the assessment against each tract or parcel of land;
- g) Estimated benefit to each parcel;
- h) CID formation and execution schedule;
- i) Financing and cash flow plan;
- j) Such other information as required to be presented at the preliminary hearing or requested by the BCC.

Section 2.6 Assistance and Recommendations to Applicants not Binding on BCC. The Review Committee shall assist Applicants in submitting completed Applications with sufficient detail and information required to enable meaningful consideration of the Final Application by the BCC. Review Committee assistance and recommendations to Applicants or to the BCC may be considered by but shall not be binding on the BCC.

Section 2.7 Report by Review Committee. Upon completion of the tasks outlined in paragraph 2.5 above, the Review Committee shall prepare a report for submission to the BCC describing the outcome of the tasks set forth in paragraph 2.5 above. The report shall include a discussion of the contents of the petition, preliminary application and the final application, a discussion of any proposed schedules, and a recommendation regarding the final application.

Section 2.8. Creation of CID. Upon receipt of the Review Committee recommendation, the BCC may, at a regularly scheduled meeting, create or reject the CID if no assessments or property taxes will be imposed on any property owner, or if assessments or property taxes are contemplated, elect to move forward with a preliminary hearing on the creation of the CID. A decision to create the CID without a preliminary hearing shall include:

- a. the estimated cost of the proposed improvement;

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- b. the proposed boundary of the improvement district;
- c. the route of the proposed improvement by streets or roads or location of the proposed improvements
- d. A description of the improvements to be constructed by the County.

Section 2.9 Preliminary Hearing Notice. If the BCC elects to move forward with a preliminary hearing on the question of creating a CID, the BCC shall by resolution cause to be held a preliminary hearing on the proposed improvement district and give notice of the preliminary hearing in accordance with Section 4-55A-11(B) of the Act. The notice of the preliminary hearing shall contain:

- (a) the time and place when the BCC will hold a preliminary hearing on the proposed improvement;
- (b) the estimated cost of the improvement;
- (c) the proposed boundary of the improvement district;
- (d) the route of the proposed improvement by streets or roads or location of the proposed improvements;
- (e) a description of each parcel or property to be assessed;
- (f) estimated benefit to each parcel;
- (g) the estimated amount of the assesment against each tract or parcel of land;
- (h) the amount of the cost to be assumed by the county, if any; and
- (i) description of the proposed finance mechanism.

Section 2.10 Preliminary Hearing. The preliminary hearing shall be held at a normally scheduled BCC meeting. The Final Application and the report of the Review Committee shall be presented at the preliminary hearing.

- (a) Further, at the preliminary hearing, any owner of a tract or parcel of land to be assessed may contest:
 - (1) the proposed assessment;
 - (2) the regularity of the proceedings relating to the improvement;
 - (3) the benefits of the improvement; or

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(4) any other matter relating to the improvement district.

(b) At the hearing the BCC may:

- (1) correct any mistake or irregularity in any proceeding relating to the improvement;
- (2) correct an assessment to be made against any tract or parcel of land;
- (3) in case of any invalidity, reassess the cost of the improvement against a benefiting tract or parcel of land;
- (4) recess the hearing from time to time.

Section 2.11 Decision of BCC. Immediately following the completion of the Preliminary Hearing, the BCC shall act on the Final Application. If the BCC acts to create a CID, that decision shall be made by resolution which shall include a determination of:

- a. the estimated cost of the improvement;
- b. the boundary of the improvement district;
- c. the route of the improvement by streets or roads or location of the proposed improvements;
- d. a description of each parcel or tract to be assessed;
- e. the estimated benefit to each parcel;
- f. the estimated amount of the assessment against each tract or parcel of land;
- g. the amount of the cost to be assumed by the county, if any; and
- h. description of the finance mechanism;
- i. how the assessment will be allocated against each tract or parcel of land.

