

ORDINANCE NO. 98-1

AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE AND ESCROW AGREEMENT, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE COUNTY TO PAY A PRINCIPAL AMOUNT OF \$ 84,675.00 FOR THE PURPOSE OF FINANCING THE PURCHASE AND INSTALLATION OF CERTAIN ENERGY CONSERVATION MEASURES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE LEASE SOLELY FROM PLEDGED GROSS RECEIPTS TAX REVENUES OF THE COUNTY; APPROVING THE FORM AND TERMS OF THE AGREEMENT AND OTHER DETAILS CONCERNING THE LEASE; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LEASE.

WHEREAS, the County of Torrance (the "County") is authorized under the laws of the State of New Mexico, and particularly Sections 6-23-1 to 6-23-10 NMSA 1978 (the "Act"), to execute and deliver obligations in order to finance the cost of the purchase and installation of energy conservation measures on public buildings pursuant to a guaranteed energy savings contract in accordance with the Act; and

WHEREAS, the County desires to enter into a Guaranteed Energy Savings Contract with Honeywell to purchase and install certain energy conservation measures (the "Equipment"); and

WHEREAS, the Lease, together with the interest thereon, shall be a special limited obligation of the County, payable solely as provided in the Lease and shall not constitute a general obligation of the County, or a debt or pledge of the faith and credit of the County or the State of New Mexico; and

WHEREAS, there has been placed on file with the County Clerk prior to this meeting (1) the proposed form of Lease-Purchase Agreement dated 3/25/98 (the "Lease"), between the County and LaSalle National Bank (the "Lessor"); and (2) the proposed form of Escrow Agreement dated 3/25/98 (The "Escrow") between the County, the Lessor and LaSalle National Bank, as Escrow Agent.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSION OF THE COUNTY OF TORRANCE, AS FOLLOWS:

Section 1. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the County Commissioners and the officers, employees and agents of the County, directed toward the acquisition of the Equipment and the execution and delivery of the Lease and Escrow be, and the same hereby is, ratified, approved and confirmed.

Section 2. Findings. The County Commission hereby declares that it has considered all relevant information and data and hereby makes the following findings:

Ordinance 98-1 Continued

- A. The Equipment is needed to meet the needs of the County and its inhabitants.
- B. Moneys available for the County from all sources other than the proceeds to be derived from the execution and delivery of the Lease are not sufficient to defray the costs of the Equipment.
- C. The Pledged Gross Receipts Tax Revenues may be lawfully pledged to secure the payment of the obligation of the County evidenced by the Lease.
- D. It is economically feasible to defray, in part, the cost of the Equipment with the proceeds to be derived from the execution and delivery of the Lease.
- E. The execution and delivery of the Lease pursuant to the Act, to provide funds for the financing of the Equipment is necessary and in the interest of the public health, safety, morals and welfare of the residents of the County.
- F. The net effective interest rate on the Lease will be established in a resolution to be subsequently adopted by the County Commission prior to execution and delivery of the Lease (the "Resolution") but will be less than 12% as required by law.

Section 3. Lease and Escrow - Authorization and Detail.

- A. This Ordinance has been adopted by the affirmative vote of at least three-fourths of all the members of the County Commission. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the County and acquiring the Equipment, it is hereby declared necessary that the County, pursuant to the Act, execute and deliver the Lease and Escrow evidencing a special limited obligation of the County to pay a principal amount of \$24,675.00. And the execution, sale and delivery of the Lease and Escrow are hereby authorized. The Equipment will be owned by the County and the County will use the Equipment for its governmental purposes.
- B. The Lease and Escrow shall be delivered through negotiations to Lessor.
- C. The Lease and Escrow shall be in substantially the form of the Lease and Escrow presented at the meeting of the County Commission at which this Ordinance was adopted. The rate of interest to be paid by the County pursuant to the Lease, to be a net effective interest rate not exceeding 12%, will be finally determined in the Resolution.

Section 4. Approval of Lease and Escrow. The Form of the Lease and Escrow as presented at the meeting of the County Commission at which this Ordinance was adopted is

Ordinance 98-1 Continued

hereby approved. The Chairman of the County Commission is hereby authorized to execute, acknowledge and deliver the Lease and Escrow with such changes, insertions and omissions as may be approved by the Chairman of the County Commission, and the County Clerk is hereby authorized to affix the seal of the County of the Lease and Escrow and attest the same. The execution of the Lease and Escrow by the Chairman of the County Commission shall be conclusive evidence of such approval.

Section 5. Special Limited Obligation. The Lease shall be secured by the pledge of the Pledged Receipts Tax Revenues as set forth in the Lease and shall be payable solely from the Pledged Gross Receipts Tax Revenues. The Lease, together with interest thereon and other obligations of the County thereunder, shall be special limited obligations of the County, payable solely as provided in this Ordinance and the Agreement shall not constitute a general obligation of the County, or a debt or pledge of the faith and credit of the county or the State of New Mexico and the holder of the Lease may not look to any general or other fund of the County for payment of the obligations. Nothing contained in this Ordinance nor in the Lease or Escrow, no any other instrument, shall be construed as obligating the County (except with respect to the application of the Pledged Gross Receipts Tax Revenues), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Lease, the Escrow, or any other instrument impose any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The Lease and Escrow shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against credit or taxing power.

Section 6. Funds and Accounts. The County hereby creates the following special and separate fund, which shall be under the control of the County:

- A. Energy Efficiency Improvement Fund. Creates the "County of Torrance Energy Efficiency Improvement Fund; for the deposit of Pledged Gross Receipts Tax Revenues.

Section 7. Deposit of Revenues and Flow of Funds. So long as any of the obligations of the County under the Lease and Escrow are unpaid, all of the Pledged Gross Receipts Tax Revenues received by the County shall promptly be set aside and deposited in the Energy Efficiency Improvements Fund.

Section 8. General Administration of Funds. The funds designated in Section 6 shall be administered and invested as follows:

- A. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be deposited in one or more bank accounts in an insured bank or banks. Each account shall be continuously secured to the extent required

Ordinance 98-1 Continued

by law and shall be irrevocable and not withdraw able by anyone for any purpose other than the designated purpose. Payments shall be made into the proper account on the first day of the month except when the first day shall not be business day, then payment shall be made on the next succeeding business day.

- B. Moneys in any fund or account not immediately needed may be invested in any investment permitted by law. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The County Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

Section 9. Lien on Pledged Tax Revenues. The Pledged Gross Receipts Tax Revenues are hereby authorized to be pledged to, and are hereby pledged, and the County grants a security interest therein, to the payment of obligations evidenced by the Lease. The Lease constitutes an irrevocable and first lien on the Pledged Gross Receipts Tax Revenues.

Section 10.

- A. All covenants, stipulations, obligations and agreements of the County contained in this Ordinance, the Lease and the Escrow, shall be deemed to be the covenants, stipulations, obligations and agreements of the County to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the County and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Ordinance, all rights, powers and privileges conferred and duties and liabilities imposed upon the County by the provisions of this Ordinance, the Lease or the Escrow shall be exercised or performed by the County or by such members, officers, board of the County as may be required by law to exercise such powers and perform such duties.
- B. No covenant, stipulation, obligation or agreement herein contained in this Ordinance, the Lease of the Escrow shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the County or member of the County Commission in his individual capacity, and neither the members of the County Commission nor any officer executing the Agreement shall be liable personally on the Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

Ordinance 98-1 Continued

Section 11. Authorized Officers. The Chairman of the County Commission, each member of the County Commission and other County Officials are hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary proper for carrying out this Ordinance, the Lease and the Escrow.

Section 12. Delegated Powers. The officers of the County, attorneys and their agents or employees of the County and members of the County Commission are hereby authorized to do all acts and things required of them by this Ordinance, the Lease or the Escrow, for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Lease and the Escrow, including but not limited to, the execution and delivery of closing documents, and reports to the Internal Revenue Service in connection with the execution and delivery of the Lease and Escrow.

Section 13. Severability. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or un-enforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 14. Repealer. 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 as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 15. Amendment of Ordinance. This Ordinance may be amended or modified only with the written consent of the holder of the Lease or Escrow as provided in the Lease or Escrow.

Section 16. Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in the Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)
Torrance County, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and a general summary of the subject matter contained an ordinance duly adopted and approved by the County Commission of the County of Torrance, New Mexico on February 25, 1998. Complete copies of the Ordinance are available for public inspection during normal and regular business hours of the County Clerk at the Torrance County Courthouse, Estancia, New Mexico, 87016.

The title of the Ordinance is: AUTHORIZING THE EXECUTION AND DELIVERY OF

Ordinance 98-1 Continued

A LEASE-PURCHASE AND ESCROW AGREEMENT, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE COUNTY TO PAY A PRINCIPAL AMOUNT OF \$84,675.00 FOR THE PURPOSE OF FINANCING THE PURCHASE AND INSTALLATION OF CERTAIN ENERGY CONSERVATION MEASURES, PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE LEASE SOLELY FROM PLEDGED GROSS RECEIPTS TAX REVENUES OF THE COUNTY, APPROVING THE FORM AND TERMS OF THE AGREEMENT AND OTHER DETAILS CONCERNING THE LEASE, RATIFYING ACTIONS TAKEN, REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE, AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LEASE.