Section 2.12. Payment of Costs. If, upon review of the Review Committee's recommendation and upon the evidence presented at the Preliminary Hearing, the BCC decides not to create the CID, the Final Application is denied. Costs associated with application review and the preliminary hearing may be borne by the Applicant or the County as determined by the BCC at the time the Review Committee is formed. If the BCC approves the Final Application, any costs associated with the application review and the preliminary hearing may be included in the overall costs of the improvements.

Section 2.13. Appeal of BCC Decision to Create CID Following Preliminary Hearing. Within thirty days after the hearing, any owner of a tract or parcel of land to be assessed may commence an action in district court seeking an account of any error or invalidity of the proceedings relating

to the improvement district to set aside or correct the assessment or any proceedings relating to the improvement district in accordance with Section 4-55A-12(D) of the Act.

Section 2.14 Following the approval of the Final Application and the decision to create the CID, the BCC shall, in accordance with 4-55A-14 and 15 of the Act, cause the Review Committee to procure the engineering and construction of the improvements through contract, following the normal County procurement process. However, following advertisement for bids for the construction of the improvements, and using the same specifications upon which the bids were requested, if the County can guarantee to construct the improvements for an amount less than the lowest bid amount, or if the County receives no bids, the County may elect to construct the improvements.

Section 2.15 Determination of Amount of Assessment and Creation of Proposed Assessment Roll Following Preliminary Hearing. Pursuant to Section 4-55A-12 of the Act, once the improvement contract is awarded and the actual cost of constructing the improvements is known, the BCC shall determine the actual amount of the assessment against each tract or parcel of land. The BCC shall not assess the tract or parcel of land an amount greater than the actual benefit to the tract or parcel of land. If the actual cost exceeds the benefit based on the contract awarded, the BCC may elect to dissolve the CID and terminate the contract, or contribute to the cost of construction in order to ensure that the assessment does not exceed the actual benefit to the tract or parcel of land by reason of the enhanced value of the tract or parcel. The BCC may determine what if any portion of the cost of improvements will be borne by the County. The BCC may allow a fair price, based on its current value, as a setoff against any assessment against a tract or parcel of land if the owner has improved the tract or parcel of land in such a manner that the improvement may be made part of the proposed improvement. Once the actual amount of assessment is determined, the BCC shall work with its engineer and shall prepare and cause to be filed in the office of the county clerk an assessment roll containing, among other things:

- (a) the name of the last known owner of the tract or parcel of land to be assessed, or if his name is unknown, state "unknown";
- (b) a description of the tract or parcel of land to be assessed; and
- (c) the amount of the assessment against each tract or parcel of land.

Section 2.16 Notice of Hearing and Hearing on Assessment Roll. After the filing of the assessment roll, the BCC shall, by resolution, set a time and place for the assessment hearing at which any property owner identified on the assessment roll may object to the amount of the assessment. Mailing of the notice of hearing shall be accomplished by the County Clerk in accordance with Section 4-55A-17(D) of the Act. All other aspects of the statutory notice requirements shall be accomplished by the County Manager or the Manager's designee.

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Section 2.17 Objections to Assessment Roll. At the hearing on the Assessment Roll, the BCC shall hear all objections which have been filed not later than three days before the date of the hearing on the assessment roll and in accordance with Section 4-55A-18 of the Act. Objections shall be limited to the regularity, validity and correctness of the proceedings, the assessment roll, each assessment contained on the assessment roll, or the amount of the assessment levied against each tract or parcel of land. The BCC may recess the hearing from time to time and, by resolution, revise, correct, confirm or set aside any assessment and order another assessment be made de novo. Thereafter, the BCC by ordinance shall, by reference to the assessment roll as so modified, if modified, and as confirmed by the resolution, levy the assessments contained in the assessment roll. The assessments may be levied in stages if preliminary liens are established pursuant to Section 4-55A-7 of the Act. The decision, resolution and ordinance of the BCC shall be:

- (a) a final determination of the regularity, validity and correctness of:
 - (i) the proceedings;
 - (ii) the assessment roll;
 - (iii) each assessment contained on the assessment roll; and
 - (iv) the amount of the assessment levied against each tract or parcel of land; and
- (b) conclusive upon the owners of the tract or parcel of land assessed.