The following is a general summary of the subject matter contained in the Ordinance:

Preambles of the Ordinance recite the authority of the county to incur obligations to finance the cost of purchasing and installing certain energy conservation measures, to pledge gross receipts tax revenues to repayment of the obligations, recite that the obligation of the county shall be a special limited obligation and not a general obligation of the County and that certain documents have been placed on file with the County Clerk and presented to the County Commission.

Sections 1 through 3 ratify actions taken by the County Commission and County officers; set forth certain findings of the County Commission regarding the obligations to be incurred by the County and with respect to the Equipment; set forth details of the obligations and provide that the County shall be obligated to pay \$84,675.00 for the Equipment and that the net effective interest rate on the obligation will be determined prior to delivery of the obligation but will be less than 6.09%.

Sections 4 through 6 approve the form of the obligation to be delivered by the County; state that the obligation is a special limited obligation of the County and shall never constitute an indebtedness of the County within the meaning of any state Constitutional provision or statutory limitation; and create special and separate funds for payment of revenues to be used to pay the obligations.

Sections 7 through 9 relate to deposits of the revenues pledged to pay the obligations and flow of funds; provide details related to general administration of the funds and investment of moneys held in the funds; and provide for a lien on the tax revenues and project revenues for the benefit of the holders of the obligations.

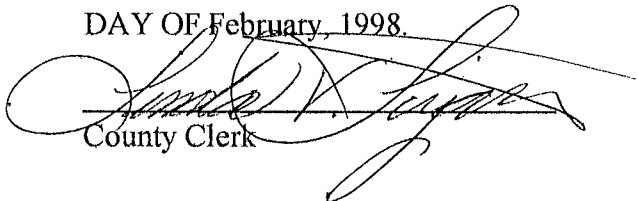
Sections 10 through 12 provide that covenants contained in the Ordinance and related documents shall be binding and enforceable upon the County but shall not be a covenant or obligation of any officer of the County in his individual capacity and authorize execution of other documents related to the obligation of the County in the taking of other acts related to the Ordinance.

Ordinance 98-1 Continued

Sections 13 through 16 provide that the Ordinance is irrevocable until the obligation is fully paid; provide a severability clause, a repealer clause, and provide a summary for publication.

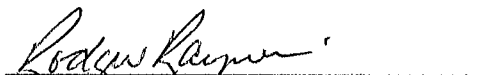
This notice constitutes compliance with 6-14-6 NMSA 1978.


WITNESS MY HAND AND SEAL OF TORRANCE COUNTY, NEW MEXICO, THIS 25th DAY OF February, 1998.


County Clerk

PASSED AND ADOPTED THIS 25TH DAY OF FEBRUARY, 1998. BY A VOTE OF 3 FOR AND 0 AGAINST.


Bill R. Williams, Chairman

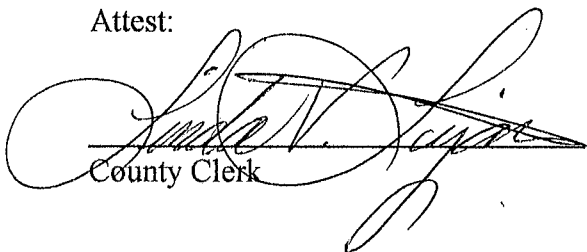

Rodger Rayner, Member

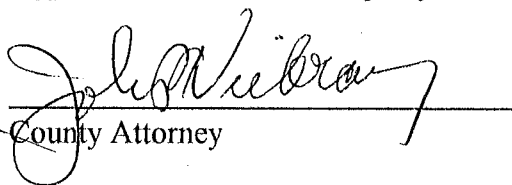

Chester Riley, Jr., Member



Attest:

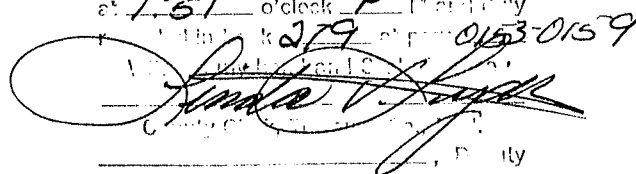
Approved as to form and legality:


County Clerk


County Attorney

This Ordinance shall become effective on the 25th day of March, 1998.

I hereby certify that this instrument was filed for record on the 26th day of Feb, A.D., 19 98 at 1:51 o'clock P M of the County of Torrance, State of New Mexico.


County Clerk