Section 2.18 Adoption of an Ordinance Establishing the Assessment. The ordinance adopted by the BCC shall:

- (a) Establish the time and terms of paying the assessment or installments on the assessment
- (b) Set any rate or rates of interest upon deferred payments of the assessment
- (c) Fix penalties to be charged for delinquent payment of an assessment.
- (d) Establish procedures and standards for an adjustment of assessment in order to allow transfer of a parcel free of an assessment lien, accommodate subdivision of an assessed parcel or accommodate property line corrections and adjustments without changing the original payment schedule, the priority or original amount of the assessment.
- (e) Provide for the payment of any assessments levied pursuant to the Act from other funds received by any owner of a tract or parcel in an improvement district in a location also intended by the BCC for stimulation of manufacturing, industrial, commercial or business development pursuant to Section 4-55A-4.1 of the Act.

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Section 2.19 Lien for Unpaid Assessment. Within sixty days after the publication or posting of the ordinance ratifying an assessment roll and levying the assessments, the county clerk shall prepare, sign, attest and record in the office of the county clerk a claim of lien for any unpaid amount due and assessed against a tract or parcel of land.

Section 2.20 Action in District Court Pertaining to the Assessment Roll. Within fifteen days after the publication of the title and general summary of the ordinance establishing the assessment or posting of the ordinance, any owner who has filed an objection as provided above may commence an action in district court to correct or set aside the determination of the board.

Section 2.21 Time for Commencement of Construction. Construction shall commence within sixty days after the payment of the first installment of the assessment and shall be diligently prosecuted so that the construction is completed within one year from the date of commencement.

ARTICLE 3 GENERAL OBLIGATION BOND FINANCING

If following the Preliminary Hearing the BCC determines that it is in the best interest of the County to finance the CID improvements by the imposition of an improvement district property tax and the issuance of improvement district general obligation bonds, bond or assignable certificates, the BCC shall enact an ordinance in compliance with Section 4-55A-12.1 of the Act. The principal amount of improvement district general obligations bonds, bonds or assignable certificates issued by the BCC shall not exceed twenty-five percent of the final estimated value of properties in the improvement district after completion of the projects to be financed with the improvement district general obligation bonds, bonds or assignable certificates and after development of the properties in the improvement district in accordance with their planned use.

ARTICLE 4 MISCELLANEOUS

Section 4.1 Assessments Held by County Treasurer. All assessment money collected shall be held by the county treasurer in a special account as a separate fund and used only for constructing improvements for the CID, reimbursement of the county for any work performed by the county in constructing the improvement and for administrative costs associated with the improvement district.

Section 4.2 Discretion and Waiver. Based upon the recommendations of the CID Review Committee and/or financing and legal advisors retained by the County, the BCC may approve CID Applications which do not strictly meet these policy criteria if the BCC, in its discretion, determines that the particular features of the proposed CID, the interests of future owners of property within the CID, the likelihood that the CID's projects and purposes will be successfully completed, and mechanisms protecting against default on financing, that the foregoing criteria

need not be applied. Nothing in this Policy shall be construed as permitting a waiver of any State or Federal law or other County ordinance, resolution, or policy existing apart from this Policy.

Section 4.3 Indemnity. The Applicant (or such other third party acceptable to the County and the CID), shall indemnify the County and the CID and their agents and employees and shall hold the County and the CID 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 CID, the levying by the CID of any assessment, special levy or charge and the construction, operation and maintenance of public infrastructure financed through the CID.

Section 4.4 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 CID.

Section 4.5 Incorporation of NMSA 1978, Sections 4-55A-1 et seq. To the extent this policy fails to address matters pertaining to a CID other than provisions governing bond funding for CIDs, the provisions of the Act shall govern.

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